

PROBATE COURT OF LICKING COUNTY, OHIO

IN THE MATTER OF ZACHARY DENNIS

CASE NO. 20090635

FILED  
NOV 2 13

AMENDED  
APPLICATION TO SETTLE A MINOR'S CLAIM  
[R.C. 2111.05, R.C. 2111.18, SUP. R. 67 AND 68]

[Check applicable boxes, complete applicable blanks, strike inapplicable language, and attach supporting documentation.]

The applicant states that:

Zachary Dennis, is an unemancipated minor, born December 17, 1993, residing at \_\_\_\_\_ this county who on or about December 6, 2007, suffered personal injury (and damage to this minor's property) by wrongful act, neglect, or default that entitles this minor to maintain an action to recover damages. A copy of the birth certificate is attached.

Attached is a narrative statement in support of the proffered settlement setting forth a description of the occurrence, the injury or damage, the treatment progress and current prognosis by the treating physicians, and other proposed or actual settlements resulting from the same occurrence being paid to persons other than this minor. Counsel will advise at the hearing as to liability and collectability.

- There is no legal guardian of the estate, and the Court may authorize the settlement without the appointment of a guardian.
- \_\_\_\_\_ is the legal guardian of the estate. Case No. \_\_\_\_\_
- Stephen & Jenifer Dennis ~~is~~ (are) the parents and natural guardians.
- \_\_\_\_\_ is the person by whom the minor is maintained.
- There is a (full) (partial) settlement offer of \$ \_\_\_\_\_ without suit being filed.  
(See attached Narrative Statement/Settlement Agreement)
- There is a (full) (partial) settlement offer of \$ / \_\_\_\_\_ after suit was filed; the style of the case, court, and case number being U.S. Dist. Ct., S.D. Ohio,  
Case No.: No. 2:08 CV 575
- The proffered settlement should be approved.
- Unreimbursed medical and other expenses of \$ \_\_\_\_\_ have been incurred.  
Attached is a list of such expenses and proposed payees.
- A reasonable attorney fee for the attorney's services is \$ 25,000.00 and reimbursement to the attorney for suit expenses is \$ \* \_\_\_\_\_. A copy of the attorney's fee contract that has (has not) received prior approval of this Court, subject to modification, and an itemization of suit expenses are attached.  
\*(included in above amount)

The parent \_\_\_\_\_, claim \$ \_\_\_\_\_ for damages on account of loss of service of this minor and that claim is included in this settlement offer.

This is a structured settlement. All necessary documents, including a statement of the present value of the settlement, are filed herewith.

The applicant requests that:

The Court authorize the applicant to execute a release which shall be effective upon payment of the settlement.

The Court order payment of the above expenses and order that the net amount of \$ 150,000.00 for the benefit of the minor be:

Deposited in the name of the minor with \_\_\_\_\_, a financial institution, and not to be released until the minor attains the age of majority or upon further order of this Court.

Delivered to the legal guardian.

Delivered to \_\_\_\_\_, parent and natural guardian.

Delivered to \_\_\_\_\_, the person by whom the minor is maintained.

Structured as set forth in the attached documents.

Supplemental forms required by local rule of Court are attached.

*Douglas M. Mansfield*  
Attorney for Applicant  
  
Douglas M. Mansfield  
Typed or Printed Name  
325 John H. McConnell Blvd.  
Suite 600  
Columbus, OH 43215  
Address  
(614) 469-3939  
Phone Number (include area code)  
  
Attorney Registration No. 0063443

*Stephen and Jenifer Dennis*  
Applicant  
  
Stephen and Jenifer Dennis  
Typed or Printed Name  
  
Address  
  
Phone Number (include area code)

**ENTRY SETTING HEARING AND ORDERING NOTICE**

The Court sets Tues. Nov. 23, 2010 at 4:00 o'clock p.m. as the date and time for hearing the above application and orders notice to be given by the applicant, as provided in the Rules of Civil Procedure, to the parents who have not waived notice and (further orders that the minor and parent attend the hearing.)

