

2012 WL 4739136 (Tex.Dist.) (Trial Order)
District Court of Texas,
17th Judicial District.
Tarrant County

Mario BAKER, Individually, as Next Friend of Amarion Baker and Tayshawn
Baker and as Personal Representative of the Estate of Sonia Baker and Stella Lopez,

v.

Jesus CISNEROS.

No. 017-254391-11.
September 14, 2012.

Final Judgment

Agreed as to Form and Substance: [Jeffrey H. Rasansky](#), State Bar No. 16551150, Rasansky Law Firm, 2525 McKinnon, Suite 625, Dallas, TX 75201, (214)651-6100, (214) 651-6150 [Fax], Attorney for Plaintiffs.

[Mike Freden](#), State Bar No. 07412050, Noteboom -- The Law Firm, 669 Airport Freeway, Suite 100, Hurst, TX 76053, (817) 282-9700, (817) 282-8073 [Fax], Attorney for Plaintiffs.

[Brett A. Smith](#), State Bar No. 18542275, [Daniel M. Karp](#), State Bar No. 24012937, Fee, Smith, Sharp & Vitullo, LLP, 13155 Noel Road, Suite 1000, Dallas, TX 75240, (972)934-9100, (972) 934-9200 [Fax], Attorneys for Defendants.

[J. Patrick Gallagher](#), State Bar No. 07585500, Haslam & Gallagher, 555 S. Summit Avenue, Fort Worth, TX 76104, (817) 332-3115, (817) 332-3148 [Fax], Guardian Ad Litem.

On this the 14th day of September, 2012, came on to be heard the above-referenced cause and came the Plaintiffs, MARIO BAKER, INDIVIDUALLY, AS NEXT FRIEND OF AMARION BAKER AND TAYSHAWN BAKER AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SONIA BAKER AND STELLA LOPEZ, came J. PATRICK GALLAGHER, duly appointed by the Court as Guardian ad Litem for the interested **Minors** herein; and came the Defendant, JESUS CISNEROS, all represented by their respective attorneys of record.

All parties announced ready for trial, and a jury having been waived, all matters of fact as well as law were presented to the Court, and all parties further announced to the Court that a Settlement and Release of All Claims had been reached in the cause, which include claims of Amarion Baker and Tayshawn Baker, both of whom are **minors**; and the Court having considered the pleadings, the Settlement and Release of All Claims, and having heard the testimony of the parties and argument of counsel, and the recommendations of the Court appointed Guardian Ad Litem, is of the opinion and finds the following:

1. All parties necessary and proper to settlement of the claims and causes of action are before the Court.
2. Plaintiffs and Defendant have agreed upon the terms contained in the Settlement and Release of All Claims, a copy of which is attached to this Final Judgment as Exhibit "A."
3. The Settlement and Release of All Claims covers all claims and causes of action that were asserted or could have been asserted in this Cause.

4. Defendant has expressly denied liability for the injuries and damages alleged by Plaintiffs.
5. The Settlement and Release of all claims releases Defendant Jesus Cisneros, as well as his heirs, insurers, attorneys, representatives, agents, employers, successors, and assigns.
6. Plaintiff Amarion Baker was born on XX/XX/2004; he is currently seven years old.
7. Plaintiff Tayshawn Baker was born on XX/XX/2006; he is currently five years old.
8. Mario Baker is the natural parent and legal guardian of Amarion Baker and Tayshawn Baker.
9. Mario Baker is a proper person to act as next friend of Amarion Baker and Tayshawn Baker.
10. Mario Baker is not disqualified to act as next friend of Amarion Baker and Tayshawn Baker.
11. Mario Baker is authorized to act on behalf of and enter into agreements which are binding on Amarion Baker and Tayshawn Baker.
12. Mario Baker has never been the subject of a guardianship or been declared non compos mentis.
13. Mario Baker is competent to enter into the Settlement and Release of All Claims in his individual capacity, and as next friend of Amarion Baker and Tayshawn Baker.
14. J. Patrick Gallagher is the Court-appointed guardian ad litem.
15. J. Patrick Gallagher has no interest adverse to Amarion Baker or Tayshawn Baker.
16. J. Patrick Gallagher is not interested in and will not receive any part of the settlement proceeds.
17. J. Patrick Gallagher is not related to Mario Baker, Amarion Baker, or Tayshawn Baker by blood or marriage.
18. J. Patrick Gallagher is acting for the best interests of Amarion Baker and Tayshawn Baker.
19. J. Patrick Gallagher is authorized to act on behalf of and enter into agreements which are binding on Amarion Baker and Tayshawn Baker.
20. J. Patrick Gallagher has approved the Settlement and Release of All Claims and recommends that it be made part of this Court's Order.
21. J. Patrick Gallagher has fulfilled his duties as attorney ad litem in this case, and he is hereby discharged from any further duties or obligations.
22. In his capacity as the Court-appointed guardian ad litem, J. Patrick Gallagher incurred expenses and rendered services in the amount of \$ 5,000.00, which this Court finds to be reasonable and necessary.
23. The attorneys' fees and expenses agreed upon between Plaintiffs and their counsel are fair, just, reasonable, and equitable.
24. The terms of the Settlement and Release of All Claims are fair, just, reasonable, equitable, and are in the best interests of all parties, including Amarion Baker and Tayshawn Baker.

