

RESOLUTION R-2018-18

**A RESOLUTION RATIFYING THE MOTION OF THE COUNCIL TO SETTLE AND
RELEASE CLAIMS SET FORTH IN VILLAGE OF WINDHAM, OHIO V PAUL
BARROWS, ET AL AND DECLARING AN EMERGENCY.**

WHEREAS, to comply with the requirements of participation in the Public Entities Pool of Ohio, (the Pool) the Village insurance carrier, the Village is obligated assist in attempts to obtain reimbursement by the Pool of amounts paid on behalf of the Village; and

WHEREAS, as part of this compliance the Village is the Plaintiff in certain litigation entitled Village of Windham, Ohio, et al, v. Paul Barrows et al, Trumbull County Court of Common Please Case No. 2017 CV 01029 (the Lawsuit); and

WHEREAS, the Pool has advised that it is appropriate for the Village to enter into a release and settle the Lawsuit; and

WHEREAS, at the Council Meeting of June 19, 2018 the Council of the Village of Windham passed a motion authorizing the Mayor to execute a release, and by passage of this resolution the Council intends to formally authorize the release and ratify its prior action.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Windham, Portage County, Ohio, a majority or more of the members thereto elected concurring that:

Section 1: The actions of the Mayor in complying with the direction of Council in executing on behalf of the Village the Release attached hereto as Exhibit "A" are ratified, confirmed and approved.

Section 2: By taking this action the Council acknowledges that although the Village is a party to the release, the entire payment in the amount is \$16,617.50 will be received by the Pool and represents reimbursement for sums paid by the Pool for the benefit of the Village. No portion of the payment will be to the Village.

Section 3: The execution of the Release settles in full the Lawsuit.

Section 4: It is hereby found and determined that all actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5: This Resolution is hereby declared to be an emergency measure, becoming effective immediately on passage by Council and approval by the Mayor, necessary to protect the health, safety, morals and general welfare of the community, and for the further reason that the Lawsuit brought by the Village of Windham is settled and the Council must take action to authorize that action.

Passed by Council on first reading, July 24, 2018

Vote of Council: Ayes: 6
 Nays: 0

Attest:

Approved:

Village Fiscal Officer, Cheree Taylor

Mayor, Deborah Blewitt

Approved as to Legal Form:

Solicitor, Thomas Reitz

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Village of Windham, Ohio and Public Entities Pool of Ohio, for and in consideration of the sum of **SIXTEEN THOUSAND SIX HUNDRED SEVENTEEN DOLLARS and 50/100 CENTS (\$16,617.50)** (the "Settlement Proceeds"), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, have released and discharged, and by these presents do hereby for themselves and their successors and assigns, release and forever discharge **PAUL BARROWS, PROGRESSIVE SPECIALTY INSURANCE COMPANY**, any and all other persons acting in active concert or participation with them and, their respective, heirs, executors, administrators, fiduciaries, successors, assigns, parent, subsidiary, related and affiliated entities, insurers, agents, employees, servants, officers, directors, shareholders, members, partners, predecessors and attorneys (hereinafter the "Released Parties"), of and from any and all claims, demands, damages, liabilities, actions, administrative proceedings, arbitral matters, causes of action and suits at law and in equity, of whatsoever kind and nature, for or because of any matter or thing done, omitted or suffered to be done by the said Released Parties from the beginning of time, including, but without limiting the generality of the foregoing, on account of or in any way growing out of any and all property damage, personal injuries, other damages and death resulting or to result from an incident which occurred on or about May 22, 2015; and the transfer of real estate (known for street numbering purposes as 1586 Shanks Down Road, Windham, Ohio 44288) by Paul Barrows to Judy Barrows.

It is understood and agreed that the word "damages" as used in this Release shall include, without limitation, actual, multiple, exemplary, consequential or punitive damages, taxes, tax consequences, fines, penalties, interest, [pre- settlement, post settlement, including without

limitation, under R.C. 1343.03(A) or 1343.03(C)] - attorney's fees or costs, compensation or benefits. It is understood and agreed that the above settlement shall include any and all claims, demands, damages, liabilities, actions, administrative proceedings, arbitral matters, causes of action and suits at law and in equity, of whatsoever kind and nature, whether now known, foreseen, liquidated, suspected or contingent, and including without limiting the generality of the foregoing: all matters now raised, or which could have been raised, in the pending lawsuit entitled, *Village of Windham, Ohio, et al. v. Paul Barrows, et al.* Trumbull County Court of Common Pleas Case No. 2017 CV 01029 (the "Lawsuit"); and, that for and in consideration of the foregoing payment, the undersigned shall dismiss with prejudice all claims in the Lawsuit, The undersigned authorize their attorney to execute and file in the Lawsuit a judgment entry or entries effectuating the foregoing.

