

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is made and entered into on August 2007 ("the Effective Date") by and between John Brady and Mary Smith individually and on behalf of the class of plaintiffs in *Chesher v. Neyer*, C-1-01-566 ("The *Chesher* Class") and Defendants Hamilton County, Ohio, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Terry Daly ("Defendants"). This settlement agreement is subject to approval by the federal court before it can be effective against all of the class members.

WHEREAS, Thomas Condon visited the Hamilton County Morgue during the period August 16, 2000 – January 7, 2001;

WHEREAS, between those dates and for varying periods of time, deceased family members of the *Chesher* Class were present in the Hamilton County Morgue in the custody of Defendants;

WHEREAS, during that time Thomas Condon manipulated, accessed, propped, viewed, and photographed some of the deceased family members of the *Chesher* Class while they were in the custody of Defendants at the Hamilton County Morgue;

WHEREAS, during that time Condon also came into possession of death scene photos of various deceased members of the *Chesher* Class;

WHEREAS, Thomas Condon has been criminally convicted of eight counts of gross abuse of a corpse and has served a sentence of 12 months in prison for those crimes all of which involved some of the deceased members of the families in the *Chesher* Class, See, *State of Ohio v. Thomas Condon*, C.P. Hamilton County, Case No. B-0100380(A);

WHEREAS, the *Chesher* Class and the Defendants seek to resolve their differences in a manner that will extend a formal apology from Hamilton County to the members of the Class; ensure destruction of the photos; fairly compensate the members of the class for the harm they have suffered; and continue the implementation of safeguards at the Hamilton County Morgue designed to prevent such abuses in the future;

THEREFORE, in consideration of the mutual promises of the parties set forth below, and subject to the approval of the federal district court, the parties agree as follows:

A. CLASS DESCRIPTION AND DEFINITIONS

1. The following is the definition of the *Chesher* Class as established by the Court, the source of the claim being the death of a loved one and the subsequent abuse of the corpse and related personal property if any:

Sub-Class One:

The family members of all the deceased whose remains, for other than a proper government purpose, were photographed by Thomas Condon or Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the legal custody of the Hamilton County Coroner's Office, without legal permission from the legal representatives of the deceased.

Sub-Class Two:

The family members of all the deceased whose remains, for other than a proper government purpose, were accessed, viewed, or manipulated, by Thomas Condon or Jonathan Tobias, M.D., or one of their agents between August 2000 and January 2001 (inclusive) while such bodies were in the legal custody of the Hamilton County Coroner's Office, without legal permission from the legal representatives of the deceased.

Doc. 366.

2. The Court defined "family members" as: "surviving spouse, children, parents, and other next of kin who suffered severe emotional distress." Doc. 381.

3. The Court defined “serious emotional distress” as:

Distress that is both severe and debilitating and renders a reasonable person, normally constituted, unable to cope adequately with mental distress. Seriousness might also suffice in the mishandling of a corpse arena where the plaintiffs were horrified, angry, saddened, wept, and were unable to sleep.

(Paraphrased, citations omitted, Doc. 380.)

B. DEFENDANTS’ OBLIGATIONS

4. Defendant Hamilton County shall provide a formal, written apology to the members of the *Chesher* Class. The Apology is attached as A-1.
5. Defendants shall transfer to the *Chesher* Class physical possession and any ownership interest they claim, could claim, or in the future might claim in the personal property in their possession or personal property that was in their possession or to which they have access, including but not limited to photographs, videos, disks, negatives, jpegs, prints, and proofs, in any format, whether in printed form, electronic or otherwise of any and all deceased family members in the *Chesher* Class, except those that may have a true forensic purpose, which would include the official records of the Hamilton County Morgue. Defendants shall also advise the Hamilton County Prosecutor of this agreement and encourage the Prosecutor to come to an agreement with the *Chesher* class regarding the disposition of any such items in the possession of the Prosecutor.
6. Defendants shall encourage the current Coroner of Hamilton County Ohio to open a dialogue with the *Chesher* Class concerning: (a) a memorial to appropriately commemorate the deceased family members and remind all Coroner employees to remain vigilant in their duty to safeguard the loved ones in their custody; (b) reopening the viewing room under an appropriate protocol; (c) assisting the Coroner

to secure funding for grief counseling services; and (d) establishment of an advisory panel of *Chesher* class members to meet with the Coroner two times a year for review of security, morgue policies and related matters. These suggestions and recommendations are not binding on Dr. Owens.

