



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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January 27, 2022

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval of Settlement Agreement with Nathan Stonebraker

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| Purpose/Outcomes | To resolve litigation related to a motor vehicle collision involving a patrol vehicle operated by Clackamas County Sheriff's Office. |
| Dollar Amount and Fiscal Impact | In exchange for a full and final resolution of plaintiff's claims, the County's Risk Fund will pay \$240,000. |
| Funding Source | Risk Fund |
| Duration | Upon execution |
| Previous Board Action | The Board has been briefed on this case during previous executive sessions |
| Counsel Review | Reviewed and approved by County Counsel January 18, 2022. SL |
| Procurement Review | Was this item processed through Procurement? No, this item is a settlement agreement and not subject to such review. |
| Strategic Plan Alignment | Build public trust through good government. |
| Contact Person | Shawn Lillegren, Senior Assistant County Counsel, (503) 742-5393 |

BACKGROUND:

The Office of County Counsel requests the approval of a settlement agreement with Nathan Stonebraker, the passenger in a vehicle that was rear-ended by a Clackamas County Sheriff's deputy who was responding to a call for assistance from another deputy. The County admitted liability for plaintiff's injuries; litigation centered on the cause, nature, and extent of plaintiff's alleged personal injuries. In part, plaintiff alleged his injuries included a traumatic brain injury that required a subdural hematoma evacuation surgery, cognitive and neurobehavioral dysfunction. Plaintiff alleged that some of his symptoms caused him to be permanently disabled, and sought to recover \$98,923 for medical expenses and \$856,000 in non-economic damages.

The parties engaged retired Oregon Supreme Court Justice Susan Leeson to mediate the matter. After diligent efforts by the mediator, the parties were able to reach a negotiated settlement on the terms presented in this settlement agreement. If approved by the Board, the case will be dismissed and the matter concluded.

RECOMMENDATION:

The Office of County Counsel requests the Board approve the attached settlement agreement, and authorize Stephen Madkour, County Counsel, to sign on behalf of Clackamas County.

Respectfully submitted,

s/ Shawn Lillegren

Shawn Lillegren
Senior Assistant County Counsel

Attachment:

Settlement Agreement

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into between Nathan Stonebraker ("Stonebraker"), Daniel Douglas Blair ("Blair"), and Clackamas County ("County"), collectively the "Parties."

WHEREAS, Stonebraker filed a complaint in the Circuit Court for the State of Oregon for the County of Clackamas, Case No. 19CV41589;

WHEREAS, Blair and the County do not agree with the allegations in Stonebraker's complaint;

Nevertheless, the Parties wish to resolve this tort claim as follows:

1. Meaning of Terms.

- (a) As used in this Agreement, "Stonebraker" shall mean Nathan Stonebraker, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
- (b) As used in this Agreement, "Blair" shall mean Daniel Douglas Blair, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
- (c) As used in this Agreement, "County" shall mean Clackamas County and current and former commissioners, current and former managers, current and former County Counsel, current and former County Administrators, current and former employees (in their individual and representative capacities), attorneys, insurers, and current and former agents.
- (d) As used in this Agreement, "Parties" shall mean Nathan Stonebraker, Daniel Douglas Blair and the County as defined above.

2. Consideration.

The Parties also agree and acknowledge that this Agreement is entered into in consideration of the mutual promises and covenants contained herein.

3. Settlement.

The County shall pay a total sum of two hundred and forty thousand dollars (\$240,000.00) as full and final payment to Nathan Stonebraker. Payment shall occur within 21 calendar days of the date in which this Agreement is fully executed and plaintiff's counsel provides defendant's counsel with a completed W-9 form. Payment will be in the form of a check, payable to Rizk Law IOLTA.

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4. Release.

Stonebraker hereby waives any legal rights and releases and forever discharges Blair and County as defined above from any and all liability, demands, claims, suits, actions, charges, damages, judgments, levies or executions, whether known or unknown, liquidated, fixed, contingent, direct or indirect, which have been or could have been raised against Blair and County which relate in any way to Stonebraker's allegations or claims referenced in his complaint filed in Clackamas County Circuit Court Case No. 19CV41589, or for any act or thing done or omitted to be done up to the date of execution of this Agreement, except for her right to enforce the Agreement according to its terms. Stonebraker agrees to a full and final waiver and release of all such claims which Stonebraker has or may have against Blair and County, specifically including but not limited to all claims for relief or remedy of any type under any state or federal laws.

5. Indemnity, Defense, and Hold Harmless.

Stonebraker agrees, to the extent, but not to exceed, sums paid to Stonebraker by County, to indemnify, defend, and hold harmless the County, their insurers, employees, officers, directors, and agents for any and all claims and liabilities associated with any benefits paid to or on behalf of Stonebraker as a result of the incidents alleged in his complaint, including but not limited to any liens, unpaid bills for medical or other treatments, wage loss benefits, insurance benefits, insurance subrogation claims, recovery of costs, and claims for attorney fees, including any attorney fee liens.