IT IS THEREFORE ORDERED that the attached Settlement and Release of All Claims is hereby APPROVED;

IT IS FURTHER ORDERED that by way of settlement, Defendants shall pay the following sums to Plaintiffs:

1. An immediate cash payment of \$ 588,194.13 made payable to Mario Baker, Individually, Stella Lopez, and Jeffrey Rasansky, PC no later than September 20, 2012;
2. An immediate cash
3. Periodic payments made according to the Schedule of Payments as follows and that said money to fund these periodic payments be paid no later no than October 8, 2012:

Payee: Amarion Baker

Beginning 12/11/2031, \$20,500.00 per year for 15 years certain only. Payments compound annually by 3%. (15 guaranteed payments)

Payee: Tayshawn Baker

Beginning 12/11/2032, \$21,500.00 per year for 15 years certain only. Payments compound annually by 3%. (15 guaranteed payments).

Assignment: The obligation to make the periodic payments described herein may be assigned to BHG Structured Settlements, Inc. and funded by an **annuity** contract issued by Berkshire Hathaway Life Insurance Company of Nebraska.

IT IS FURTHER ORDERED that the rights to receive periodic payments granted to the **minor** Plaintiff(s) in this Judgment may not be sold, transferred, hypothecated, pledged, or otherwise alienated in any manner, directly or indirectly, without the prior approval of the then-sitting Judge of this Court, as evidenced by an order approving such transaction entered after compliance with all requirements of the Structured Settlement Protection Act, §§ 141.001, [Texas Civil Practice and Remedies Code](#), as it now exists or may hereafter be amended, or any successor to such statute. Any purported or attempted sale, transfer, hypothecation, pledge, or other alienation of such payment rights that has not been so approved will be a direct violation of this order.

IT IS FURTHER ORDERED that entirety of the above-referenced consideration constitutes damages received on account of personal injury or physical sickness that resulted from allegations made in this Cause within the meaning of [Section 104\(a\) \(2\) of the Internal Revenue Code of 1986](#), as amended, and no portion of said consideration constitutes exemplary or punitive damages, interest, or damages other than actual damages on account of personal physical injuries or physical sickness;

IT IS FURTHER ORDERED that Plaintiffs and Defendants shall bear their own court costs;

IT IS FURTHER ORDERED that the \$5,000.00 ad litem fee shall be taxed as a cost against Defendants in this matter and shall be paid by Defendants within 14 days of the entry of this Order;

It is finally ORDERED, ADJUDGED, AND DECREED that all relief not granted herein for or against every party to this cause is denied.

SIGNED this 14th day of September 2012.

<<signature>>

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

<<signature>>

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State Bar No. 16551150

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(214)651-6100

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ATTORNEY FOR PLAINTIFFS

<<signature>>

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ATTORNEY FOR PLAINTIFFS

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ATTORNEYS FOR DEFENDANTS

<<signature>>

J. PATRICK GALLAGHER

State Bar No. 07585500

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GUARDIAN AD LITEM

SETTLEMENT AND RELEASE OF ALL CLAIMS

I. DEFINITIONS.

“Claimants” mean MARIO BAKER, INDIVIDUALLY, AND AS NEXT FRIEND OF AMARION BAKER AND TAYSHAWN BAKER AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SONIA BAKER AND STELLA LOPEZ as well as her spouse, any heirs, executors, administrators, successors, and assigns of MARIO BAKER, INDIVIDUALLY, AS NEXT FRIEND OF AMARION BAKER AND TAYSHAWN BAKER AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SONIA BAKER AND STELLA LOPEZ.

