

**BOROUGH OF ENGLISHTOWN
RESOLUTION NO. 2017-104**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF
ENGLISHTOWN APPORVING SETTLEMENT OF MACINNES vs BOROUGH
OF ENGLISHTOWN et als. DOCKET NO. MON-L-2164-14.**

WHEREAS, an amicable settlement of all claims asserted in the above captioned matter has been developed and approved by Plaintiff and Defendants; and

WHEREAS, the terms and provisions of the Confidential Settlement Agreement and Release have been carefully reviewed and assented to by Plaintiff and all Defendants; and

WHEREAS, pursuant to the terms of said Agreement Plaintiff has executed and filed a Stipulation of Dismissal with prejudice of the above captioned matter.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Englishtown, that the Borough Attorney is authorized to execute the Confidential Settlement Agreement and Release document, which Agreement is incorporated herein by reference as if fully set forth at length.

Offered by: C/Krawiec

Seconded by: C/Mann

Roll Call: Ayes: C/Krawiec, C/Mann, C/Marter, C/Wojyn

Nays: None

Abstain: C/Robilotti

Absent: C/Cooke

I do hereby certify the above to be a true copy of a resolution adopted by the Governing Body of the Borough of Englishtown at a regular meeting held June 28, 2017.


Peter Gorbaturk, Municipal Clerk

CLEARY | GIACOBBE | ALFIERI | JACOBS LLC

JESSICA V. HENRY, Counsel
jhenry@cgalaw.com

Reply to: Oakland Office

February 10, 2017

VIA EMAIL AND REGULAR MAIL

Matthew R. Curran, Esq.
Sciarra & Catrambone, LLC
1130 Clifton Avenue
Clifton, New Jersey 07013

RECEIVED
FEB 10 2017

Re: **MacInnes v. Borough of Englishtown, et al.**
Docket No. MON-L-2164-14

BY:

Dear Mr. Curran:

As discussed, enclosed please find for your review a proposed Confidential Settlement Agreement and Release along with a Stipulation of Dismissal, with prejudice, with regard to the above-referenced matter. Please advise of any comments regarding same. Otherwise, if same meet your approval, please have the documents executed and return the executed copies to my attention.

Very truly yours,



Jessica V. Henry
Enclosures

169 Ramapo Valley Road
Upper Level 105
Oakland, NJ 07436
Tel 973 845-6700
Fax 201 644-7601

5 Ravine Drive
PO Box 533
Matawan, NJ 07747
Tel 732 583-7474
Fax 732 290-0753

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10:6-1, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"), the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, et seq. ("FLA"); the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. ("CEPA"); New Jersey Worker Freedom from Intimidation Act, N.J.S.A. 34:19-9 et seq.; the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a, et seq. ("WHL"); the New Jersey Discrimination in Wages Law, N.J.S.A. 34:11-56.1, et seq. ("DWL"); the New Jersey Workers' Compensation Law, N.J.S.A. 34:15-39.1, et seq. ("NJWC"); and the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, et seq. ("WPL"), the United States Constitution, the New Jersey Constitution, or any other federal, state or local statute, ordinance or law whether such claims are known or unknown, unforeseen, unanticipated, unsuspected or latent, and any claims which were raised or could have been raised prior to the date of this Agreement, whether known or unknown, unforeseen, unanticipated, unsuspected or latent (all of the foregoing being collectively referred to as "Claims").

6. Plaintiff promises and agrees that he will not file, re-file, appeal, initiate, or cause to be filed, re-filed or initiated any Claim or other proceeding based upon, arising out of, or related to any Claims subsumed within the Release; nor shall he solicit, encourage, participate, assist or cooperate in any Claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. If a Court Order or lawful subpoena is served on Plaintiff requiring that he testify in any matter in which Releasees have an interest, he agrees to immediately notify and provide a copy of the Court Order or subpoena to Defendants' counsel c/o Cleary Jacobbe Alfieri Jacobs, LLC, 169 Ramapo Valley Road, Upper Level Suite 105, Oakland, New Jersey 07436. Plaintiff shall provide Defendants' counsel with a copy of the Court Order or subpoena as soon as possible and reasonably in advance of his appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with and assist the

Defendants and Summit in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

7. Plaintiff acknowledges and agrees that this Agreement is not an admission by any of the Defendants or Summit and/or any of their agents, employees or representatives of any wrongdoing or liability and is being entered into solely for the purpose of economic expediency.

8. Releasors agree that they shall engage in no act which is intended, or reasonably may be expected to harm the reputation, business, prospects, or operations of Releasees. Releasors further agree and covenant that they shall not make any disparaging statements, oral or written, whether direct or implied, about Releasees.

