

Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 15.375

Agenda No. 10.0

Approved: MAY 27 2015

TITLE:

RESOLUTION AUTHORIZING SETTLEMENT OF THE
LAW SUIT OF GRACE SMYKOWSKI, ET AL. V. CITY
OF JERSEY CITY, ET AL.



COUNCIL

offered and moved

adoption of the following Resolution:

WHEREAS, on October 22, 2011, Grace Smykowski was lawfully on public property; and

WHEREAS, Grace Smykowski fell and was injured as a result of a condition then existing on the aforesaid property; and

WHEREAS, Grace Smykowski and her husband Thomas Smykowski filed a lawsuit in the Superior Court of New Jersey, Law Division, Hudson County bearing Docket No. HUD-L-3891-12; and

WHEREAS, Corporation Counsel has recommended settlement of this lawsuit in the amount of \$145,000.00 because of the litigation risk involved; and

WHEREAS, the plaintiffs have agreed to this settlement and will sign all required releases and will dismiss the lawsuit with prejudice and will satisfy all liens out of the settlement proceeds; and

WHEREAS, the necessary funds for the settlement are available in the City of Jersey City Insurance Fund Commission account.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel be and is hereby authorized to settle this lawsuit for \$145,000.00 and to sign and file all necessary paperwork to conclude the settlement; and
2. The Jersey City Insurance Commission Fund be and is hereby authorized to issue a check in the amount of \$145,000.00 payable to the plaintiffs and their attorneys.

SDC/cw
03/19/15

APPROVED: 

APPROVED: _____

Business Administrator

APPROVED AS TO LEGAL FORM

Certification Required ☐

Not Required ☐

APPROVED  8-0

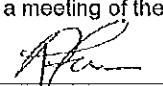
Corporation Counsel


RECORD OF COUNCIL VOTE ON FINAL PASSAGE 5.27.15											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	ABSENT			WATTERMAN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.


Rolando R. Lavarro, Jr., President of Council


Robert Byrne, City Clerk

RELEASE OF ALL CLAIMS AND CONFIDENTIALITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

The Undersigned, GRACE SMYKOWSKI AND THOMAS SMYKOWSKI, for the sole consideration of \$200,000.00 (Two Hundred Thousand Dollars) payable by First Mercury Insurance Company on behalf of PAULUS HOOK COMMUNITY HOUSING CORP., WESTGATE MANAGEMENT COMPANY, INC., and to the undersigned, do hereby and for all their heirs, executors, administrators, successors and assigns, release, acquit and forever discharge PAULUS HOOK COMMUNITY HOUSING CORP., WESTGATE MANAGEMENT COMPANY, INC., as well as all of their related entities, partnerships, subsidiaries and divisions, including all of its employees, agents, officers, directors, heirs, executors, administrators, shareholders, successors, as well as all related persons, firms, corporations, associations and partnerships in addition to First Mercury Insurance Company, RiverStone Claims Management and its affiliates, agents and all related insurance carrier from any and all suits, debts, dues, account bonds, covenants, contracts, agreements, judgments, medical bills, ERISA type liens, claims, actions, losses, causes of action, demands, rights, damages, costs, loss of services, expenses, liens, invoices, bills and compensation whatsoever, which the undersigned now have or which may hereafter accrue on account of or in any growing out of any and all known and unknown, foreseen and unforeseen, personal injuries, property damage, losses and the consequences thereof resulting or to result from the accident, casualty or event which is claimed to have occurred in or about October 22, 2011 and perhaps ongoing, and which in turn resulted in the filing of the matter in the Superior Court of New Jersey, Law Division, Hudson County, captioned Grace Smykowski, et al. v. Paulus Hook Community Housing Corp., et al., Docket No.: HUD-L-3891-12.

It is further agreed that the foregoing settlement of this matter shall be and is hereby deemed CONFIDENTIAL. Furthermore, the confidentiality aspect of the settlement is and shall be deemed a critical part of the settlement agreement. Failure by the undersigned and/or their heirs, executors, administrators,

successors, and assigns to honor the Confidentiality Agreement could result in forfeiture and/or return of the settlement proceeds along with other such relief which may be deemed just and equitable in accordance with our Court Rules including, among other things, reimbursement of reasonable attorney fees and related expenses incurred in connection with the foregoing.

It is understood and agreed that this settlement is the compromise of a disputed claim, and that the payment made herein is not to be construed as an admission of liability or fault on the part of the parties hereby released, and that said parties / releasees deny any and all liability herein and intend merely to avoid litigation and buy their peace.