“Claimants' Counsel” means Jeffrey H. Rasansky, Rasansky Law Firm, 2525 McKinnon, Suite 625, Dallas, Texas 75201 and Mike Freden, Noteboom - The Law Firm, 669 Airport Freeway, Suite 100, Hurst, Texas 76053.

“Defendants” mean Jesus Cisneros and his respective spouse, children, successors, assigns, executors, administrators, attorneys, agents, representatives, officers, directors, shareholders, partners, agents, employees, servants, representatives, attorneys, affiliate companies, insurer, and any other person, firm or corporation in privity with them.

“Released Parties” means Jesus Cisneros, ACE American Insurance Company, Enterprise Rent-A-Car Company, Enterprise Leasing Company of DFW, EAN Holdings, L.L.C. Enterprise Holdings, Inc., Rental Insurance Services, and City of Fort Worth and their respective successors, assigns, executors, administrators, attorneys, agents, representatives, officers, directors, shareholders, partners, agents employees, servants, representatives, attorneys, affiliate companies, insurer, and any other person, firm or corporation in privity with them.

The “Incident” means the events described in Claimants' Petition and includes all actions or events surrounding said events, and the matters that have been or might have been alleged in Claimants' pleadings in the Lawsuit. Specifically, the “Incident” refers to the occurrence on December 11, 2009 wherein Plaintiff Sonia Baker was driving her P.T. Cruiser in the 3800 block of Columbus Trail in Fort Worth, Tarrant County, Texas when Defendant Jesus Cisneros, operating a Toyota Highlander, collided with Plaintiff Sonia Baker allegedly causing her death.

“The Lawsuit” means the above-entitled and numbered cause brought by Claimants against Defendants presently pending in Cause No. 017-254391-11, filed in the 17th District Court in Tarrant County, Texas. Also means the Action brought by ACE American Insurance Company as against Jesus Cisneros, Mario Baker, and Stella Lopez, etal, Civil Action No. 4:12-cv-00290-Y.

“All Claims” as used herein is intended to be construed liberally to effect a complete, total, and full release of all claims as between all parties and Defendants and Released Parties and their respective agents, employees, associates, successors, assigns, and insurers, and includes all demands, rights of recovery, causes of action, injuries, acts, omissions, claims, debts, expenses, interest, cost, judgments, penalties and liens, WHETHER NOW EXISTING OR ARISING HEREFTER, (1) that arise out of the Incident; (2) that have been brought by Claimants in the Lawsuit against Defendants, and (3) that could have been brought in a lawsuit against the Released Parties by Claimants. Furthermore, “All Claims” means all claims, demands and causes of action of any nature, whether in contract or in tort, or arising under or by virtue of any statute or regulation, including all claims arising out of an alleged past, present, or future negligence and gross negligence of Defendants and Released Parties for any other loss or damage arising from the Incident, including but not limited to prejudgment or post-judgment interest, medical expenses, survivors and/or death claims, physical pain and mental anguish, loss of consortium, damages to familial relations, loss of companionship, society and affection, disability, disfigurement, impairment, ensuing death, lost wages, back pay, front pay, loss of earning capacity, damage to reputation, loss of household services, and/or statutory, multiple, exemplary or punitive damages which Claimants may have. The term “All Claims” includes present and future claims and injuries, regardless of whether the existence of such claims and/or injuries is presently known or unknown, and regardless of whether additional injuries or claims should arise, become known, or allegedly result from the Incident.

“The Consideration” means all the promises, agreements, and representations set forth below and the following:

Provisions relating to Structured Settlements:

1. Payments

In consideration of the release set forth above, the Insurer on behalf of the Defendant agrees to pay the sums outlined below:

1.1 Payments due at the time of settlement as follows:

Payment of the sum of Five-Hundred Eighty-Eight Thousand One Hundred Ninety Four Dollars and Thirteen Cents (\$588,194.13) made payable to Mario Baker, Stella Lopez, and Jeffrey Rasansky, PC. Additionally payment in the sum of \$78,935.29 made payable to Stella Lopez.