*[Signature]*  
Probate Judge

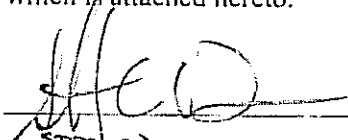
PROBATE COURT OF LICKING COUNTY, OHIO

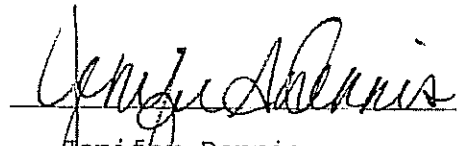
IN THE MATTER OF ZACHARY DENNIS

CASE NO. 20090635

WAIVER AND CONSENT TO SETTLE MINOR'S CLAIM

The undersigned, waive all claims for damages on account of loss of services of said minor, waive notice of the hearing, and consent to and approve the Form 22.0, Application To Settle Minor's Claim, a copy of which is attached hereto.

  
\_\_\_\_\_  
~~Stephen~~  
Steven Dennis  
\_\_\_\_\_  
Typed or Printed Name


  
\_\_\_\_\_  
Jennifer Dennis  
\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

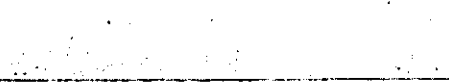
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the

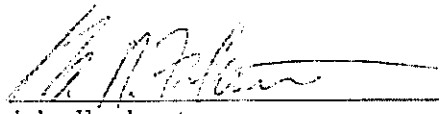
date set forth:

  
\_\_\_\_\_  
Stephen Dennis, individually and as father and  
natural guardian of Zachary Dennis, a minor

Date: 9-19-10

  
\_\_\_\_\_  
Jenifer Dennis, individually and as mother and  
natural guardian of Zachary Dennis, a minor

Date: 9/20/2010

  
\_\_\_\_\_  
John Freshwater

Date: 12/22/2010

## NARRATIVE STATEMENT IN SUPPORT OF SETTLEMENT

The settlement that the parties are asking this Court to approve stems from a civil rights lawsuit (among other claims) that Stephen and Jenifer Dennis filed on June 13, 2008 in the United States District Court for the Southern District of Ohio on behalf of themselves and their minor son, Zachary Dennis, against the Mount Vernon City School District Board of Education, certain administrators, and against Mount Vernon Middle School teacher John Freshwater. A previous settlement was reached with the School Board and the named administrators and was probated with this Court (under the same case number this application has been filed under). Attorney W. Scott Hayes was previously appointed as guardian ad litem in the matter for purposes of that settlement. This settlement involves the remaining defendant in the civil action, John Freshwater.

During the 2007-2008 school year, Zachary Dennis was an eighth grade student at Mount Vernon Middle School, and his science teacher was John Freshwater. On December 6, 2007, Mr. Freshwater applied an electric device known as a tesla coil, which has a high voltage output, to Zachary Dennis' arm. The tesla coil left a readily identifiable cross consisting of red welts on Zachary Dennis' forearm, and caused swelling and blanching in the surrounding area. Zachary Dennis suffered significant discomfort for a few days following the infliction of the injury. He did not seek medical treatment for the injury, which resolved itself in a few weeks.

After reporting this incident to the School District, Stephen and Jennifer Dennis learned of other actions by defendant John Freshwater and the other defendants that they believe violated both their and their son's Constitutional and other rights. The Dennises believe that John Freshwater repeatedly violated the United States Constitution and School District policy by displaying religious items—including bibles and the Ten Commandments—in his classroom, by teaching intelligent design, and by expressing his own religious beliefs to students during class time, among other things. Based on this conduct, the Dennises filed suit. Because of the negative publicity surrounding the circumstances of the lawsuit, the Dennises moved from Knox County to Licking County in 2009.