It is further understood and agreed that the above settlement shall include any and all claims, demands, damages, liabilities, actions, administrative proceedings, arbitral matters, causes of action and suits at law and in equity, of whatsoever kind and nature, which may occur in the future as a result of the subject incident, including those that may be created in the future by virtue of changes in the law from legislative acts or judicial interpretation.

The undersigned warrant, represent and covenant that they have full control over the disposition of the Settlement Proceeds which are the subject of this Release, and no portion thereof has been assigned, subrogated or transferred to any other person or entity, private or governmental, which has or may claim a right against any of the Released Parties. The undersigned do also hereby agree for themselves and their successors and assigns, to protect, indemnify, assume and hold harmless the Released Parties from any and all claims, demands, damages, liabilities, actions, administrative proceedings, arbitral matters, causes of action and

suits at law and in equity, of whatsoever kind and arising from or related to a breach of the warranties, representations and covenants of this paragraph; from those of a derivative nature; and of any person or entity claiming a right as an assignee, subrogee or transferee of the undersigned, whether governmental or private.

It is further understood and agreed that neither this Release nor the payment hereunder is to be construed as an admission of liability on the part of any of the Released Parties by whom liability is expressly denied, but, this Release is given and said payment is made and accepted in full accord and satisfaction of, and in compromise of, a disputed claim and for the purpose of terminating a dispute and litigation.

The undersigned warrant, represent and covenant that no promise or inducement has been offered except as stated in this Release; that this Release is executed without reliance upon any statement or representation made by any of the parties or any of their representatives; that the signatories have full capacity, power and authority to execute and deliver this Agreement and to perform all of the provisions of this Release; and that this Release is valid, binding and duly enforceable against the undersigned and their successors and assigns. .

The undersigned further acknowledges and agree that they have read and have understood this document and have knowingly and voluntarily entered into this document after a consultation with their legal counsel who has also reviewed this document on their behalf.

“And” as well as “or” as used in this Release shall be construed conjunctively as well as disjunctively as may be necessary so as to give the broadest construction to this Release in favor of a full and final release and discharge of any and all claims, demands, damages, liabilities, actions, administrative proceedings, arbitral matters, causes of action and suits at law and in equity, of whatsoever kind and nature as to the Released Parties on account of or in any way

growing out of the subject accident. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identities of the parties may require.

This Release may be executed in two or more counterparts, and each counterpart, when executed, shall have the efficacy of a signed original but all of which together shall constitute one and the same instrument. The Release may also be executed and delivered by facsimile and electronic signature.


This Release is binding upon and shall inure to the benefit of each of the undersigned, their successors and assigns, and the Released Parties and their successors and assigns.

The undersigned have hereunto duly signed this document this 19 day of JUNE, 2018.

Village of Windham, Ohio


BY: 11/14/18

Public Entities Pool of Ohio


BY: _____

NOTICE: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT IS GUILTY OF INSURANCE FRAUD.

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

Before me, a Notary Public in and for said county, personally appeared the above-named DEBORAH BLEWETT, MAYOR, who executed the foregoing instrument as the duly authorized representative of the Village of Windham.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at WINDHAM, Ohio, this 19~~th~~ day of JUNE, 2018.


NOTARY PUBLIC

THOMAS R. REITZ, Attorney at Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R.C.

STATE OF OHIO)
) SS:
COUNTY OF Franklin)

Before me, a Notary Public in and for said county, personally appeared the above-named Mike Egnor, who executed the foregoing instrument as the duly authorized representative of the Public Entities Pool of Ohio.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Blacklick, Ohio, this 15th day of May, 2018.


NOTARY PUBLIC



Michelle H O'Neill
Notary Public
In and For the State of Ohio
My Commission Expires
29 July 2022

Attorney for Plaintiff