The undersigned hereby declare and represent that the damages sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release and Confidentiality Agreement it is understood and agreed, that the undersigned rely wholly upon the undersigned's judgments, belief and knowledge of the nature, extent, affect and duration of said damages and liability thereof and is made without reliance upon any statement or representation of the parties hereby released and/or their representatives.

The undersigned further declare and represent that there may be unknown or unanticipated injuries, damages, losses, bills, liens and or the like resulting from the above stated alleged incident, casualty or event and in making this Release and Confidentiality Agreement it is understood and agreed that this Release is intended to include all such damages. Further, with the undersigned 's acceptance of the sum of \$200,000.00 from above noted, the undersigned hereby agrees to satisfy any and all outstanding liens (including but not limited to Medicare, Medicaid, ERISA and/or workers' compensation liens), bills and/or invoices arising from and/or incurred as a result of the subject incident which occurred on or about October 22, 2011 and will also, if appropriate, indemnify and/or hold harmless Paulus Hook Community Housing Corp. and Westgate Management Company, Inc., and First Mercury Insurance Company, RiverStone Claims Management and all of their subsidiaries and related entities.

The undersigned further declare and represent that no promise, inducement or agreement not herein expressed have been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

The Releasor represents that any and all liens, outstanding bills, Medicaid, Medicare, disability benefits, workers' compensation claims, ERISA type claims and/or the like shall be paid out of the proceeds of this settlement.

Additionally, the undersigned acknowledges that neither she nor decedent's children are Medicare and/or Medicaid beneficiaries. However, if Medicare and/or Medicaid should make any payments in connection with the injuries the Releasor claimed herein, she agrees to be solely responsible for the payment of same if necessary.

MEDICARE DISCLOSURES, WARRANTIES AND INDEMNITY AGREEMENT

1. Recitations and Disclosures

I understand that in reaching this agreement, the parties have considered Medicare's interest in recovering conditional payments made for medical treatment rendered as a result of the CLAIM. It is not the intention of any party to this settlement to shift to Medicare the responsibility for payment of medical expenses for the treatment of injuries sustained as a result of the CLAIM. However, this settlement agreement is intended to foreclose responsibility on the part of the RELEASED PARTIES for payment of medical expenses or prescription expenses related to CLAIM other than the payment made as part of this settlement and release of claims.

I understand that Section 1862(b)(2)(A)(ii) of the Social Security Act precludes Medicare payment for services to the extent that payment has been made or can reasonably be expected to be made promptly under liability insurance. 42 CFR 411.50 defines liability insurance. Anytime a settlement, judgment or award

provides funds for past or future medical services, it can reasonably be expected that those funds are available to pay for the services claimed and/or released in the settlement, judgment, or award. Thus, Medicare should be reimbursed for past services and should not be billed for future services until funds from the settlement, judgment, or award are exhausted by payments that would otherwise be covered by Medicare.

I understand that in 2007 the Medicare, Medicaid and SCHIP Extension Act (hereinafter "Extension Act") was enacted, in part, to protect Medicare when the settlement of a bodily injury claim involves payment for past or future medical services and the injured individual is either a current Medicare beneficiary or has the potential to be entitled to Medicare benefits within thirty (30) months of the date of settlement. Furthermore, I understand that this Act requires that such payments be reported within a time established by the Secretary of Health and Human Services.

I understand that, if Medicare is not protected as set forth in the Extension Act, Medicare may cease all benefits otherwise available to me. I further understand and agree that, in the event Medicare seeks reimbursement for past or future payments, the Indemnity Agreement provides that I will indemnify the Released Parties from all responsibility for Medicare's claim.

The Released Parties expressly deny all liability for any damages as a result of the Accident and dispute the reasonableness and necessity of past and future medical treatment and expenses allegedly incurred as a result of said Accident.

II. Hold Harmless and Indemnity Agreement

Additionally, as further consideration of the parties' willingness to settle the claim referenced in the RELEASE OF ALL CLAIMS, and to induce said settlement, Plaintiffs and Plaintiffs' attorney agree by and on behalf of themselves and their heirs, executors, administrators, and assigns, that they will hold harmless and indemnify each and every released party including without limitation Paulus Hook Community Housing

Corp. and Westgate Management Company, Inc., and First Mercury Insurance Company, RiverStone Claims Management, all of their subsidiaries, affiliates, parent company, divisions, contractors, employees, servants, agents, officers, directors and legal representatives, and hold free and harmless from and against any and all losses, claims demands, cause or causes of action or judgments of every kind and character, which may or could be brought for attorneys' fees, contribution or indemnity, any and all statutory contractual or common law subrogation claims or liens, including, but not limited to, all Hospital liens, workers' compensation subrogation liens, Medicare or Medicaid liens, Social Security disability liens, health insurance liens, Federal, State or local government liens.