Stephen and Jenifer Dennis recently resolved their own and their son's claims against John Freshwater as set forth in the attached settlement agreement. The settlement involves payments by John Freshwater's insurer to both Stephen and Jenifer Dennis and a separate payment to be made on behalf of their minor son, Zach Dennis. The \$150,000.00 amount being paid on behalf of Zach is being used to purchase an annuity through the Metropolitan Life Insurance Company. That annuity will pay Zach a total of \$217,261.30 in periodic payments over the next 13 years. (A schedule of the payments is set forth in the settlement agreement.) The settlement also includes a \$25,000.00 payment to Jones Day, the Dennises' counsel, for expenses and attorney's fees incurred in representing them in this matter.

This settlement with Mr. Freshwater was the result of very lengthy and involved discussions, and was reached shortly before trial was scheduled. The settlement required extensive involvement by Judge Gregory Frost, the federal court judge who presided over the civil action. The Dennises agreed to this settlement in order to avoid having to put their son, Zach, and other Mt. Vernon School students through the ordeal of what would likely have been a

multi-week trial. The Dennises respectfully request that this Court approve the settlement so that they and their son can put this matter behind them.

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is voluntarily executed on this \_\_\_\_ day of September 2010 by Stephen Dennis (aka John Doe) and Jenifer Dennis (aka Jane Doe), individually and on behalf of their minor child, Zachary Dennis (aka James Doe) (collectively, "Plaintiffs"), and John Freshwater ("Freshwater"). Plaintiffs and Freshwater are collectively referred to as the "Parties."

**WHEREAS**, on or about June 13, 2008, Plaintiffs filed a lawsuit against Freshwater, among others, in the United States District Court, Southern District of Ohio, Eastern Division, Case No. 2:08-CV-575, in which Plaintiffs asserted claims for relief against Freshwater (the "Lawsuit");

**WHEREAS**, on or about September 2, 2008, Freshwater filed a counterclaim against Plaintiffs, which counterclaim was subsequently dismissed by the Court (the "Counterclaim"); and

**WHEREAS**, the Parties now desire to reach a settlement of any and all disputes between them, so as to avoid any further litigation costs and to avoid any future litigation or litigation costs regarding the enforceability of this Agreement or any issues identified in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Plaintiffs and Freshwater agree as follows:

**1. Release of Claims:**

a. In consideration for the payments and covenants set forth in this Agreement, Plaintiffs and their heirs, family members, legal representatives, beneficiaries, principals, fiduciaries, agents, and assigns, hereby **RELEASE, ACQUIT, FOREVER DISCHARGE, AND AGREE TO HOLD HARMLESS** Freshwater in his individual and official

capacities and The Netherlands Insurance Company (the "Insurer"), and each of their past, present, and future officers, directors, shareholders, members, affiliates, related companies, employees, fiduciaries, subsidiaries, attorneys, successors, predecessors, representatives, partners, principals, agents, assigns, and all other related persons, firms or corporations (collectively, the "Released Parties"), from any and all manner of action, damages, losses, costs, actions, causes of action, claims, liens, demands, suits, charges, fees, debts, obligations, attorney fees, interest, and any and all liabilities of any nature and description, both known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential, whether arising in law or in equity, arising from any act or omission from the beginning of time through the date of this Agreement. Plaintiffs also agree to forego recovery of the sanctions awarded to them in the Lawsuit.

b. In consideration for the covenants and mutual promises set forth in this Agreement, Freshwater and his heirs, family members, legal representatives, beneficiaries, principals, fiduciaries, agents, and assigns, hereby RELEASE, ACQUIT, FOREVER DISCHARGE, AND AGREE TO HOLD HARMLESS the Plaintiffs, and each of their past, present, and future employees, fiduciaries, attorneys, successors, predecessors, representatives, partners, principals, agents, assigns, and all other related persons, from any and all manner of action, damages, losses, costs, actions, causes of action, claims, liens, demands, suits, charges, fees, debts, obligations, attorney fees, interest, and any and all liabilities of any nature and description, both known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential, whether arising in law or in equity, arising from any act or omission from the beginning of time through the date of this Agreement.