6. Medicare Secondary Recovery Act.

The Parties, and specifically Stonebraker and Stonebraker's counsel, agrees to and fully incorporates by this reference the Medicare Compliance Addendum to Settlement Agreement and Release of Claims, included with this Agreement.

7. No Admission of Liability.

Stonebraker acknowledges the Agreement and payment is a compromise and final settlement of a disputed claim. Nothing in the Agreement shall be construed to be or used as an admission of liability, fault, or wrongful, tortious, or unlawful activity by any party. No part of this agreement shall be admissible in any court or alternative dispute resolution proceeding for the purpose of proving liability, causation, or fault.

8. Covenant Not to Commence Lawsuit or Claim.

The Parties further covenant that they will not commence or bring any lawsuit or claim in the future against the other party as a result of any of the events prior to execution of this Agreement or any act or thing done or omitted to be done by the other party prior to the execution of this Agreement.

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9. Integration.

The Parties agree that this Agreement states the entire agreement of the Parties and supersedes all prior and contemporaneous negotiations and agreements, oral or written. Each party expressly acknowledges that the other party did not, directly or indirectly, make any promises, representations, or warranties whatsoever, express or implied, other than those contained in this Agreement. The Parties further agree that this Agreement may be amended only by a subsequent writing signed by the Parties.

10. Severability and Governing Law.

The Parties agree that any provision of this Agreement that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The Parties further agree that this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Agreement in lieu of the illegal, invalid, or unenforceable provision. The Parties also agree that Oregon law shall govern the validity and enforceability of this Agreement.

11. No Assignment, Subrogation, or Transfer.

The Parties represent and warrant that there has not been and there will be no assignment, subrogation or other transfer of any interest in any of the released claims. The Parties agree to and hold the released Parties, and each of them, harmless from any liability, claims, demands, costs, expenses and attorneys' fees incurred by the released parties, or any of them, as a result of any person asserting any such assignment or transfer or any rights to claims under any such assignment or transfer.

12. Attorney Fees and Costs.

Each party to this Agreement shall bear its own attorney fees and costs incurred before and through the date of this Agreement.

13. Execution of this Agreement.

This Agreement may be executed in one or more identical counterparts, including facsimile and scanned and electronically transmitted counterparts, each of which shall be deemed an original. All counterparts shall constitute one Agreement, binding on all the Parties, notwithstanding that all of the parties have not signed the same counterpart.

14. Review by Counsel.

The Parties have been given the opportunity to have this Agreement reviewed by counsel. BY SIGNING THIS AGREEMENT, STONEBRAKER ACKNOWLEDGES that he has carefully read and fully understands all provisions and effects of this Agreement and that the County

advised him in writing, by this paragraph, to consult with his own personal attorney before signing this Agreement; that he has had sufficient opportunity to consult with attorney(s) before signing this Agreement; that he is voluntarily entering into this Agreement free of coercion and duress; and that neither the County nor any of their agents or attorneys, has made any representations or promises concerning the terms or effects of this Agreement other than those expressly set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release of Claims on the respective dates set forth below.

CLACKAMAS COUNTY COUNSEL



Nathan Stonebraker

Date: 1-13, 2022.

Stephen Madkour, County Counsel

Date: _____, 2022.



Daniel Douglas Blair

Date: 01/18/, 2022.



APPROVED AS TO FORM

Samuel Pope
Plaintiff's Counsel

Date: January 13, 2022.

Medicare Compliance Addendum to Settlement Agreement and Release of Claims

Acknowledgment:

Nathan Stonebraker ("Plaintiff"), Daniel Douglas Blair, and Clackamas County ("Defendants"), (collectively, the "Settling Parties") hereby acknowledges the following: (1) Under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. §1395y(b), and its accompanying regulations ("the MSP Provisions"), the Centers for Medicare and Medicaid Services (the "CMS") in certain circumstances may have an obligation to seek reimbursement of conditional payments made by the Medicare program (Title XVIII of the Social Security Act) (the "Medicare Program") on claims for items and services relating to injuries allegedly sustained by Plaintiff; (2) Plaintiff and Plaintiff's counsel are in the best position to determine if any reimbursement obligation exists, based on Plaintiff's entitlement (or lack thereof) to Medicare Program benefits, Plaintiff's actual receipt of such benefits, and, if there is a reimbursement obligation, to ensure that the Medicare Program's interests are properly considered and discharged; (3) If there is a reimbursement obligation to the Medicare Program, Plaintiff and Plaintiff's counsel are responsible under the MSP Provisions to verify, resolve and satisfy such obligation; and (4) If Plaintiff is now or in the past has been enrolled in the Medicare Program, Defendants will report the Settlement to the CMS pursuant to the MSP Provisions (even if Defendants do not agree that the evidence actually establishes liability for injuries allegedly sustained by Plaintiff).

Plaintiff Statements:

Plaintiff represents and warrants that Plaintiff and Plaintiff's counsel have reviewed the underlying facts and evidence of this case. Plaintiff understands and acknowledges that if Plaintiff is Medicare-enrolled at the time of settlement, Defendants are required to report this Settlement to the CMS but further acknowledges that by doing so, Defendants do not concede or admit that they necessarily agree that Defendants are liable for Plaintiff's alleged injuries.

