

**ORIGINAL**

FILED  
COURT OF CLAIMS  
OF OHIO

2016 JUL 15 PM 3:11

**IN THE COURT OF CLAIMS OF OHIO**

JEREMY TESTER, :

Plaintiff, :

v. :

THE OHIO STATE UNIVERSITY :  
MEDICAL CENTER, :

Defendant. :

Case No. 2016-2016 - 00546  
Judge \_\_\_\_\_

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

1. This agreement is made between Jeremy Tester, 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 claims against Defendant in an action now pending in the Court of Claims, entitled *Jeremy Tester v. The Ohio State University Medical Center*, and identified as Ohio Court of Claims Case No. 2016-2016 - 00546.
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 Ohio Court of Claims Case No. 2016-2016 - 00546.
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 agreement and release 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 One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00), 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. 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.
  - C. Plaintiff agrees to hereby release, hold harmless from any liability, and forever discharge the State of Ohio and The Ohio State University Medical Center, their agents, servants, employees and officers, personally and in any other capacity, from any and all claims, actions, causes of action, demands, costs, loss of services, expenses, and any and all other damages which the undersigned ever had, now has, or may have, or claim to have, against the State of Ohio or The Ohio State University Medical Center or their agents, servants, employees or officers, on account of or in any way arising out of the incidents, claims, and/or causes of action that were or could have been alleged in Ohio Court of Claims Case No. 2016-~~2016~~ - 00546
9. 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.
10. Plaintiff hereby acknowledges that the Medicare Secondary Payer Act, 42

U.S.C. Section 1395y(b) ("Act"), applies to any personal injury settlement involving a Medicare beneficiary and requires that Medicare be reimbursed for any of its conditional payments made on behalf of the Medicare beneficiary.

- A. As part of the Act, Plaintiff has an obligation to verify the status of Jeremy Tester as a Medicare beneficiary and resolve conditional payments made on his behalf by Medicare, if any.
- B. Plaintiff and his counsel agree that counsel will (1) hold an amount sufficient to reimburse Medicare, if necessary, for conditional payments made by Medicare on behalf of Jeremy Tester from the settlement proceeds in a client trust account or similar account; (2) provide Defendant with a copy of the final demand letter, waiver letter or no-conditional payment letter issued by Medicare or the Centers for Medicare and Medicaid Services ("CMS"); and (3) provide Defendant with proof of full payment of the final demand or other evidence that Plaintiff has in fact satisfied all Medicare claims or liens in full prior to distributing the remaining funds in the trust account to Plaintiff.

11. Defendant has, or will, report this agreement and release to the 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.

12. In the event that 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. 2016-  
2016 - 00546, 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. 2016-2016-00546

13. As part of this settlement, and in addition to the other releases and indemnification clauses set forth in this agreement and release, 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 Jeremy Tester.
14. In consideration of the payment set forth in this agreement and release, Plaintiff waives any causes of action regarding 42 U.S.C. Section 1395y(b)(3)(A) and releases Defendant and any insurer of Defendant from any obligation for any claim, known or unknown, arising out of the failure of Defendant to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. Section 1395y(b)(3)(A).
15. In reaching resolution of this matter, Plaintiff and Defendant have paid considerable attention to Plaintiff's entitlement to Medicare or Medicaid benefits under 42 U.S.C. 1395y, as well as Social Security disability benefits pursuant to 42 U.S.C. 423, as well as the entitlement of CMS to subrogation and intervention pursuant to 42 U.S.C. 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. Instead, this agreement and release is intended to provide Plaintiff a lump sum which will foreclose Defendant's responsibility for future payments of all medical expenses related to any and all injuries set forth in the Complaint filed in Ohio Court of Claims Case No. 2016-2016-00546
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 understands that the receipt of these settlement funds may affect his rights to other governmental benefits, insurance benefits, disability benefits, or pension benefits. Despite this possibility, Plaintiff desires to enter into this agreement and release to settle his claims as set forth in the Complaint filed in Ohio Court of Claims Case No. ~~2016-~~ 2016 - 00546
18. Plaintiff agrees to be bound by a journal entry dismissing with prejudice the above described claims known as Ohio Court of Claims Case No. 2016-  
~~2016-~~ 2016 - 00546
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.
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

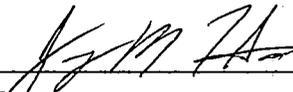
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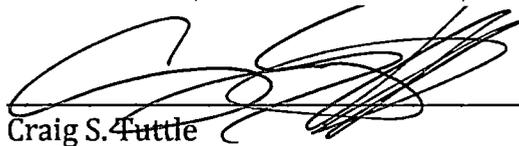
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documents on its behalf, and have executed this agreement and release voluntarily.

6-10-16  
DATE

  
\_\_\_\_\_  
Jeremy Tester  
Plaintiff  
S.S. No.

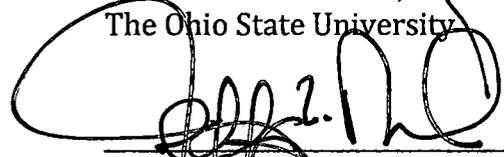
6-13-16  
DATE

  
\_\_\_\_\_  
Craig S. Futtler  
Counsel for Plaintiff

6.23.16  
DATE

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

7.5.16  
DATE

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

**[PAGE SIX OF SIX: SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS]**

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Case No. 2016-00546

Judge \_\_\_\_\_

**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 and Release of All Claims in the above-captioned action and hereby approves it this 14<sup>th</sup> day of July, 2016.

MICHAEL DeWINE  
Ohio Attorney General

  
\_\_\_\_\_  
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18th Floor  
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Case No. 2016-\_\_\_\_\_

Judge \_\_\_\_\_

**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 One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) shall be drawn on the account of The Ohio State University Wexner Medical Center made payable to Jeremy Tester, and his attorneys, Leeseberg & Valentine, and sent to the Plaintiff c/o Craig S. Tuttle, Leeseberg & Valentine, 175 South Third Street, Penthouse One, Columbus, Ohio 43215.

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE, COURT OF CLAIMS OF OHIO

Entry cc:  
Craig S. Tuttle, Esquire  
Leeseberg & Valentine  
175 South Third Street  
Penthouse One  
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