7. Defendants shall join with the *Chesher* Class in a motion to establish of a Qualified Settlement Fund, the *Chesher* Class Qualified Settlement Fund. Attached as A-2.
8. Defendants shall join with the *Chesher* Class in a joint motion to preliminarily approve this class action settlement. Attached as A-3.
9. Hamilton County agrees to pay to the *Chesher* Class Qualified Settlement Fund eight million dollars (\$8,000,000.00) in compensatory damages as follows:
 - a. Five Hundred Thousand Dollars (\$500,000.00) by September 15, 2007;
 - b. Three million five hundred thousand dollars (\$3,500,000.00) on or before November 1, 2007;
 - c. Four million dollars (\$4,000,000.00) on or before February 29, 2008.

No payments are made on account of punitive damages of any kind.

C. CHESHER CLASS OBLIGATIONS

10. Subject to the approval of the federal court, the *Chesher* Class shall dismiss the action with prejudice. A copy of that order is attached as A-4.
11. In exchange for the promises contained herein and subject to the approval of the federal court, the members of the *Chesher* Class, individually, and on behalf of their respective heirs, successors and assigns, do hereby release and forever discharge Hamilton County, Ohio (which includes, but is not limited to, the Prosecutor's Office, the Coroner's Office, and any other County agencies), Carl

L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Terry Daly and Jonathan Tobias, M.D., their successors and assigns, and all of their present and former officers, officials, employees, attorneys, agents or contractors and their respective heirs, successors and assigns, of and from any and all claims, actions, causes of action, demands, costs, loss of services, expenses, attorneys' fees, rights, liens, injuries, losses, suits, judgments, contracts, covenants, orders, liabilities and damages of any type, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, open or hidden, which have existed, presently exist or may exist in the future arising out of or in any way related to any act, omission, transaction or occurrence prior to the Effective Date of this Settlement Agreement which the *Chesher* Class or their successors in interest may have or claim to have arising out of the allegations in this case, whether asserted or unasserted, except for such actions that may be necessary for the enforcement of this Settlement Agreement or as specifically reserved herein.

D. MISCELLANEOUS

12. The parties executing this Settlement Agreement represent and warrant that they have fully read and understood this Agreement, that counsel of their choice advised them regarding the terms, conditions and risks in entering this Agreement, and that they are authorized and competent to execute this Agreement and have done so voluntarily.
13. The effective date of this Settlement Agreement shall be that day on which the resolution of Hamilton County approving this Settlement Agreement becomes

finalized as a matter of law or the date of the last signature to this Settlement Agreement, whichever is later ("Effective Date").

14. The federal court shall retain jurisdiction over this Settlement Agreement as outlined in the Order of Dismissal, attached hereto as Exhibit A-4. Jurisdiction over these terms will be consistent with *Kokkonen v. Guardian Life Insurance of America*, 511 U.S. 375, 114 S.Ct. 1673 (1994) and *Caudill v. North American Media Corp.*, 200 F.3d 914 (6th Cir. 2000).
15. The payment referred to above is a global settlement of all claims by all class members including any claims for attorney fees and expenses awardable under federal and/or state law. Defendants agree that for the purposes of 42 U.S.C. §1988 plaintiffs are a prevailing party entitled to fees and expenses paid by the Defendants. Defendants shall not oppose class counsel's application for fees and expenses which are governed by statute and subject to approval by the Court. Said attorney fees and expenses are included in the global settlement amount contained herein in paragraph 9.
16. The parties acknowledge that by extending a formal apology and that entering into the Settlement Agreement, Defendants do not admit liability as to any claims made and that the payments are being made as a compromise and settlement of disputed claims.
17. The obligations contained in this Agreement are contingent upon the Court granting an order to establish a Qualified Settlement Fund and approving the Order of Dismissal attached as Exhibit A-4, and approval of the settlement pursuant to Fed. R. Civ. Proc 23(e).