9. Plaintiff represents and warrants that no other person or entity has any interest in the Claims that comprise or could have been raised in the Complaint, or in any other demands, obligations, or causes of action referred to in this Agreement, and that he has the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Plaintiff further represents that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims which comprise the Complaint, or any other demands, obligations, or causes of action referred to in this Agreement. Plaintiff further acknowledges that the only consideration for signing this Agreement is the terms stated in this Agreement, and that no other promise or agreement of any kind has been made to him by any person or entity whatsoever to cause him to sign this Agreement; that he is competent to execute this Agreement; that he has been advised in writing and given the opportunity to consult advisors, legal or otherwise, of his own choosing; and that he fully understands the meaning and intent of this Agreement. No change to or modification of this Agreement shall be valid or binding unless it is in writing and signed by Plaintiff and Summit.

10. The Parties acknowledge and agree that as a governmental entity, the Defendants and/or Summit may be obligated to disclose a copy of this Agreement to persons under the New Jersey Open Public Records Act or common law. Notwithstanding the foregoing, Releasors and their Attorney agree that they shall not disclose, or cause to be disclosed, the terms of this Agreement, or the fact that this Agreement exists, except to their accountants and/or tax advisors, or to the extent otherwise required by law. Each such person who is provided information regarding the terms of this Agreement by either Plaintiff or his Attorney shall first be required to review this Agreement and agree to abide by the limitations on disclosure. Plaintiff and his Attorney acknowledge and agree that this confidentiality provision is an express and absolute condition of this Agreement, is consideration bargained for and that any violation of the terms and conditions of this confidentiality provision shall constitute a material breach of this Agreement. In the event that this Agreement is required to be disclosed pursuant to applicable law, Releasors and their Attorney agree that their communication with any person or the media regarding the Action shall be limited to the statement that the "claim was resolved to their satisfaction." Any statements made by Plaintiff, his Attorney or anyone acting on their behalf shall be deemed a material breach of this Paragraph 10. In the event Plaintiff or his Attorney violates any covenant in this Paragraph 10 Summit may move in a summary proceeding to enforce same and will be paid 50% of the Settlement Sum as liquidated damages, along with attorneys' fees and court costs.

11. Waiver of Current and Future Employment. Plaintiff hereby agrees that he will retire from employment with the Borough and, in exchange for the payments made herein, hereby covenants that he will not seek future employment with the Borough and waives any future right or entitlement to be reemployed by the Borough and acknowledges that neither the

Borough, nor any of its officers, public officials, administrators and/or directors shall have any obligation to hire and/or employ him in the future.

12. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications and to this end the provisions of this Agreement are declared to be severable.

13. No waiver or any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other term of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

14. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the Parties to it. Each of the Releasees who are not signatories to this Agreement is intended to be third-party beneficiary of this Agreement. Each such Releasee shall be entitled to enforce this Agreement and each of its terms. In the event of any breach of this Agreement, an aggrieved Releasee may move before Monmouth County Superior Court to enforce the terms hereof and shall be awarded legal fees if it is the prevailing party in such action.

15. The Releasors hereby agree to jointly and severally indemnify, defend and hold harmless Releasees jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities of any form or kind whatsoever, whether vested or contingent, which any party to the Complaint or any other person or their successors or assigns has or may have against the Releasees arising from the subject matter of the Complaint, including without limitation any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon,

among other things, disability, handicap, sex, age or race, intentional or negligent infliction of emotional distress, defamation, and any claims which were raised or could have been raised in the Complaint, whether known or unknown, unforeseen, unanticipated, unsuspected or latent.

16. This Agreement represents the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof, and supersedes and replaces any and all prior agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the Parties hereto.

17. This Settlement Agreement will be governed by and construed under the laws of the State of New Jersey and shall not be construed for or against any Party based on attribution of drafting to any Party.

18. This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

19. Plaintiff hereby covenants that if any liens exist against the Settlement Sum, he will be obligated to and shall ensure that they are paid in full, compromised or satisfied and released by him. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien against the Defendants or Summit, Plaintiff agrees that he will defend and indemnify the Defendants and Summit from and against all such claims. This representation is intended to include all liens, past, present and future, including, but not limited to, governmental liens, Social Security liens, child support or custody liens, attorneys' liens, medical provider liens, Medicare and Medicaid liens, ERISA liens, workers' compensation liens,

all statutory or common law liens, and judgment liens. Plaintiffs agree to indemnify and hold the Releasees and all of their insurance carriers harmless in connection with any claim made by reason of liens against or tax obligations associated with payment of the Settlement Sum. If a claim is hereafter made against the Releasees or their insurance carriers by anyone seeking payment of the liens, Releasees will indemnify and hold the Releasees and their insurance carriers harmless for any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

In furtherance of the foregoing, Plaintiff states as follows:

"I agree to satisfy and personally guarantee payment for any and all liens, including but not limited to liens asserted by any workers' compensation insurance carrier or governmental entity, including but not limited to Medicare and/or Medicaid, that has paid, or will pay, any benefits to me, or on my behalf, out of the monies you are paying pursuant to this Release. I further agree to satisfy any and all child support judgment liens and unpaid medical bills of any medical provider or facility out of the proceeds of this settlement.

