

07-682-CD
Jake Yoder et al vs Cory Oshenic et al

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAKE D. YODER and ESTHER B.
HERSHBERGER YODER, as
Administrators of the Estate of
David J. Yoder,

Petitioners,

vs.

CORY OSHENIC, MICHELE
OSHENIC, AND NATIONWIDE
MUTUAL FIRE INSURANCE
COMPANY,

Respondents.

No. 2007-682-C.D

PETITION FOR LEAVE TO
COMPROMISE AND SETTLE THE
WRONGFUL DEATH/SURVIVAL
CLAIMS OF DAVID J. YODER, A
DECEASED MINOR

FILED ON BEHALF OF PETITIONERS:

JAKE D. YODER and ESTHER B.
HERSHBERGER YODER, as
Administrators of the Estate of
David J. Yoder,

Attorney for Nationwide Mutual Fire
Insurance Company

Robert J. Grimm, Esquire
I.D. No. 55381
Swartz Campbell LLC
Suite 4750
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

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FILED

APR 30 2007
AMY PAID \$35.00
William A. Shaw
Prothonotary/Clerk of Courts

Original
upstairs

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M 1:46 P.M. 6K 2cc to Atty
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Respondents.

**PETITION FOR LEAVE TO COMPROMISE AND
SETTLE THE WRONGFUL DEATH/SURVIVAL
CLAIMS OF DAVID J. YODER, A DECEASED MINOR**

AND NOW, come the Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, Administrators of the Estate of David J. Yoder, and Jake D. Yoder and Esther B. Hershberger Yoder in their own right and files the following Petition for Leave to Compromise and Settle the Wrongful Death/Survival Claims of David J. Yoder, respectfully representing and setting forth the following:

1. The Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, are the Administrators of the Estate of David J. Yoder, and are adult individuals residing at 420 Shamokin Trail Road, DuBois, Clearfield County, Pennsylvania 15801.

2. The Decedent, David J. Yoder, died following a motor vehicle accident, which occurred on September 23, 2006. David J. Yoder and Esther B. Hershberger Yoder have been appointed the Administrators of David J. Yoder's Estate. At the time of his unfortunate death, David J. Yoder was a little over one month old.

3. The Respondents, Cory Oshenic and Michele Oshenic, are adult individuals who reside at 1791 Desire Road, Reynoldsville, Pennsylvania 15851.

4. The Respondent, Nationwide Mutual Fire Insurance Company, is a corporation duly authorized to conduct business in the Commonwealth of Pennsylvania with a place of business of P. O. Box 2655, Harrisburg, Pennsylvania 17105. At all times relevant hereto, Respondent, Nationwide Mutual Fire Insurance Company, was the motor vehicle liability insurance carrier for the Respondents, Cory Oshenic and Michele Oshenic.

5. On or about September 23, 2006, the decedent, David J. Yoder, was a passenger in a horse drawn Amish buggy operated by his father, Jake D. Yoder, when said Amish buggy was involved in a motor vehicle accident with a vehicle operated by the Respondent, Cory Oshenic, at the intersection of TR 509 and SR 2007 in Winslow Township, Jefferson County, Pennsylvania.

6. At said intersection on September 23, 2006, the Amish buggy collided with the vehicle operated by Cory Oshenic, causing the minor to be ejected from the horse drawn Amish buggy and unfortunately caused his death.

7. At the time of the September 23, 2006 motor vehicle accident, Respondents, Cory and Michele Oshenic, had a motor vehicle liability insurance policy with Respondent, Nationwide Mutual Fire Insurance Company, which provided for \$25,000.00 in bodily injury limits.

8. The Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, are the only heirs to the estate of David J. Yoder.

9. The Respondent, Nationwide Mutual Fire Insurance Company, has offered the sum of \$25,000.00 as the policy limits for bodily injuries, and for the wrongful death/survival claims of the estate of David J. Yoder.

10. Due to the expenses and uncertainty of litigation, Petitioners believe that it is the best interest of the deceased and the estate of David J. Yoder to settle and compromise this matter.

11. The Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, as Administrators of the Estate of David J. Yoder have entered into a release and settlement agreement with Nationwide Mutual Fire Insurance Company, the liability motor vehicle insurance carrier for Respondents, Cory Oshenic and Michele Oshenic, wherein and in consideration of the sum of \$25,000.00, the Petitioners will release and discharge the Respondents from any all liability forever with regard to the personal injuries, wrongful death and survival claims by the decedent, David J. Yoder, and any and all claims and injuries sustained by the Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, as a result of the September 23, 2006 motor vehicle accident. Attached hereto and marked as **Exhibit A** is a copy of the Release and Settlement Agreement.

12. The Petitioners are of the opinion that the offer of settlement is fair and reasonable under the circumstances and because of the limited amount of insurance coverage available for the Petitioners as well as the difficulty and proof and uncertainty of litigation.

13. The Petitioners request this Honorable Court to enter an Order approving the settlement and compromise of this matter as set forth in the Court Order.

WHEREFORE, Petitioners, Jake D. Yoder and Esther B. Hershberger Yoder, as Administrators of the Estate of David J. Yoder, and in their own right respectfully pray that this Honorable Court make an Order approving the compromise and settlement of the Estate of David J. Yoder as set forth above.