2. **Payment:** In consideration for the releases set forth above, the cost of the total payment to be made to Plaintiffs by or on behalf of the Released Parties is Four Hundred and Seventy-Five Thousand Dollars and No Cents (\$475,000.00) (the "Payment Amounts") to be made as set forth below.

a. One Hundred and Fifty Thousand Dollars and No Cents (\$150,000.00) shall be paid by the Released Parties to purchase a structured settlement annuity issued by Metropolitan Life Insurance Company to provide periodic payments to Zachary Dennis ("Payee"). The periodic payments shall be made according to the following schedule:

\$19,000.00 on 12/19/2011;  
\$21,000.00 on 12/19/2014;  
\$27,261.30 on 12/19/2018;  
\$50,000.00 on 12/19/2021; and  
\$100,000.00 on 12/19/2023.

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

b. Three Hundred and Twenty-Five Thousand Dollars and No Cents (\$325,000.00) shall be paid by two checks. One check in the amount of Three Hundred Thousand Dollars and No Cents (\$300,000.00) shall be made payable to "Stephen Dennis and Jenifer Dennis." This amount compensates Plaintiffs for mental pain and suffering damages as well as any other damages they suffered. A second check in the amount of Twenty Five Thousand Dollars and No Cents (\$25,000.00) shall be made payable to "Jones Day." Both of these checks shall be provided to Plaintiffs' counsel: Douglas M. Mansfield, JONES DAY, 325 John H. McConnell Boulevard, Suite 600, Columbus, Ohio 43215.

c. The Payment Amounts shall be due upon execution of this Agreement by Plaintiffs and within ten days after approval of this settlement by the appropriate Probate Court.

d. Plaintiffs and Freshwater acknowledge they have each reviewed these Releases with an attorney of their choosing and have been fully advised concerning the contents of the Releases.

e. Right to Payments. Plaintiffs acknowledge that the Periodic Payments referenced in Section 2(a) cannot be accelerated, deferred, increased or decreased by the Plaintiffs or any payee; nor shall the Plaintiffs or any payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

f. Beneficiary. Any payments to be made as referenced in Section 2(a) after the death of any payee pursuant to the terms of this Agreement shall be made to the estate of Payee. Payee may change any designation at any time, after reaching the age of majority, by written notice which is delivered to, received and accepted by Metropolitan Life Insurance Company or the Assignee. The designation must be in a form acceptable to Metropolitan Life Insurance Company or the Assignee before such payments are made to the designated person(s) or entity.

g. Consent to Qualified Assignment. Plaintiffs acknowledge and agree that the Released Parties may make a "qualified assignment," within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Released Parties' liability to make the Periodic Payments set forth above to MetLife Tower Resources Group, Inc. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of the Released Parties (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

Any such assignment, if made, shall be accepted by the Plaintiffs without right of rejection and shall completely release and discharge the Released Parties from the Periodic Payments obligation assigned to the Assignee. Plaintiffs recognize 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 Released Parties shall thereupon become final, irrevocable and absolute.

h. Purchase of an Annuity. The Released Parties, themselves or through their Assignee, shall fund the liability to make the Periodic Payments through the purchase of an annuity policy from Metropolitan Life Insurance Company. Subject to paragraph 2(a) above, the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Metropolitan Life Insurance Company mail payments directly to Payee. Plaintiffs shall be responsible for maintaining a current mailing address for Payee with Metropolitan Life Insurance Company (1-800-638-2704).

i. Discharge of Obligation. The obligation assumed by Assignee with respect to any required payment shall be discharged upon the mailing on or before the due date of a valid check in the amount specified to the address of record for Payee, or by direct deposit or electronic funds transfer if so requested. However, if a check is lost or otherwise not received, Metropolitan Life Insurance Company, upon notification of said check being lost, or not received, shall promptly reissue said check, subject to verification of "stop payment" that Payee has not negotiated said check. Payee recognizes that Assignee shall be the sole obligor with respect to the obligations assigned, and that all other releases that pertain to the liability of the

Released Parties with respect to the obligations assigned shall thereupon become final, irrevocable and absolute.

