

WILBURN TUCKER	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
TML INTERGOVERNMENTAL	§	
EMPLOYEE BENEFITS POOL and	§	
PARKLAND HEALTH & HOSPITAL	§	
SYSTEMS,	§	44 TH JUDICIAL DISTRICT
	§	
Defendants.	§	

COMPROMISE SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS

This agreement is by and between Plaintiff WILBURN TUCKER, his parents BARNEY AND CHRISTIE TUCKER and Defendant TML INTERGOVERNMENTAL EMPLOYEE BENEFITS POOL, and THE CITY OF MCKINNEY, collectively referred to herein as the ("Parties").

WHEREAS, on or about September 24, 2009, Plaintiff Wilburn Tucker was involved in a motorcycle/automobile accident in McKinney, Texas. The driver of the other automobile involved in the accident, Joseph Rigali, was insured by USAA automobile insurance. USAA, on behalf of its insured, agreed to settle any and all claims that Wilburn Tucker had against Joseph Rigali for the payment of the \$100,000.00 in liability policy limits. Plaintiff Wilburn Tucker accepted the policy limits offer from USAA. At the time of the accident Barney Tucker, who is Wilburn's father, was employed as a fireman with the City of McKinney. Wilburn Tucker was a covered individual under his father's health coverage with the City of McKinney. The City of McKinney contracted with TML

to administer claims and handle the payment of benefits. As such, and for the purposes of this litigation, TML and the City of McKinney were the payor of benefits regarding Wilburn Tucker's medical care as that term is defined under §172.015(b) of the Local Government Code.

WHEREAS, on or about June 28, 2011, Plaintiff Wilburn Tucker filed a declaratory judgment action (the "Litigation") under §172.015(f) of the Local Government Code in order to have the court make a determination of the amount of subrogation that any payor of benefits might be entitled to from the settlement proceeds. The parties have now reached an agreement regarding the amount of subrogation to be paid to the payor of benefits from the settlement proceeds, and desire to enter into this Settlement Agreement to memorialize their agreement.

WHEREAS, the Litigation includes all matters, causes of action, allegations and complaints that could be made in common law, equity or by statute by the respective Parties hereto, which are more fully described and detailed in the pleadings on file, as well as by the events, transactions and occurrences which underlie the Litigation. The Litigation also includes any and all claims, counterclaims and cross-claims with respect to and arising out of the above-entitled and numbered cause which were or could have been asserted between and among the Parties to this agreement; and

WHEREAS, there presently exists a *bona fide* dispute among the parties concerning the amount of any subrogation due under §172.015, *et seq.* of the Local Government Code, and any other applicable rule, contract, or law, and the Parties continue to maintain the validity of all their claims and allegations asserted in the Litigation as well as continue to deny any and all liability arising from the claims and allegations asserted in the Litigation; and

WHEREAS, with all parties acting solely for the purposes of compromising and settling the

Litigation, for the sole purpose of avoiding the risks, costs and burdens of further litigation, the Parties desire to settle the Litigation as described more fully herein below;

For and in consideration of the mutual promises, representations, warranties and agreements herein contained, the Parties agree as follows:

CONSIDERATION AND RELEASE

2.01. In consideration of the execution of this Compromise Settlement Agreement and Release of All Claims and for agreement to be bound to the terms thereof, TML Intergovernmental Employee Benefits Pool and the City of McKinney hereby accept the total sum of Ten Thousand Dollars and No Cents (\$10,000.00), payable to them by Plaintiff Wilburn Tucker from the settlement proceeds mentioned above, as a full and final settlement of any and all claims, demands, liens, subrogation interests, or causes of action that they, and their respective agents, representatives, assigns, insurers, and attorneys, have against Plaintiff Wilburn Tucker, his parents Barney and Christie Tucker, their attorney Marty L. Matthews or USAA automobile insurance, based on any events that occurred prior to the date of the execution of this Settlement Agreement.

2.02. TML Intergovernmental Employee Benefits Pool and the City of McKinney, and their agents, representatives, assigns, attorneys, and insurers hereby release, acquit, and forever discharge Plaintiff Wilburn Tucker, his parents Barney and Christie Tucker, their attorney Marty L. Matthews and USAA automobile insurance from any and all claims, liens, subrogation interests, and causes of action including any and all healthcare liens or subrogation interests applicable to Plaintiff Wilburn Tucker, and resulting from the medical services, bills, care, and treatment of Plaintiff Wilburn Tucker, arising by, through or from the accident of September 24, 2009..