1.2 Periodic payments made according to the Schedule of Payments as follows (the “Periodic Payments”):

Payee: Amaron Baker

Beginning 12/11/2031, \$20,500.00 per year for 15 years certain only. Payments compound annually by 3%. (15 guaranteed payments)

Payee: Tayshawn Baker

Beginning 12/11/2032, \$21,500.00 per year for 15 years certain only. Payments compound annually by 3%. (15 guaranteed payments)

All the payments set forth herein constitute damages on account of personal physical injuries, arising from an occurrence within the meaning of [Section 104\(a\)\(2\) of the IRS Code](#) of 1986, as amended.

2. Qualified Assignment

The parties hereto acknowledge and agree that the Defendant or Released Parties 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 Defendant's and Released Parties and/or Insurer's liability to make the periodic payments required herein. Any such assignment, if made, shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Defendant and Released Parties and the Insurer from such obligation hereunder as are assigned to *BHG STRUCTURED SETTLEMENTS, INC.* (the "Assignee"). The Plaintiff recognizes that, in the event of such an assignment, the Assignee shall be their sole obligor with respect to the obligations assigned, and that all other releases that pertain to the liability of the Defendant and Released Parties and the Insurer shall thereupon become final, irrevocable and absolute.

If the liability to make the periodic payments is assigned by way of a Qualified Assignment:

- A) Periodic payments from the Assignee cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee;
- B) The Assignee's obligation for payment of the periodic payments is no greater than the obligation of the person originally liable (whether by suit or agreement) for payment and from whom the obligation was assigned.

3. Plaintiff's Rights to Payments

Said payments cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee, nor shall the Plaintiff or any Payee have the power to sell or mortgage or encumber same, or any part thereof, nor anticipate the same, or any part hereof, by assignment or otherwise.

4. Right to Purchase an Annuity

The Defendant, the Insurer and/or the Assignee reserve the right to fund its liability to make periodic payments through the purchase of an **annuity** policy from *BERKSHIRE HATHAWAY LIFE INSURANCE COMPANY OF NEBRASKA* (the "**Annuity** Issuer"). The Defendant, the Insurer and/or the Assignee shall be the owner of the **Annuity** policy and shall have all the rights of ownership. The Defendant, the Insurer and/or the Assignee may have **Annuity** Issuer mail payments directly to the Payee. The Plaintiff shall be responsible for maintaining the currency of the proper mailing address and mortality information to **Annuity** Issuer.

5. Payee's Beneficiary

Any payments to be made after the death of the Payee pursuant to the terms of this Settlement Agreement and Release shall be made to such person or entity as shall be designated in writing by the said Payee, upon reaching the age of majority, to the Defendant, the Insurer or the Assignee. If no such person or entity is so designated by said Payee, 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 Defendant, the Insurer or the Assignee. The designation must be in a form acceptable to the Defendant, the Insurer or the Assignee, but in no event shall the request of the Payee be unreasonably withheld or denied.

6. Discharge of Obligation

The obligation of the Assignee to make each Periodic Payment shall be fully discharged upon the mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address on record for the Payee with the **Annuity** Issuer. If the Payee notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct the **Annuity** Issuer to initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfer deposited, shall have the **Annuity** Issuer process a replacement payment.

7. Nature of Payments

All sums paid pursuant to this Structured Settlement constitute damages on account of personal injuries or sickness arising from physical injuries that resulted from the allegations made in the Lawsuit and no portion of the proceeds paid under this Structured Settlement represent exemplary or punitive damages nor pre-judgment or post-judgment interest.

8. Future Cooperation

All parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement, which are not inconsistent with its terms.

The parties hereto intend that all sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of [Section 104\(a\)\(2\) of the Internal Revenue Code of 1986](#), as amended. Plaintiffs agree to indemnify the Defendants and Released Parties for a claim made by the Internal Revenue Code under this provision.

II. AGREEMENT

(1) In this Agreement, the singular includes the plural, and vice versa; likewise, the disjunctive includes the conjunctive and vice versa.

(2) For the Consideration, Claimants RELEASE, ACQUIT, AND FOREVER DISCHARGE Defendants and the Released Parties from All Claims that have accrued or may ever accrue to them due to the Incident. This Release specifically is agreed to extend and apply to any and all injuries, claims, and damages that Claimants might suffer, allege, or incur as a result of or that may be related to the Incident. For the consideration called for herein, Claimants do hereby compromise, settle, fully release, and forever discharge Defendants and the Released Parties of and from any and all claims, demands, controversies, actions, causes of actions, or remedies, whether at common law, statutory or otherwise, which they have or may claim to have or may in the future own or hold for any type of damage or loss, including, but not limited to, personal or bodily injuries, property damage, wrongful death, economic loss, damage to reputation, loss of profits, lost wages, back pay, front pay, medical expenses, direct or consequential damages, pain and suffering, mental anguish, loss of earning capacity, loss of use, loss of inheritance, loss of consortium, reimbursement of payments made pursuant to statute or contract, punitive or exemplary damages, attorneys'

fees, costs of interest, whether known or unknown, arising from or in any way growing out of or resulting from or to result from the Incident.

(3) Claimants, Defendants, and Released Parties acknowledge the receipt and sufficiency of the Consideration by signing this Agreement. The agreement of Defendants and Released Parties to provide the Consideration is not an admission of liability or wrongdoing. Defendants and Released Parties deny any and all liability and wrongdoing. This Agreement merely represents the compromise of a disputed claim in order to avoid further litigation and ultimately, a trial on the merits of this case.

(4) Claimants, Defendants, and Released Parties agree that the Consideration is accepted in full and final settlement of All Claims. Claimants, Defendants, and Released Parties agree that the Consideration is all the money, services, or other consideration which, under any circumstances, Defendants and Released Parties will ever have to pay for or provide on account of the Incident in the past, present or future arising out of the Incident.

(5) The Release from any liability or claim for any unknown or future injury or damage is a specifically negotiated term of this Agreement for which the Consideration is being provided. Claimants have agreed to Release all unknown or future injuries, claims and damages only after due time to consider same and after appropriate consultation with their respective counsel.

(6) In the event that any party in any action pursued by Claimants should assert any third-party action, cross-action, counterclaim, or other form of action against Defendants or Released Parties, then they expressly understand and agree that Defendants and Released Parties are to incur no further liability to them as a result of any claim, demand or cause of action which they may assert against anyone as a result of the Incident and Defendants and Released Parties will pay no further consideration to them beyond the Consideration stated herein. This Settlement is made in full contemplation of the terms and provisions of TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 33.01 et seq., and the doctrine of comparative causation in effect in Texas. In the event that any claim, demand or cause of action, whether by any third-party action, cross-action, counter claim or otherwise for contribution or indemnity be asserted against Defendants or Released Parties in a lawsuit or cause of action brought by Claimants, then Claimants agree that Defendants and Released Parties are to incur no further monetary liability to them as the result of the Incident, even if the effect of this Agreement is to reduce any potential recovery by them against any other person or entity not expressly benefited by this Agreement.

CLAIMANTS MARIO BAKER AND STELLA LOPEZ AGREE TO INDEMNIFY AND DEFEND DEFENDANTS AND THE RELEASED PARTIES AND TO HOLD THEM HARMLESS FROM (A) ALL VALID AND ENFORCEABLE CLAIMS THAT HAVE BEEN OR LATER MAY BE ASSERTED BY ANY PERSON, FIRM OR CORPORATION CLAIMING BY, THROUGH OR UNDER THEM; AND (B) ALL LEGAL ACTIONS, INCLUDING THIRD-PARTY ACTIONS AND CROSS-ACTIONS, ASSERTED OR BROUGHT AGAINST DEFENDANTS OR THE RELEASED PARTIES BY ANY PERSON, FIRM, OR CORPORATION BY CLAIMANTS, ARISING OUT OF THE INCIDENT, THE LAWSUIT, OR THE CONSIDERATION INCLUDING, BUT NOT LIMITED TO, ANY VALID AND ENFORCEABLE CLAIMS FOR REIMBURSEMENT, DIRECTLY AND/OR THROUGH SUBROGATION OR LIEN, FOR ANY MEDICAL BILLS OR EXPENSES PAID BY OR ON BEHALF OF CLAIMANTS. THIS INDEMNITY AGREEMENT SPECIFICALLY APPLIES TO ALL THE ACTS AND OMISSIONS THAT WERE ALLEGED OR COULD HAVE BEEN ALLEGED IN THE LAWSUIT, INCLUDING THE ALLEGED NEGLIGENCE AND/OR GROSS NEGLIGENCE OF DEFENDANTS OR RELEASED PARTIES. _____ Initials

(7) Claimants, Defendants, and Released Parties agree to file a Take Nothing Judgment in a form approved by all parties, and any other pleadings necessary to effectuate the intent of this Agreement. Each party shall bear its own costs.

