

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

2016 FEB -5 PM 3: 14

IN THE COURT OF CLAIMS OF OHIO

BARBARA A. COOPER, Exec., :
 :
Plaintiff, :
 :
v. : Case No. 2015-00017
 :
 : Judge Patrick M. McGrath
THE OHIO STATE UNIVERSITY :
MEDICAL CENTER, :
 :
Defendant.

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. This agreement is made between Barbara A. Cooper, as Executor of the Estate of Charles E. Cooper, hereinafter the Plaintiff, and The Ohio State University Medical Center, hereinafter the Defendant (all of whom are designated herein as the "parties").
2. Plaintiff has asserted a wrongful death claim against Defendant in an action now pending in the Court of Claims, entitled *Barbara A. Cooper, Executor v. The Ohio State University Medical Center*, and identified as Ohio Court of Claims Case No. 2015-00017.
3. This agreement and release is made as a compromise between the parties for the complete and final settlement of the incidents, claims and/or causes of action that were or could have been alleged in Court of Claims Case No. 2015-00017.
4. It is understood by the parties that the facts upon which this agreement and release is made may hereafter prove to be other than or different from the facts now known by either of them or believed by either of them to be true. Each of the parties expressly accepts and assumes the risk of the facts proving to be so different, and each of the parties agrees that all the terms of this agreement and release shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts.
5. The parties agree that the terms of this agreement and release bind the parties, as well as their assigns and successors in interest.

6. Plaintiff understands that this settlement is a compromise of disputed claims and payment thereof is not to be construed as an admission of liability on the part of Defendant.
7. This agreement and release contains the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements between the parties except as set forth herein.
8. In consideration of the mutual covenants set forth herein, the parties agree as follows:
 - A. Defendant agrees to pay Plaintiff, the sum of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), pursuant to Ohio Revised Code Section 2743.19. No interest on this amount shall be paid. No representation is made by Defendant as to the tax consequences of payment of the amount specified in this paragraph.
 - B. The settlement amount represents only those damages recoverable under Ohio's Wrongful Death Statute, R.C. Sections 2125.02(B)(1) through (5). Consistent with R.C. Section 2743.02(D), no portion of the settlement amount represents reimbursement for medical bills that were paid, or payable by, any private insurers.
9. Plaintiff agrees that all claims, demands, rights, causes of action, costs, loss of services, expenses, and any and all other damages on account of, or in any way arising out of the actions or inactions of Defendant, its officers, employees, servants, or agents, during or arising out of the incident described in the Complaint in Court of Claims Case No. 2015-00017 be released, settled, satisfied, discharged and compensated.
10. All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.
11. In the event of a claim, action or other proceeding is brought against Defendant as a result of, arising out of, or with reference to the incident described in the Complaint filed in Ohio Court of Claims Case No. 2015-00017, including, but not limited to, any subrogation claim or any claim, action or other proceeding for contribution, damages, indemnity or reparation in whole or in part, Plaintiff will indemnify Defendant and hold

Defendant harmless from any and all claims, liability, judgments, damages, losses, costs and expenses of any nature whatsoever (including attorney fees and court costs) arising out of or relating to such claim, action or other proceeding brought against Defendant. Plaintiff's obligations to indemnify and hold harmless Defendant extend to, but are not limited to, any obligation arising out of any subrogation liens, government reimbursement rights or any claims made by an insurance carrier, state or federal government agency, health care provider, or attorney(s) pursuant to alleged common law, contractual or statutory subrogation rights. Other than the payment set forth above, it is the express intent of the parties that Defendant shall be relieved from any and all obligations whatsoever to pay any amount to any person or any entity in connection with, arising out of or relating in any matter whatsoever to the incident described in the Complaint filed in Ohio Court of Claims Case No. 2015-00017.

12. Charles E. Cooper was a Medicare beneficiary. The parties acknowledge that in a previous action filed in the Court of Claims, entitled *Charles E. Cooper, et al. v. The Ohio State University Medical Center*, and identified as Ohio Court of Claims Case No. 2012-07331, Charles E. Cooper agreed to resolve his medical negligence claims against Defendant, the terms of which being set forth in the Settlement Agreement and Release executed by the parties and Charles E. Cooper in November 2012. Plaintiff represents herein that consistent with the terms of the previous settlement agreement, Charles E. Cooper paid Medicare for its claimed liens and thereafter he received a letter from the Centers for Medicare and Medicaid Services ("CMS") that acknowledged receipt of payment and indicated that its file was being closed. Plaintiff has provided Defendant a copy of said correspondence.
13. Defendant has, or will, report this agreement and release to CMS consistent with the Medicare, Medicaid, and SCHIP Extension Act as well as notify CMS of the settlement pursuant to 42 CFR Section 411.25.
14. As part of this settlement, and in addition to the other releases and indemnification clauses set forth in this Settlement Agreement and Release of All Claims, Plaintiff agrees to indemnify, defend, and hold Defendant harmless against and from any cause of action brought by any federal or state department, agency, contractor or other entity including, but not limited to, any subrogation claim or any action to recover or recoup Medicare or Medicaid benefits or loss of Medicare or Medicaid benefits. Plaintiff further shall be responsible for and hold Defendant harmless from any claim, past, present or future, for conditional payments made by Medicare or Medicaid

with regard to or on behalf of Plaintiff.