18. This Settlement Agreement is the entire agreement among the parties and can be executed on separate signature pages all of which may then be appended to form an original signed Agreement which is fully enforceable against each signing party. This Settlement Agreement can only be modified in a writing signed by the parties and remains subject to the jurisdiction of the Court and governed by federal law and the laws of the State of Ohio.

John Brady
John Brady, Individually and on
behalf of the *Chesher* Class

STATE OF OHIO)
) SS:
COUNTY OF *Clinton*)

Sworn to before me and subscribed in my presence this *24th* day
of *August*, 2007.

Connie Sue Penquite
Notary Public

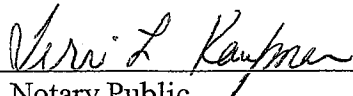


CONNIE SUE PENQUITE
Notary Public, State of Ohio
My Commission Expires: Oct. 26, 2009
Recorded in Clinton County


Carl Parrott, M.D.,

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Sworn to before me and subscribed in my presence this 28th day of August 2007.


Notary Public

TERRI L. KAUFMAN
Notary Public, State of Ohio
My Commission Expires 11-14-2011

Gary Utz

Gary Utz, M.D.

STATE OF OHIO)
) SS:
COUNTY OF Hamilton)

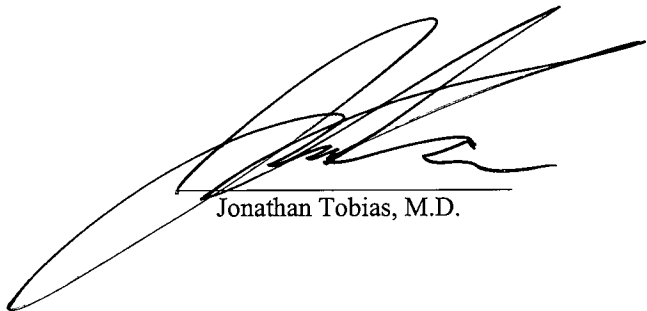
Aug Sworn to before me and subscribed in my presence this 29 day
_____, 2007.

Patricia A. Carpenter

Notary Public



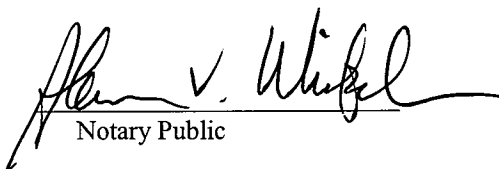
PATRICIA A. CARPENTER
Notary Public, State of Ohio
My Commission Expires
June 3, 2009



Jonathan Tobias, M.D.

STATE OF OHIO)
COUNTY OF Hamilton) SS:

August, 2007. Sworn to before me and subscribed in my presence this 21st day



Notary Public

GLENN V. WHITAKER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 O.R.C.

Robert T. Daly

~~Terry Daly~~
Robert T. Daly

STATE OF OHIO)
COUNTY OF *Hamilton*) SS:

August, 2007. Sworn to before me and subscribed in my presence this *27* day

Andrea S. Hatten

Notary Public



ANDREA S. HATTEN
Notary Public, State of Ohio
My Commission Expires
November 27, 2010



HAMILTON COUNTY, OHIO

By: [Signature]

Title: County Administrator

STATE OF OHIO)
COUNTY OF Hamilton) SS:

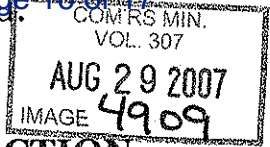
Sworn to before me and subscribed in my presence this 29th day
of Aug., 2007.

