

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

City Clerk File No. _____ Res. 17-306

Agenda No. _____ 10.T.

Approved: _____ APR 12 2017

TITLE:



RESOLUTION RATIFYING THE SETTLEMENT OF THE LAWSUIT SHARMAINE SIMMONS, ET AL. V. CITY OF JERSEY CITY, ET AL. EFFECTIVE JANUARY 30, 2017

COUNCIL offered and moved adoption of the following Resolution:

WHEREAS, Sharmaine Simmons, through her guardian Ad Litem, Uraine Simmons and Uraine Simmons ("plaintiffs") filed a lawsuit in the Hudson County Superior Court bearing Docket No.: HUD-L-973-15; and

WHEREAS, the Corporation Counsel recommended a settlement in the amount of \$45,000.00 because of the litigation risk involved; and

WHEREAS, the plaintiffs agreed to this settlement and have signed all required releases and dismissed the lawsuit with prejudice; and

WHEREAS, \$45,000.00 was paid to Plaintiffs on January 30, 2017;

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

1. The January 30, 2017 settlement payment in the amount of \$45,000.00 settling the litigation is ratified.

CR/mw
4/4/17

APPROVED: _____

APPROVED: _____
Business Administrator

APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 7-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 4.12.17											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	ABSENT		
GADSDEN	✓			OSBORNE	✓			WATTERMANN	ABSENT		
BOGGIANO	✓			ROBINSON	✓			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

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

RESOLUTION RATIFYING THE SETTLEMENT OF THE LAWSUIT SHARMAINE SIMMONS, ET AL. V. CITY OF JERSEY CITY, ET AL. EFFECTIVE JANUARY 30, 2017

Initiator

Department/Division	Law Department	
Name/Title	Chaunelle Robinson, Assistant Corporation Counsel	
Phone/email	(201) 547-5228	crobinson@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

Plaintiffs Sharmaine Simmons and Uraina Simmons sued the City of Jersey City for injuries Sharmaine Simmons sustained while playing softball at the Bayside Park softball field during a little league game. Sharmaine Simmons fractured her ankle when she slid into second base. Her injury required the insertion of a metal plate and screws. This resolution ratifies the \$45,000.00 settlement payment to Plaintiffs on January 30, 2017. Plaintiffs have already executed a general release and stipulation dismissing the settlement against the City of Jersey City.

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

RELEASE AND SETTLEMENT OF ALL CLAIMS

Matter: Sharmain Simmon, a Minor by her Guardian Ad Litem, Uraina Simmons and Uraina Simmons, Individually v. City of Jersey City, Washington Park Little League, Jackie Robinson Little League, Bayside Park and Green Construction

Docket No.: HUD-L-973-15

By this General Release dated January 31, 2017, **Sharmaine Simmons, Uraina Simmons, Guardian Ad Litem and Uraina Simmons, Individually** (known hereinafter as the "Releasers"), as the Releasers and Plaintiffs in a Civil Action filed in the Superior Court of New Jersey, Law Division, Hudson County, Docket No.: HUD-L-973-15, does, for themselves, their successors, heirs, attorneys and assigns, for the consideration described below, hereby forever release, discharge and give up, as against the defendants, **City of Jersey City, Jackie Robinson Little League, Washington Park Little League, Bayside Park and Green Construction, Inc., Wesco Insurance Company and Gallagher Bassett Services, Inc** (hereinafter known as "Releasees") every claim, cause of action, demand and right of every type and kind, known or unknown, raised or which could have been raised in the above mentioned Civil Action, including but not limited to: liens, attorney fees, expenses and costs of suit, and damages of any kind or description.