I am of sound mind and body and fully capable of reading and understanding this agreement. I understand the consequences of my failure to abide by the Extension Act.

THE UNDERSIGNED HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this _____ day of 4/21/15, 20_____.

Caution: Read before signing below

(X) *Grace Smykowski*
GRACE SMYKOWSKI

(X) *Thomas Smykowski*
THOMAS SMYKOWSKI

NOTARY IS REQUIRED

As to form and content:

STATE OF New Jersey

COUNTY OF Bergen

On the 21st day of April 2015, before me personally appeared _____

_____ to me known to be the person(s) named herein and who executed the foregoing Release and has acknowledged to me that he/she voluntarily executed the same.

[Signature]

Notary Public

My term expires:

Paul DeCarvalho
Attorney at Law in the State of N.J.

ADDENDUM TO RELEASE OF ALL CLAIMS
(No Known Medicare Involvement)

I, GRACE SMYKOWSKI, (hereinafter also referred to as "I" or "Plaintiff"), individually and on behalf of my heirs, executors, administrators and assigns, as further consideration for the settlement referenced in the RELEASE OF ALL CLAIMS, further recite, warrant and agree to and warrant the following:

DISCLOSURES, WARRANTIES AND INDEMNITY AGREEMENT

1. Recitations and Disclosures

I understand that in reaching this agreement, the parties have considered Medicare's interest in recovering conditional payments made for medical treatment rendered as a result of the CLAIM. It is not the intention of any party to this settlement to shift to Medicare the responsibility for payment of medical expenses for the treatment of injuries sustained as a result of the CLAIM. However, this settlement agreement is intended to foreclose responsibility on the part of the RELEASED PARTIES for payment of medical expenses or prescription expenses related to CLAIM other than the payment made as part of this settlement and release of claims.

I understand that Section 1862(b)(2)(A)(ii) of the Social Security Act precludes Medicare payment for services to the

extent that payment has been made or can reasonably be expected to be made promptly under liability insurance. 42 CFR 411.50 defines liability insurance. Anytime a settlement, judgment or award provides funds for past or future medical services, it can reasonably be expected that those funds are available to pay for the services claimed and/or released in the settlement, judgment, or award. Thus, Medicare should be reimbursed for past services and should not be billed for future services until funds from the settlement, judgment, or award are exhausted by payments that would otherwise be covered by Medicare.

I understand that in 2007 the Medicare, Medicaid and SCHIP Extension Act (hereinafter "Extension Act") was enacted, in part, to protect Medicare when the settlement of a bodily injury claim involves payment for past or future medical services and the injured individual is either a current Medicare beneficiary or has the potential to be entitled to Medicare benefits within thirty (30) months of the date of settlement. Furthermore, I understand that this Act requires that such payments be reported within a time established by the Secretary of Health and Human Services.

I understand that, if Medicare is not protected as set forth in the Extension Act, Medicare may cease all benefits otherwise available to me. I further understand and agree that, in the event Medicare seeks reimbursement for past or future

payments, the Indemnity Agreement provides that I will indemnify the Released Parties from all responsibility for Medicare's claim.

The Released Parties expressly deny all liability for any damages as a result of the Accident and dispute the reasonableness and necessity of past and future medical treatment and expenses allegedly incurred as a result of said Accident.

II. Warranties

Therefore, in consideration of the parties' willingness to settle the claim referenced in the RELEASE OF ALL CLAIMS, and to induce said settlement, Plaintiff makes the following warranties:

- Medicare has made NO CONDITIONAL PAYMENTS for any medical expense or prescription expense related to the Accident.
- I am not, nor have I ever been a Medicare beneficiary.
- I am not currently receiving Social Security Disability Benefits.
- I have not applied for Social Security Disability Benefits.
- I have not been denied Social Security Disability Benefits.
- I have not appealed from a denial of Social Security Disability Benefits.
- I am not in End Stage Renal failure.

- I do not expect to become eligible for Medicare benefits within the next 30 months.
- No liens, including but not limited to liens for medical treatment by hospitals, physicians, or medical providers of any kind have been filed for the treatment of injuries sustained in the Accident.