(8) Claimants warrant and represent that before executing this Agreement, they became fully informed of the terms, contents, conditions and effects of this Agreement; that in making this Agreement, they have had the benefit of the advice of attorneys of their choosing; and that no promises or representations of any kind have been made by Defendants and Released Parties, or anyone acting for Defendants and Released Parties, except as is expressly stated in this Agreement. Claimants have relied

solely on her own judgment and the advice of their Counsel in making this settlement, and Claimants fully understand that this is a full, complete, and final release of all injuries, claims and damages, past, present or future, known or unknown. Claimants as well as any heirs, executors, administrators, successors and assigns of Claimants, understand that the Consideration is all the money or services that are ever to be paid or provided anyone by or on behalf of Defendants and Released Parties as a result of the Incident and/or the Lawsuit, regardless of whether the injuries or damages of Claimants or their heirs, executors, administrators, successors and assigns, should change, worsen, or arise in the future.

(10) Claimants warrant and specifically represents that there is no existing or former spouse, parent, child, guardian, or other person, firm, corporation or other entity with any potential claim for damages as a result of the incident referenced herein. CLAIMANTS MARIO BAKER AND STELLA LOPEZ HEREBY AGREE TO USE THE SETTLEMENT PROCEEDS TO SATISFY IN FULL ANY AND ALL OUTSTANDING HOSPITAL, MEDICAL PROVIDER, MEDICARE, MEDICAID, OR ANY OTHER GOVERNMENTAL LIEN ARISING FROM THE INCIDENT MADE THE BASIS OF THIS LAWSUIT. CLAIMANTS MARIO BAKER AND STELLA LOPEZ AGREE TO DEFEND AND INDEMNIFY THE RELEASED PARTIES, INCLUDING THE LAW FIRM OF FEE, SMITH, SHARP & VITULLO, L.P. AS AGAINST ANY AND ALL CLAIMS FOR UNPAID MEDICAL BILLS AND/OR MEDICAL LIENS. Claimants Mario Baker and Stella Lopez agree and state that they are specifically and solely responsible for the satisfaction of all such liens, medical bills and subrogation interests to the extent such exist.

(11) Claimants acknowledge that there are no known medical bills and/or outstanding medical liens arising from this incident. Claimants agree that should any claim be made for such medical bills and/or liens, Claimants shall have the sole and complete responsibility for paying said bills from the settlement proceeds.

(12) Claimants' counsel acknowledges that this Agreement was fully explained to Claimants before signing this Agreement.

(13) This Agreement states the entire agreement of the parties and supersedes all prior or contemporaneous oral or written understandings, agreements, statements or promises. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the parties to this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original, and this Agreement is effective upon execution of at least one counterpart by each party to this Agreement. If this Agreement does not become effective for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever. This Agreement has been and shall be construed to have been drafted by all of the parties to it so that the rule of construing ambiguities against the drafter shall have no force or effect. In the event that anyone or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity shall not affect any other provision herein. This Agreement is entered into in the State of Texas, and shall be construed and interpreted by and in accordance with the laws of the State of Texas.

(14) Claimants assume the risk of any mistake of fact or law with regard to any aspect of this Agreement and the dispute described herein or any asserted rights released by this Agreement.

(15) It is understood that the provisions of this Release are contractual and not mere recitals. Any signatories to this Agreement warrant that they have the authority to execute this Agreement and bind the respective parties.

EXECUTED on the ____ day of ____, 2012.

<<signature>>

Mario Baker, Individually, as Next Friend of Amarion Baker and Tayshawn Baker and as Personal Representative of the Estate of Sonia Baker

<<signature>>

Stella Lopez, Individually

.....

ACE American Insurance Company

Authorized Representative

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