2.03. Plaintiff Wilburn Tucker, his parents Barney and Christie Tucker, and USAA automobile insurance, and their agents, representatives, assigns, attorneys and insurers hereby release, acquit, and forever discharge TML Intergovernmental Employee Benefits Pool and the City of McKinney, and their agents, representatives, assigns, and attorneys, from any and all claims, demands and causes of action of whatever kind or character that Plaintiff Wilburn Tucker, his parents Barney and Christie Tucker, and USAA automobile insurance have against TML Intergovernmental Employee Benefits Pool or the City of McKinney based on any events that arise by, through or from the accident of September 24, 2009.

2.04. This release is intended by the parties to be the broadest type of release possible. This release includes all the matters actually alleged, as well as those that could have been alleged, in the declaratory judgment action, and any and all amendments thereto, as well as all matters alleged or that could have been alleged in any answer filed by TML Intergovernmental Employee Benefits Pool, and any amendments thereto.

INDEMNIFICATION AND HOLD HARMLESS

3.01. To the fullest extent permitted by law, TML Intergovernmental Employee Benefits Pool, and the City of McKinney expressly agree to indemnify and hold harmless Plaintiff Wilburn Tucker, his parents Barney and Christie Tucker, their attorney Marty L. Matthews, and USAA Automobile Insurance from any and all third party claims for subrogation, reimbursement, or liens for medical care, treatment or expenses that arise from the payment of medical expenses on behalf of Wilburn Tucker as a result of the accident on September 24, 2009. This indemnification and hold harmless agreement specifically includes any and all claims for breach of contract, subrogation,

reimbursement or liens of any kind that have been made or could have been made by any of the group benefit plans that provided health care coverage to Wilburn Tucker under the City of McKinney's employee health care coverage or group benefit plan, or any other payor of benefits for the injuries that he sustained in the accident of September 24, 2009. It is understood and agreed that this indemnification and hold harmless agreement does not apply to the claims asserted by Parkland Health & Hospital Systems.

DISMISSAL AND RELEASE OF SUIT

4.01. Once the settlement document has been signed by the parties, Plaintiff Wilburn Tucker agrees to dismiss the Litigation as to Defendant TML Intergovernmental Employee Benefits Pool, with prejudice to re-filing of the same.

REPRESENTATIONS AND WARRANTIES:

5.01. Each of the Parties warrants to the other that they have the requisite individual, municipal, or corporate authority to bind each and every Party as well as any corporate entities or organization, including all heirs, assigns, successors, officers, and stockholders to this Settlement Agreement.

5.02. Plaintiff Wilburn Tucker warrants and represents that he is over the age of 18, is fully competent to manage his own affairs and enter into this agreement, and that he owns the claims asserted in the Litigation. Plaintiff Wilburn Tucker warrants and represents that he has not assigned or transferred any part of his claims to any other person or entity other than provided for in this agreement or other than his attorney's fees.

5.03. It is further expressly understood and agreed by the Parties that Wilburn Tucker will

continue to receive the medical care, services, treatment and other benefits under the City of McKinney's employee health care coverage, or group benefit plan in accordance with the terms and conditions of the coverage or plan, and that nothing herein shall be deemed to be a release of any claims for benefits that Wilburn Tucker has with respect to that employee health care coverage or benefit plan.

MISCELLANEOUS PROVISIONS

6.01. This Settlement Agreement is to be governed by and enforced in accordance with the laws of the State of Texas.

6.02. This Settlement Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements or understandings between the Parties regarding the Litigation. No oral understandings, statements, promises or inducements outside the terms of this Settlement Agreement exist.

6.03. This Settlement Agreement was prepared by the joint efforts of the Parties' attorneys. The parties agree to sign any additional documents that may become necessary to finalize and dismiss the Litigation.

6.04. If any provision of this Settlement Agreement is held to be invalid, void or unenforceable by any court of competent jurisdiction, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

6.05. A properly executed copy of this Settlement Agreement is the same as an original for any purposes a party may wish to make of it.

The parties hereby declare and represent that they have read the foregoing instrument prior to

the execution thereof, and fully understood it.

ENTERED INTO on this the ____ day of _____, 2012.

TML INTERGOVERNMENTAL EMPLOYEE BENEFITS POOL

By: _____

Its: _____

Date: _____

CITY OF MCKINNEY

By: _____

Its: _____

Date: _____

Wilburn Tucker

Date: _____

Christie Tucker

Date: _____

Barney Tucker

Date: _____