III. Hold Harmless and Indemnity Agreement

Additionally, as further consideration of the parties' willingness to settle the claim referenced in the RELEASE OF ALL CLAIMS, and to induce said settlement, Plaintiff and Plaintiff's attorney agree by and on behalf of themselves and their heirs, executors, administrators, and assigns, that they will hold harmless and indemnify each and every released party including without limitation Paulus Hook Community Housing Corp. and Westgate Management Company, Inc., their Carriers, First Mercury Insurance Company, RiverStone Claims Management all of their subsidiaries, affiliates, parent company, divisions, contractors, employees, servants, agents, officers, directors and legal representatives, and hold free and harmless from and against any and all losses, claims demands, cause or causes of action or judgments of every kind and character, which may or could be brought for attorneys' fees, contribution or indemnity, any and all statutory contractual or common law subrogation claims or liens, including, but not limited to, all Hospital liens, workers' compensation subrogation liens, Medicare or Medicaid liens, Social Security disability liens, health insurance liens, Federal, State or local government liens.

I am of sound mind and body and fully capable of reading and understanding this agreement. I understand the consequences of my failure to abide by the Extension Act.

Done at Bergen County, State of New Jersey, this 21st day of April, 2015.

x Grace Smykowski
Grace Smykowski, Plaintiff

STATE OF NEW JERSEY :
COUNTY OF Bergen : SS

Before me, the undersigned notary public in and for the State of New Jersey, on this _____ day of _____, 2010, personally appeared _____, known to me to be the persons whose names are subscribed to the foregoing instrument, who acknowledged to me that each executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 21st day of April, 2015.

Notary Public

Done at _____ County, State of New Jersey this 4/21/15 day of 2015.

Paul DeGrado
Plaintiffs' attorney's name

Paul DeGrado

TOMPKINS, McGUIRE, WACHENFELD & BARRY LLP

3 Becker Farm Road, Fourth Floor

Roseland, New Jersey 07068-1726

(973) 622-3000

Attorneys for Defendants/Third-Party Plaintiffs,

Paulus Hook Community Housing Corp. and Westgate Management Company, Inc.

Richard F. Connors, Jr., Esq.: NJ Attorney ID #034981988

GRACE SMYKOWSKI AND

THOMAS SMYKOWSKI,

Plaintiffs,

v.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – HUDSON COUNTY

DOCKET NO.: HUD-L-3891-12

PAULUS HOOK COMMUNITY HOUSING
CORP., WESTGATE MANAGEMENT
COMPANY, INC., CITY OF JERSEY CITY,
JERSEY CITY DEPARTMENT OF PUBLIC
WORKS, COUNTY OF HUDSON, STATE OF
NEW JERSEY, JOHN DOE (1-10) a fictitious
Person whose identity is presently unknown, and
XYZ CORPORATION, (1-10) a fictitious
corporation, sole proprietorship, partnership,
limited liability company, and/or limited liability
partnership whose identity is presently unknown,

Defendants.

PAULUS HOOK COMMUNITY HOUSING
CORP. and WESTGATE MANAGEMENT
COMPANY, INC.,

Third-Party Plaintiffs,

v.

JERSEY CITY PARKING AUTHORITY and
PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,

Third-Party Defendants.

AFFIDAVIT OF PLAINTIFF

1. I, GRACE SMYKOWSKI, am over the age of eighteen (18) and am competent to be a witness in this matter. I have personal knowledge of the facts set forth herein.

2. I understand that in reaching a settlement, the parties have considered Medicare's interest in recovering conditional payments made for medical treatment rendered as a result of the claim that is the subject of my(our) above captioned lawsuit.
3. I have provided my(our) Social Security Number. I understand that if I(We) am(are) a Medicare beneficiary(ies) and I(We) do not provide the requested information, including a Health Insurance Claim Number, I(We) may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my(our) claim(s) correctly and promptly.
4. I hereby make the following representations and warranties:
 - (a) I have not applied for Medicare benefits.
 - (b) Medicare has made no conditional payments for any medical expense or prescription expense related to the claimed injury.
 - (c) I am not, nor have I ever been Medicare beneficiaries.
 - (d) I am not currently receiving Social Security Disability Benefits.
 - (e) I have not applied for Social Security Disability Benefits.
 - (f) I have not been denied Social Security Disability Benefits.
 - (g) I have not appealed from a denial of Social Security Disability Benefits.
 - (h) I am not in End Stage Renal Failure.
 - (i) I have not been diagnosed with amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's Disease.
 - (j) No liens, including but not limited to liens for medical treatment by hospitals, physicians, or medical providers of any kind, have been filed for the treatment of injuries sustained in the Accident.
5. I assume all responsibility for all liens related to the treatment of the claimed injury, including those asserted by Medicare or any other entity pursuant to the Medicare, Medicaid and SCHIP Extension Act and/or the Medicare Secondary Payer Act.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this affidavit are true.

Date 4/21/15

Grace Smykowski
GRACE SMYKOWSKI

Sworn and subscribed before me this 21st day of April, 2015

Notary Public

Paul DeGraaf

Attorney at Law in State of N.J.

My Commission expires: _____