Plaintiffs acknowledge and agree that they are solely and fully responsible for any taxes which may apply. Plaintiffs further agree to indemnify and hold the Released Parties harmless as to any liability for these taxes. Plaintiffs further acknowledge that they are solely and fully responsible for satisfying from the settlement proceeds any and all outstanding medical expenses, liens, assigned claims, rights of reimbursement, and subrogated claims. Plaintiffs hereby release, acquit, discharge, and agree to hold harmless and indemnify the Released Parties from any and all claims, demands, actions, liability, damages, judgments, or losses made against the Released Parties as a result of any amount sought, claimed, or recovered by any insurer, health care provider, governmental agency or other organization or entity subrogated to the rights of Plaintiffs against the Released Parties.

3. **Dismissal of Lawsuit:** Following the execution of this Agreement by Plaintiffs and Freshwater, approval of the settlement by the appropriate Probate Court, and payment of the Four Hundred and Seventy-Five Thousand Dollars and No Cents (\$475,000.00) as set forth in paragraph 2 above, counsel for Plaintiffs shall dismiss the lawsuit with prejudice. The Parties shall be responsible for their own court or other costs.

4. **No Admission of Liability:** Nothing in this Agreement shall be construed as an admission of liability by the Parties.

5. **Waiver of Interest:** Plaintiffs hereby release any claim for bad faith claim-handling, punitive damages, and prejudgment and/or post judgment interest, including any claims under R.C. § 1343.03, or arising by virtue of the opinion of the Supreme Court of Ohio in *Hartmann v. Duffey*.

6. **Entire Agreement:** It is understood and agreed that this Agreement contains the entire agreement between Plaintiffs and Freshwater; that no promises, representations, inducements or agreements not expressed in this Agreement have been made between the Parties; that the Parties are not relying on any other statements or representations of any kind in executing this Agreement, and that the terms of this Agreement are contractual, not a mere recital.

7. **Multiple Originals:** This Agreement will be executed in duplicate by the Parties, allowing each party to maintain an original copy.

8. **Non-Waiver:** Any waiver by any party of any provision or condition of this Agreement does not waive any other provision or condition of this Agreement or waive any consequences attaching to any subsequent breach of that provision or condition.

9. **Severability:** If any provision of this Agreement is found to be invalid or illegal, then such invalidity or illegality shall not invalidate the entire Agreement. Rather, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

10. **Ohio Release:** This is an Ohio release and is to be construed in accordance with the laws of Ohio. The Parties consent to jurisdiction by the United States District Court, Southern District of Ohio, Eastern Division, over any disputes arising from or relating to the Lawsuit or this Agreement.

11. **No Other Assignment:** The Parties hereby represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claims hereby released.

12. **Modification:** This Agreement may not be modified except by an agreement in writing signed by all of the Parties to this Agreement.

13. **Successors and Assigns:** This Agreement shall be binding on, and inure to the benefit of, the Parties and their respective successors and assigns.

14. **Free Act and Enforceability:** The Parties declare that they have read and reviewed this Agreement and fully understand its terms; each fully understands the meaning and intent of this Agreement, including, but not limited to, its final and binding effect; and each has executed the same freely and voluntarily, after the opportunity for explanation, review and approval by their attorney. The Parties warrant that they are duly authorized to execute this Agreement and bind themselves and their interests in accordance with the terms set forth herein.

This Agreement is the product of negotiations between the Parties and their respective counsel and shall not be construed in favor of or against any party by virtue of any party's role in the drafting of any document or any provision herein.

The Parties understand that settlement of the Lawsuit is contingent on their execution of this Agreement, approval of the settlement by the appropriate Probate Court, and payment as set forth in paragraph 2 above.

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, LICKING COUNTY, OHIO

NOTICE OF HEARING

IN THE MATTER OF: Zachary Dennis  
CASE No.: 20090635

To: Douglas M. Mansfield, Esq., 325 John H. McConnell Blvd., Suite 600, Columbus, OH  
43215

Stephen D.

Jennifer D.

Scott Hayes, GAL, 195 E. Broad Street, P.O. Box 958, Pataskala, Ohio 43062

A hearing on the Application to Settle a Minor's Claim has been set for Tuesday, November 23, 2010 at 4:00 o'clock p.m. The Probate Court is located on the first floor, Courthouse, Newark, Ohio 43055.

Given under my hand and seal of said Court, this 12<sup>th</sup> day of October, 2010.

JUDGE ROBERT H. HOOVER

Amista D. Buxton  
Deputy Clerk

o0o

The State of Ohio, Licking County

Amista D. Buxton being duly sworn, says that on the 12<sup>th</sup> day of October, 2010 she served the above notice by regular mail a true copy thereof to the above named parties/attorneys.

Amista D. Buxton  
Deputy Clerk

Sworn to before me and signed in my presence, this 12<sup>th</sup> day of October, 2010.

JUDGE ROBERT H. HOOVER

Robert H. Hoover  
Deputy Clerk

PROBATE COURT OF LICKING COUNTY, OHIO

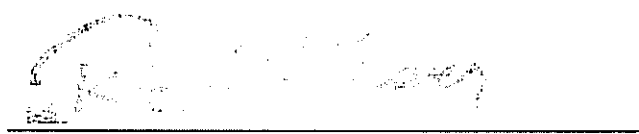
IN THE MATTER OF Zachary Dennis

CASE NO. 20090635

NOV 23 2010 10:17 AM  
CLERK OF COURT

JOURNAL ENTRY APPOINTING GUARDIAN AD LITEM

The court hereby orders that Scott Hayes, Attorney at Law, is appointed to act as Guardian Ad Litem in this matter. A hearing on the APPLICATION TO APPROVE SETTLEMENT & Report of Distribution and Entry on Wrongful Death and Survival Claims has been scheduled for the 23<sup>rd</sup> day of November, 2010 at 4:00 P.M. The Court also orders the release of relevant medical records to the Guardian Ad Litem.



Judge

PROBATE COURT OF LICKING COUNTY, OHIO

IN THE MATTER OF ZACHARY DENNIS

CASE NO. 20090635

**FILED**

NOV 23 2010

JUDGE ROBERT H. HOOVER  
LICKING COUNTY PROBATE COURT  
NEWARK, OHIO

**ENTRY APPROVING SETTLEMENT OF A MINOR'S CLAIM**

Upon hearing the application to approve and distribute the settlement of the claim of the minor, the Court: [check whichever of the following are applicable]

Approves the proffered settlement of \$ 475,000.00 ;  
 Orders payment of \$ \_\_\_\_\_ for medical and other expenses, as follows:  
\_\_\_\_\_

Orders payment of \$ \_\_\_\_\_ to the attorney for reimbursement of suit expenses and \$ 25,000.00 for attorney fees for service rendered with respect to this matter;

Orders payment of \$ 300,000.00 to the parent, STEVEN ; JENIFER DENNIS, for damages on account of loss of service of this minor;

Authorizes the applicant to execute a release which shall be effective upon payment of the settlement;

Orders that the net amount of \$ 150,000.00 for the benefit of the minor be:

Deposited in the name of the minor and not to be released until the minor attains the age of majority or upon further order of this Court with Form 22.3 Verification of Receipt and Deposit filed with the Court;

Delivered to the legal guardian of the estate of this minor;

Delivered to \_\_\_\_\_, parent\_ and natural guardian\_;

Delivered to \_\_\_\_\_, the person by whom the minor is maintained;

Structured as set forth in the documents attached to the application;

Orders the applicant and the attorney to report on their distribution of the proceeds within thirty days of the date of this entry;

Further orders \_\_\_\_\_

11/23/2010  
Date

[Signature]  
Probate Judge