[Signature]
Notary Public



**JACQUELINE PANIOTO
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-03-11**

2157983.1



**RESOLUTION AUTHORIZING SETTLEMENT IN CIVIL ACTION
DESIGNATED AS *CHESHER V. NEYER*, C-1-01-566, IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO**

By the Board:

WHEREAS, a civil action has been initiated in the United States District Court, Southern District of Ohio by John Brady and Mary Smith, individually, and on behalf of the class of plaintiffs in *Chesher v. Neyer*, C-1-01-566 and Defendants Hamilton County, Ohio, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Gary Utz, M.D., Jonathan Tobias, M.D., and Terry Daly asserting claims for injuries arising from the actions of Thomas Condon who was provided access to the Hamilton County Morgue by the Coroner, Dr. Carl L. Parrott, M.D., or members of his staff during the period from August 16, 2000-January 7, 2001 and who manipulated, accessed, propped, viewed, and photographed some of the deceased family members of the *Chesher* class while in the custody of Defendants in the Hamilton County Morgue; and

WHEREAS, a settlement has tentatively been reached between the Board of County Commissioners of Hamilton County, Ohio and the plaintiffs on behalf of the plaintiff class in Case No. C-1-01-566 pending in the United States District Court:
NOW, THEREFORE,

BE IT RESOLVED by the Board of County Commissioners of Hamilton County, Ohio, that Hamilton County hereby approves a settlement in the amount of \$8,000,000 to be paid as directed by the United States District Court for the benefit of the plaintiff class and payment of plaintiffs' attorneys fees and costs, contingent upon the approval of the United States District Court for the Southern District of Ohio, and further contingent upon the execution of a settlement and release agreement by the authorized class representative and the County Administrator, dismissing the civil action Case No. C-1-01-566 with prejudice, extinguishing all of their claims against Hamilton County, Ohio, and further contingent upon the release of Hamilton County, Ohio, and its current and former officials, employees, agents and assigns, from any and all claims; and

BE IT FURTHER RESOLVED that the County Administrator on behalf of the Board and the County, its elected officials, employees, agents, and former officials, employees, and agents, is authorized to execute the "Class Action Settlement Agreement" in substantially the form that is attached hereto as "Appendix A," the "Supplemental Agreement" attached hereto as "Appendix B," and any other documents necessary to effectuate the settlement; and



BE IT FURTHER RESOLVED that the Clerk of the Board shall certify copies of this resolution to Patrick Thompson, County Administrator; Hon. O'Dell M. Owens, Coroner of Hamilton County; Dr. Carl L. Parrott, M.D., and Hon. S. Arthur Spiegel, United States District Court for the Southern District of Ohio.

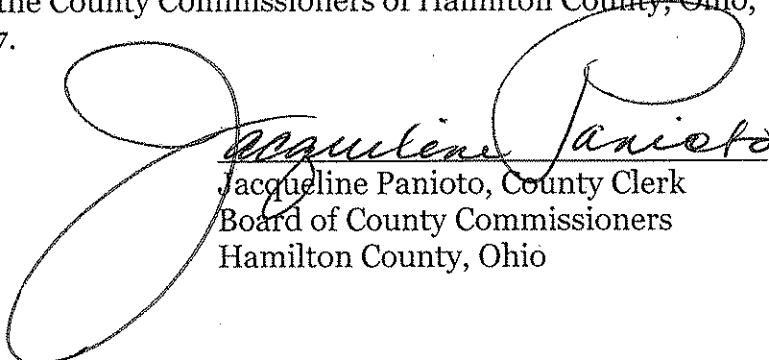
ADOPTED at a regular adjourned meeting of the Board of County Commissioners of Hamilton County, Ohio, this 29th day of August, 2007.

Mr. DeWine, ABSENT/EXCUSED Mr. Pepper, YES Mr. Portune, AYE

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a Resolution adopted by this Board of County Commissioners, and the minutes pertinent thereto, at a regular meeting held on the 29th day of August, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the County Commissioners of Hamilton County, Ohio, this 29th day of August, 2007.


Jacqueline Panioto, County Clerk
Board of County Commissioners
Hamilton County, Ohio