In recognition of my obligations to satisfy all such liens out of the monies being paid pursuant to this Release, I further agree to indemnify and defend you, your attorneys and your liability insurance carriers from and against any and all claims made or actions filed against you, your attorneys, or your liability insurance carriers for payment of any such liens upon prompt presentation and tender of such claims. I further acknowledge that I have specifically discussed this provision of this Release with my attorneys."

20. Plaintiff represents and warrants that Medicare has not (pursuant to 42 U.S.C. §1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to Plaintiff and arising from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the release herein. The Parties agree that all representations and warranties made herein shall survive settlement. In consideration of the promises made by the Defendants and Summit in this Agreement, including but not limited to the Settlement Sum to be paid by Summit pursuant to

this Agreement, Plaintiff agrees that he shall be responsible for satisfying any future claims for reimbursement of conditional payments that may be asserted by Medicare, and that the Defendants and Summit shall have no obligation to satisfy any such claims for reimbursement.

21. Plaintiff agrees to indemnify, defend and hold harmless the Defendants and Summit, including their past, present and future officers, directors, shareholders, attorneys, trustees, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest and assigns all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, from any action, cause of action, claim, penalty, statutory fine, and attorneys fee, including, but not limited to, an action to recover or recoup Medicare benefits paid or a loss of Medicare benefits or for any recovery sought by Medicare, including past, present and future payments, benefits and/or liens, and including any such claims, actions, causes of action, enforcement proceedings, penalties, liabilities and similar sanctions under the Medicare Secondary Payer Act. Plaintiffs further agree to waive any and all potential future Claims against the Releasees under the Medicare Secondary Payer ("MSP") Act, 42 U.S.C. §1385y (including any and all amendments thereto) and its accompanying federal regulations at CFR §411.1 et. seq., including 42 CFR §411.46 and 42 CFR §411.47. It is the Parties' intention and purpose under this paragraph to provide for the full protection and indemnification of the Defendants and Summit, including their past, present and future officers, directors, shareholders, attorneys, trustees, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest and assigns, from and against any claims, actions enforcement proceedings, penalties, fines, liabilities and other sanctions under the requirements, regulations and provisions of the MSP Act and its accompanying regulations.

The Plaintiff agrees that if he is required to set aside or repay any portion or all of the Settlement Sum to reasonably consider Medicare's interest under Federal Law, Plaintiff shall be solely responsible for setting aside or repaying such monies from his own funds.

Plaintiff agrees to investigate and assume any responsibility and/or liability to pay any current Medicare liens that may be related to the injury in question. Further, Plaintiff agrees to pay any future Medicare liens that may arise that are determined to be related to the injury that is the subject of the Complaint.

22. Each Party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement, and signs this Agreement of its own free will. No Party to the Agreement has relied upon any representations or statements made by any other Party hereto which are not specifically set forth in this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

23. This Settlement Agreement is executed voluntarily and without any duress, coercion or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims asserted in the Claim. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;
- (c) They understand the terms and consequences of this Agreement and of the releases it contains;
- (d) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Plaintiff Michael MacInnes

Witness

By: _____

Date: _____

Sciarra & Catrambrone, LLC

By: Matthew R. Curran, Esq.

Date: _____

Summit Risk Services

Witness

By: _____

Date: _____

CLEARY GIACOBBE ALFIERI JACOBS LLC

169 Ramapo Valley Road

Upper Level 105

Oakland, NJ 07436

(973) 845-6700

Jessica V. Henry, Esq. Attorney ID No. 050901995

Attorneys for Defendants, Borough of Englishtown, Peter S. Cooke and Maryanne Krawiec

MICHAEL MACINNES,

Plaintiff,

v.

BOROUGH OF ENGLISHTOWN, PETER
S. COOKE, JR., individually and in his
official capacities as the Lieutenant and
senior officer of the Borough of Englishtown
Police Department, MARYANNE
KRAWIEC, individually and in her official
capacities as Council President and Police
Commissioner, and JOHN & JANE DOE(S)
1-10, and XYZ CORPORATION(S) 1-10,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MONMOUTH COUNTY
: DOCKET NO. MON-L-2164-14

: Civil Action

:
: **STIPULATION OF DISMISSAL**
: **WITH PREJUDICE**

It is hereby stipulated and agreed by the attorneys for the respective parties that the above
action be dismissed with prejudice and without costs to any of the parties.

Jessica V. Henry, Esq.
Cleary Giacobbe Alfieri Jacobs, LLC
Attorney for Defendants

Dated:

Matthew R. Curran, Esq.
Sciarra & Catambrone, LLC
Attorney for Plaintiff

Dated:

