

Settlement Agreement and Release

This **Settlement Agreement and Release** (the "Settlement Agreement") is made and entered into this _____ day of _____, 2004, by and between:

Plaintiff:

Insured:

Insurer:

Recitals

A.. Plaintiff filed a Claim against "Insured" in the Court of _____, County of _____, State of _____, Civil Action File No.: _____, (the "Claim"), which Claim arose out of certain alleged negligent acts or omissions by Insured. In the Claim, Plaintiff sought to recover monetary damages as a result of that certain occurrence on or about _____, at _____, which resulted in physical/personal injuries to _____.

B. Insurer is the liability insurer of the Insured, and as such, would be obligated to pay any claim made or judgment obtained against Insured which is covered by its policy with Insured.

C. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the incident described in Recital A above, upon the terms and conditions set forth below.

Agreement

The parties agree as follows:

1.0 Release and Discharge

1.1 In consideration of the payments set forth in Section 2, Plaintiff hereby completely releases and forever discharges Insured and Insurer from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on tort, contract or other theory of recovery, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the incident described in Recital A above, including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff, or any future wrongful death claim of Plaintiff's representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Insured.

1.2 This release and discharge shall also apply to Insured's and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release, on the part of the Plaintiff, shall be a fully binding and complete settlement among the Plaintiff, the Insured and the Insurer, and their heirs, assigns and successors.

1.4 The Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiff's decision to

enter into this Settlement Agreement. The Plaintiff further agrees that Plaintiff has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than Plaintiff believes. It is understood and agreed to by the parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of Insured, by whom liability is expressly denied.

2.0 **Payments**

In consideration of the release set forth above, the Insurer on behalf of the Insured agrees to pay to the individual(s) named below ("Payee(s)") the sums outlined in Section 2 below:

2.1 Payments due at the time of settlement as follows:

The sum of _____ Dollars (\$_____) shall be paid to _____
as follows:

2.2 Periodic payments made according to the schedule as follows (the "Periodic Payments"):

To:

All sums set forth herein constitute damages on account of personal injuries and sickness, within the meaning of Section 104 (a)(2) of the Internal Revenue Code of 1986, as amended.

3.0 **Modification or Transfer of Payment Rights**

Each Plaintiff acknowledges and agrees that neither the Periodic Payments nor any rights thereto or interest therein (collectively "Payment Rights") can be:

(a). accelerated, deferred, increased or decreased by such Plaintiff or any other Payee; or

(b). sold, assigned, pledged, hypothecated or otherwise transferred or encumbered, either directly or indirectly, by such Plaintiff or any other Payee unless such sale, assignment, pledge, hypothecation or other transfer or encumbrance (any such transaction being hereinafter referred to as a "Transfer") has been approved in advance in a "qualified order" as defined in Section 5891(b)(2) of the *Internal Revenue Code*, as amended (a "Qualified Order"), and otherwise complies with applicable state law, including without limitation any and all applicable state structured settlement protection statutes.

No Plaintiff or other Payee shall have the power to affect any Transfer of Payment Rights except as provided in subparagraph (b) above, and any other purported Transfer of Payment Rights shall be wholly void.

4.0 **Plaintiff's Beneficiary**

Any payments to be made after the death of any Payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Plaintiff to the Insurer. If no person or entity is so designated by Plaintiff, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Insurer or Insurer's Assignee. The designation must be in a form acceptable to the Insurer or Insurer's Assignee before such payments are made.

5.0 **Consent to Qualified Assignment**

5.1 Plaintiff acknowledges and agrees that the Insured and/or the Insurer may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Insured's and/or the Insurer's liability to make the Periodic Payments set forth in Section 2.2 to _____ (the "Assignee") The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of Insured and/or the Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

5.2 Any such assignment, if made, shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Insured and the Insurer from the Periodic Payments obligation assigned to the Assignee. The Plaintiff recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Insured and the Insurer shall thereupon become final, irrevocable and absolute.

6.0 **Right to Purchase an Annuity**

The Insured and/or the Insurer, itself or through its Assignee, reserve the right to fund the liability to make the Periodic Payments in Section 2.2 through the purchase of an annuity policy from _____. The Insured, the Insurer or the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Insured, the Insurer or the Assignee may have _____ mail payments directly to the Payee(s). The Plaintiff shall be responsible for maintaining a current mailing address for Payee(s) with the Assignee.

7.0 **Discharge of Obligation**

The obligation of the Insured and/or the Insurer to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s) named in Section 2 of this Settlement Agreement.

8.0 **Attorney's Fees**

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with the Complaint, this Settlement Agreement and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters.

9.0 **Representation of Comprehension of Document**

In entering into this Settlement Agreement the Plaintiff represents that Plaintiff has relied upon the advice of his/her attorneys, who are the attorneys of his/her own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Plaintiff by his/her attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiff.

10.0 Warranty of Capacity to Execute Agreement

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

11.0 Confidentiality

The parties agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this Settlement Agreement or any of the amounts, numbers or terms and conditions of any sums payable to Payee(s) hereunder.

12.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of _____.

13.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

14.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Plaintiff, the Insured and the Insurer with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

15.0 Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties.

Plaintiff

By: _____

Date: _____

Insurer

By: _____

Title: _____

Date: _____