Plaintiff also represents and warrants that, if Plaintiff has not already reimbursed or otherwise satisfied the Medicare Program for conditional payments made on claims for items and services relating to the injuries that are the subject of this action being resolved by this Settlement, Plaintiff will do so in a timely manner as set forth in the MSP Provisions.

Plaintiff further represents and warrants that, to the extent any other government payer (including but not limited to Medicaid, Veteran's Administration, Tricare/CHAMPUS) has a right to be reimbursed for any payments made on claims for items and services relating to the alleged injuries that are the subject of this action being resolved by this Settlement, Plaintiff has, or will, fully reimburse, resolve, otherwise satisfy, or properly consider, the rights of such payers.

Plaintiff acknowledges that in making payment to Plaintiff pursuant to this Settlement, Defendants are reasonably relying on the representation and warranties made by Plaintiff herein and these representations and warranties are a material inducement to Defendants to make payment as part of this Agreement.

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Plaintiff's Counsel Statements:

Plaintiff's counsel understands and acknowledges that where Plaintiff is identified as Medicare-enrolled at the time of execution of this Agreement, Defendants are required to report this Settlement to the CMS but further acknowledges that by doing so Defendants do not concede or admit that they necessarily agree that Defendants are liable for Plaintiff's alleged injuries.

Plaintiff's counsel further represents and warrants that it will take reasonable actions to ensure that any such reimbursement obligation is in fact resolved or satisfied. Finally, Plaintiff's counsel represents and warrants that, as a material inducement to Defendants making payment under this Settlement before such reimbursement obligation is resolved or satisfied, and as a condition subsequent to this Settlement, Plaintiff's counsel will provide Defendants with proof of the Medicare Program's determination that such reimbursement obligation has been fully resolved or satisfied once such determination is received by Plaintiff's counsel.

Plaintiff's counsel further represents and warrants that, to the extent any other government payer (including but not limited to Medicaid, Veteran's Administration, Tricare/CHAMPUS) has a right to be reimbursed for any payments made on claims for items and services relating to the alleged injuries that are the subject of this action being resolved by this Settlement, Plaintiff's counsel will take reasonable actions to ensure that Plaintiff has, or will, fully reimburse, resolve, otherwise satisfy, or properly consider, the rights of such payers.

Plaintiff's counsel acknowledges that in making payment to Plaintiff pursuant to this Settlement, Defendants are reasonably relying on the representation and warranties made by Plaintiff's counsel herein and these representations and warranties are a material inducement to Defendants to make payment under this Agreement.

Tort Recovery or Similar Record

Based on the warranties and representations made above, a tort recovery or similar record may need to be established by Plaintiff's counsel and a reporting event may be triggered, which would be the responsibility of the Defendants, by and through their insurance carrier. In the case of a reportable event, Defendants will comply with the MSP Provisions. Defendants will determine whether the Settlement is reportable under the Act. If there is an obligation to establish a tort recovery or similar record with the CMS, Plaintiff's counsel shall provide Defendants appropriate information validating that such a record has been established with the CMS and/or its recovery contractor. The Settling Parties expressly agree that payment of settlement proceeds is not conditioned upon Plaintiff providing proof that all Medicare reimbursement claims and obligations have been satisfied. Rather, Defendants agree to forward the gross settlement proceeds within the time frame agreed between the Settling Parties at the time of Settlement once Plaintiff has tendered an executed release, and Plaintiff's counsel has provided Defendants with appropriate information validating that a tort recovery or similar record has been established with the CMS and/or its recovery contractor.

Medicare's Potential Future Interests

Plaintiff will set-aside \$2,000 from the settlement proceeds to fully satisfy any claimed interest from Medicare. The Settling Parties do not intend to shift responsibility of future medical benefits to the Federal

Government. Plaintiff agrees to take such actions as are considered legally necessary to ensure Medicare's interests are properly considered.

Plaintiff and Plaintiff's counsel represent that they agree to satisfy any and all Medicare subrogation interests, claims and/or liens, as may be finally determined and/or compromised, from the proceeds of the settlement funds as distributed to Plaintiff's counsel.

Plaintiff understands that it is his responsibility to properly consider Medicare's future interest. If Medicare's future interest is not properly considered, Plaintiff understands that the CMS may be entitled to recover its future interest from Plaintiff, and that Defendants are not liable to the CMS for Plaintiff's failure to properly consider Medicare's future interest.

IN WITNESS WHEREOF, the Parties hereto have executed this Medicare Compliance Addendum to Settlement Agreement and Release of Claims on the respective dates set forth below.



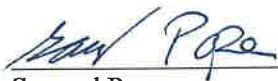
Nathan Stonebraker

Date: 1-13, 2022.

CLACKAMAS COUNTY COUNSEL

Stephen Madkour, County Counsel

Date: _____, 2022.



Samuel Pope
Plaintiff's Counsel

Date: January 13, 2022.



Daniel Douglas Blair

Date: 01/18/, 2022.