Jake D. Yoder
Jake D. Yoder
Administrator of the Estate of
David J. Yoder, a deceased minor

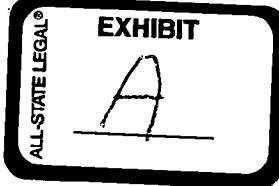
Esther B. Yoder
Esther B. Hershberger Yoder
Administrator of the Estate of
David J. Yoder, a deceased minor

FULL AND FINAL RELEASE

FOR AND IN CONSIDERATION of the sum of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) to us in hand paid by Nationwide Mutual Fire Insurance Company, the receipt of which is hereby acknowledged, we, as Administrators of the Estate of David J. Yoder and in our own right, being of lawful age, hereby fully and forever release, acquit, and discharge the said Cory Oshenic and Michele Oshenic, and Nationwide Mutual Fire Insurance Company, their heirs, administrators, executors, successors, assigns, and insurers from any and all actions, causes of action, claims, and demands of whatsoever kind or nature on account of any and all known and unknown injuries, losses, and damages by us or our property sustained or received on or about September 23, 2006, for which injuries, losses, and damages a claim was asserted with Nationwide Mutual Fire Insurance Company with a claim number of 5837 D 622057 09232006 41, it being understood and agreed that the acceptance of said sum is in full accord and satisfaction of a disputed claim and that the payment of said sum is not an admission of liability.

It is expressly understood and agreed that this Release and settlement is intended to cover and does cover not only all now known injuries, losses, and damages, but any future injuries, losses, and damages not now known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof;

And we hereby declare that we fully understand the terms of this settlement; that the amount stated herein is the sole consideration of this Release and that we voluntarily accept said sum for the purpose of making a full and final compromise, adjustment, and settlement of all claims for injuries, losses, and damages resulting or to result from said incident.



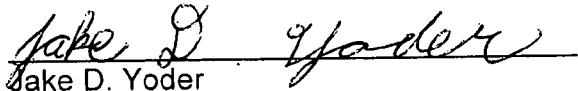
It is further understood and agreed that this is the complete Release agreement, and that there are no written or oral understandings or agreements, directly or indirectly, connected with this Release and settlement that are not incorporated herein.

We agree that the terms of this Release are confidential and neither we, nor our attorneys, shall disclose, inform, or otherwise make known to any other persons or entities the terms and conditions of this Release. Additionally, neither we, nor our attorneys, shall publicize the terms of this Release to any media organization nor shall we, or our attorneys, publicize the terms of this agreement.

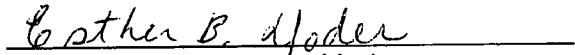
This agreement shall be construed that wherever applicable the use of the singular number shall include the plural number and shall be binding upon and inure to the successors, assigns, heirs, executors, administrators, and legal representatives of the respective parties hereto.

By affixing her signature, the undersigned agrees that she will neither publicize nor authorize the publication of this settlement or the terms thereof.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 24th day of April, 2007.



Jake D. Yoder
As Administrator of the Estate of
David J. Yoder and in my own right



Esther B. Hershberger Yoder
As Administrator of the Estate of
David J. Yoder and in my own right

VERIFICATION

I, Jake D. Yoder, Administrator of the Estate of David J. Yoder, a deceased minor, verify that the statements of fact contained in the foregoing **PETITION FOR LEAVE TO COMPROMISE AND SETTLE THE WRONGFUL DEATH/SURVIVAL CLAIMS OF DAVID J. YODER, A DECEASED MINOR** are true and correct to the best of our knowledge, information and belief.

This statement of verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 4/24/07

Jake D. Yoder
JAKE D. YODER
Administrator of the Estate of
David J. Yoder, a deceased minor

VERIFICATION

I, Esther B. Hershberger Yoder, verify that the statements of fact contained in the foregoing **PETITION FOR LEAVE TO COMPROMISE AND SETTLE THE WRONGFUL DEATH/SURVIVAL CLAIMS OF DAVID J. YODER, A DECEASED MINOR** are true and correct to the best of our knowledge, information and belief.

This statement of verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: 4/24/07

Esther B. Yoder
ESTHER B. HERSHBERGER YODER
Administrator of the Estate of
David J. Yoder, a deceased minor

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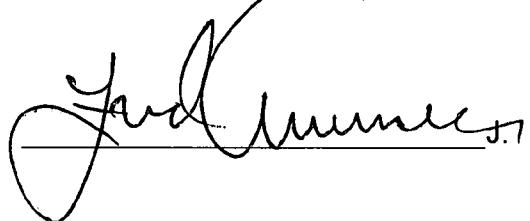
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DECEASED MINOR

Respondents.

ORDER OF COURT

AND NOW, this 1 day of May, 2007, upon consideration
of the foregoing Petition for Leave to Compromise and Settle the claim of the Estate of
David J. Yoder, a minor, who is deceased, it is hereby ORDERED and DECREED that
the within Petition to Compromise and Settle the claim is hereby approved by this Court
and it is further ORDERED and DECREED that the Respondent, Nationwide Mutual
Fire Insurance Company shall pay the Petitioners the sum of \$25,000.00.

BY THE COURT:



FILED
MAY 01 2007
Atty Grimm
GK

William A. Shaw
Prothonotary/Clerk of Courts

~~FILE~~
~~APR 10 2007~~
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/1/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED
MAY 01 2007

William A. Shaw
Prothonotary/Clerk of Courts