Releasers acknowledge and agree that any such liens, attorneys fees and expenses will be paid and satisfied from the settlement proceeds. Further, Releasers consent to a dismissal, with prejudice, as to the **City of Jersey City, Jackie Robinson Little League, Washington Park Little League, Bayside Park and Green Construction, Inc., Wesco Insurance Company and Gallagher Bassett Services, Inc.**, of the Civil Action referenced above. For and in consideration of the below sum, the undersigned hereby agree to satisfy all liens or encumbrances which may

apply to the above sum including but not limited to medical providers, medical insurance companies, HMO's, Medicare, Medicaid liens, Workers' Compensation liens, and any and all subrogation claims and hereby agrees to indemnify all the above named Releasees and their respective insurance carriers against any further liability for the satisfaction of any such liens or encumbrances.

In consideration and in exchange for this General Release, Releasees agree to pay the Releasers and to their attorney **Zavodnick, Perlmutter & Boccia, LLC** the sum of **Ninety Five Thousand Dollars (\$95,000.00)**, as follows: Green Construction shall pay Twenty-Five Thousand Dollars (\$25,000.00); Jackie Robinson Little League shall pay Twenty-Five Thousand Dollars (\$25,000.00); and the City of Jersey City and Bayside Park shall pay Forty-Five Thousand Dollars (\$45,000.00) subject to approval, as required by law, of the Municipal Council of the City of Jersey City in full and complete satisfaction of any and all claims made or which could have been made by the Releasers against the Releasees.

It is understood and agreed that the payment of said amount by Releasees is not to be construed as an admission of liability on the part of the City of Jersey City, Bayside Park, Jackie Robinson Little League, Washington Park Little League, and Green Construction, Inc. but that said payment is in compromise and settlement of Releasers' claims; which are not admitted, but are denied and disputed. This Release is being given by Releasers voluntarily and not based on any representations or statements of any kind made by Releasees or their representatives, as to the merits, legal liability, or value of my claim or any other matter relating thereto. This release covers all actions, causes of action, claims, demands and cross-claims by reason of any damage, loss or injury, known or unknown, which may be traced either directly or indirectly to the incident which is the subject of the lawsuit, Docket No.: HUD-L-973-15.

Releasers acknowledge that they have read this General Release and are signing it voluntarily. Releasers acknowledge that they had the opportunity to review the Release with the assistance of counsel. Releasers acknowledge that there have been no promises or representations made which are not contained within this document and that the Releasers sign this General Release as their voluntary obligations between the Releasers and the Releasees.

THIS IS A RELEASE: READ BEFORE SIGNING.

S. Simmons
Sharmaine Simmons

1-31-17
Date

656 Ocean Ave,
Jersey City, NJ 07305
Address

U. Simmons
Uraina Simmons, Guardian Ad Litem

1-31-17
Date

Address
Uraina Simmons, Individually

1/31/17
Date

U. Simmons
656 Ocean Avenue JC NJ 07305
Address

ADDENDUM TO RELEASE AND SETTLEMENT AGREEMENT
MEDICARE

SHARMAIN SIMMONS, AND HER GUARDIAN AD LITEM, URAINA SIMMON, (collectively referred to as "I", "Plaintiff", or "Releasor"),), individually and on behalf of my heirs, executors, administrators and assigns, as further consideration for the settlement arising as a result of an accident that occurred in Jersey City, New Jersey on May 2013, that is the subject matter of the lawsuit Sharmain Simmons, a Minor by her Guardian Ad Litem, Uraina Simmons and Uraina Simmons, Individually v. City of Jersey City, Washington Park Little League, Jackie Robinson Little League, Bayside Park and Green Construction , Docket No.: HUD-L-973-15 further recite, warrant and agree to City of Jersey City, Jackie Robinson Little League, Washington Park Little League, Bayside Park and Green Construction, Inc., Wesco Insurance Company and Gallagher Bassett Services, Inc TPA, and any and all of their predecessors, successors, assigns, parents, subsidiaries, and affiliates, and each of their officers, directors, shareholders, employees, legal representatives, insurers and agents past and present (referred, to as "You" or "Releasees"), the following:

DISCLOSURES, WARRANTIES AND INDEMNITY AGREEMENT

I. 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 result of the Claim. However, this settlement agreement is intended to foreclose responsibility on the part of the Releasees 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.