15. In reaching this settlement resolution, Plaintiff and Defendant have paid considerable attention to Plaintiff's entitlement to Medicare or Medicaid benefits under 42 USC 1395y, as well as Social Security disability benefits pursuant to 42 USC 423, as well as the entitlement of CMS to subrogation and intervention pursuant to 42 USC 1395y(b)(2) to recover any overpayment by Medicare. It is not the purpose of this agreement and release to shift to Medicare or Medicaid the responsibility for payment of medical expenses for the treatment of injury related to conditions, based upon the parties' belief that all such claims have been resolved.
16. Plaintiff acknowledges that any decision regarding entitlement to Social Security, Medicare, or Medicaid benefits, including the amount and duration of payments and offset reimbursement for prior payments, is determined by federal law and regulations. As such, the United States Government is not bound by any of the terms of this Settlement Agreement and Release of All Claims.
17. Plaintiff agrees to be bound by a journal entry dismissing with prejudice the above-described claim known as Ohio Court of Claims Case No. 2015-00017.
18. It is understood that this agreement and release shall not be binding on any of the parties until the proposed resolution of this matter has been duly approved by the Probate Court of Seneca County, Ohio, and a certified copy of the Journal Entry of said approval is attached. If said Probate Court shall fail or refuse to approve the proposed resolution of this matter, this agreement and release shall become null and void and without any force or effect, and none of the parties shall be bound by it.
19. The parties acknowledge and agree that this agreement and release shall not be binding on any of the parties until it has been duly presented to the Ohio Attorney General, as required by Section 2743.15(A), Ohio Revised Code, and Rule 7(A) of the Rules of the Court of Claims, for the Attorney General's approval, and the Ohio Attorney General has approved the agreement and release. The parties further acknowledge that the signature of the Assistant Attorney General on this agreement and release is on behalf of Defendant and is not to be construed as the approval of the Attorney General. If the Attorney General should fail or refuse to approve the agreement and release, it shall be null and void and without any force or effect, and none of the parties shall be bound by it.

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20. The parties acknowledge and agree that this agreement and release shall not be binding on any of the parties until it has been duly presented to the Ohio Court of Claims as required by Ohio Revised Code Section 2743.15(A), and Rules 7(A) and (B) of the Rules of the Court of Claims, for the Court's approval, and the Court has approved the agreement and release. If the Court should fail or refuse to approve the agreement and release, it shall be null and void and without any force or effect, and none of the parties shall be bound thereby.
21. The undersigned have read this agreement and release, understand all its terms, if signing on behalf of a principal, have authority to sign settlement documents on its behalf, and have executed this agreement and release voluntarily.

1-21-16
DATE

Barbara A. Cooper
Barbara A. Cooper, Executor of the
Estate of Charles E. Cooper
Plaintiff

1-25-16
DATE

Kenneth S. Blumenthal
Kenneth S. Blumenthal
Counsel for Plaintiff

1.2.16
DATE

Christopher M. Culley
Christopher M. Culley
Senior Vice President, General Counsel
The Ohio State University

2.4.16
DATE

Jeffrey L. Maloon
Jeffrey L. Maloon
Principal Assistant Attorney General
Counsel for Defendant

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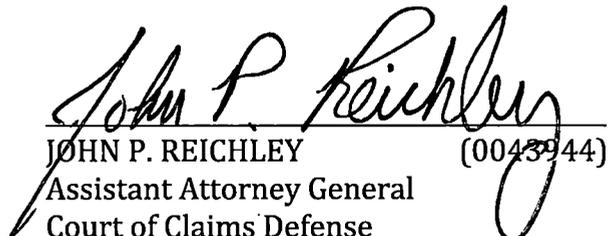
:

Defendant.

ATTORNEY GENERAL'S APPROVAL OF SETTLEMENT

The Attorney General of Ohio, pursuant to Sections 2743.15(A) and 109.04 of the Ohio Revised Code, has reviewed the Settlement Agreement in the above-captioned action and hereby approves it this 5th day of February, 2016.

MICHAEL DeWINE
Ohio Attorney General


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Assistant Attorney General
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JOURNAL ENTRY APPROVING SETTLEMENT

The Court, being fully advised as to the premises, approves and confirms the settlement agreement heretofore entered into by and between the parties hereto and orders the case be dismissed with prejudice to all parties, all court costs to be paid by Defendant. No interest shall be paid on the amount of the settlement.

It is further ordered that the settlement warrant of Eight Hundred Thousand and No/100 Dollars (\$800,000.00) shall be drawn on the account of The Ohio State University Wexner Medical Center made payable to Barbara A. Cooper, Executor, and her attorneys, Rourke & Blumenthal LLP, and sent to the Plaintiff c/o Ken Blumenthal, Rourke & Blumenthal LLP, 495 South High Street, Suite 450, Columbus, Ohio 43215.

DATE: _____

JUDGE, COURT OF CLAIMS OF OHIO

Entry cc:
Ken Blumenthal, Esquire
Rourke & Blumenthal LLP
495 South High Street
Suite 450
Columbus, Ohio 43215
Counsel for Plaintiff

and

Jeffrey L. Maloon, Esquire
Principal Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215-4220
Counsel for Defendant