

DEC 21 1987

RELEASE AND SETTLEMENT AGREEMENT

On February 7, 1984, Jennifer Gambriel sustained accidental injuries when a spark ignited her clothing during a class at Pleasant Hope High School in Pleasant Hope, Missouri. It is the contention of Jennifer Gambriel, Billy Gambriel and Virginia Gambriel that the injuries were caused by the negligence of the agents, servants, or employees of Pleasant Hope School and Terry Halleran; and as a result Jennifer Gambriel sustained injuries. The extent of the injuries which Jennifer Gambriel received is uncertain, indefinite and incapable of being satisfactorily established, and in order to avoid the uncertainty of trial, avoid the expense of prolonged litigation, and in order to settle their differences, Jennifer Gambriel, Billy Gambriel and Virginia Gambriel have agreed to a compromise settlement with Pleasant Hope School, Terry Halleran and their insurance carrier, Wausau Underwriters Insurance Company, whereby certain sums of money are to be paid to Jennifer Gambriel in a structured settlement which will include payments as hereinafter will be set out in this agreement.

It is fully understood and intended by Jennifer Gambriel, Billy Gambriel and Virginia Gambriel that this agreement shall constitute a full and final settlement and release of all claims which Jennifer Gambriel, Billy Gambriel and Virginia L. Gambriel might have against Pleasant Hope School, Terry Halleran, their agents, servants and employees as a result of the accident and injuries sustained by Jennifer Gambriel on February 7, 1984. Therefore, it is agreed by Jennifer Gambriel, Billy Gambriel, and Virginia Gambriel that they do hereby completely release, quitclaim, acquit, discharge, and hold forever harmless Pleasant Hope School, Terry Halleran, Phillips-Van Heusen Corporation, their agents, servants, and employees, from any and all claims, demands, actions, and causes of actions of any kind or character, whether known or unknown, including any and all claims for loss of services and consortium, which have arisen in the past or which might arise in the future, whether directly or indirectly caused by, connected with, or resulting from that aforementioned accident which occurred on February 7, 1984, when Jennifer Gambriel sustained injuries when a spark ignited her clothing during a class at Pleasant Hope School.

It is agreed on the part of all parties to the agreement that the agreement shall be a full and binding release and a complete settlement between the parties to the agreement, their heirs, executors, administrators, and assigns forever. In consideration for this agreement and release, Pleasant Hope School's insurer, Wausau Underwriters Insurance Company, hereby agrees to pay Jennifer Gambriel, Billy Gambriel and Virginia Gambriel and their attorneys or on their behalf as follows:

1. LUMP SUM PAYMENT. Phillips Van Heusen Corporation and its insurer, Commercial Union Insurance Companies, agree to pay Jennifer Gambriel, Billy Gambriel and Virginia Gambriel and their attorney, Donald L. Sanders, the sum of \$24,893.

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Pleasant Hope School and its insuror, Wausau Underwriters Insurance Company, agree to pay to Jennifer Gambriel, Billy Gambriel and Virginia Gambriel and their attorney Donald L. Sanders the sum of \$5,107. The receipt of these funds is hereby acknowledged by Jennifer Gambriel, Billy Gambriel and Virginia Gambriel and Donald L. Sanders, their attorney. In addition, the following sums will be paid by Pleasant Hope School and its insuror Wausau Underwriters Insurance Company:

(a) The sum of \$3,000 will be paid to Jennifer Gambriel on October 15, 1990.

(b) The sum of \$10,000 will be paid to Jennifer Gambriel on October 15, 1993.

(c) The payments referred to in (a) and (b) above shall be guaranteed as set forth in the paragraph denominated "Guaranteed Payments."

2. MEDICAL PAYMENTS TO OTHERS. Pleasant Hope School and its insuror, Wausau Underwriters Insurance Company, agree to pay certain medical bills incurred by Jennifer Gambriel, Billy Gambriel and Virginia Gambriel prior to the date of this agreement. The payments shall be made directly to the health care provider. The payments total \$22,956.99. Neither Pleasant Hope School or Wausau Underwriters Insurance Company shall have any obligation to pay any medical expenses in excess of \$22,956.99 or any medical expenses incurred after October 6, 1987. It is not necessary to include the Gambriels' attorney on any such draft.
3. MONTHLY PAYMENTS. Monthly payments in the amount of \$500 per month shall begin as of October 15, 1994, with all future monthly payments continuing thereafter payable on the 15th day of each and every month for the life of Jennifer Gambriel, provided that, in any event, the monthly payments shall continue for a guaranteed period of 120 months.

Wausau Underwriters Insurance Company shall at all times remain directly responsible for the payment of all sums and obligations contained within this agreement. As additional security for the payment of the sums set forth in this agreement, Wausau Underwriters Insurance Company shall purchase an annuity contract with Jennifer Gambriel designated as the "measuring life" under said annuity contract. Payments made under said annuity contract, through Employers Life Insurance Company of Wausau, shall operate as a pro tanto discharge of the scheduled obligations set forth in this agreement.

4. GUARANTEED PAYMENTS. Upon the death of Jennifer Gambriel, Billy Gambriel and Virginia Gambriel, in equal shares, or the survivor, as beneficiary, shall continue to receive any remaining guaranteed payments pursuant to this agreement, the number of said payments being the difference between the total number of guaranteed payments as provided for above and the number of said payments paid to Jennifer Gambriel before her death; provided, however, that the said Billy Gambriel or Virginia Gambriel survives Jennifer Gambriel, and further provided that written proof of the death of Jennifer Gambriel is furnished to Wausau Underwriters Insurance Company, its successors or assigns. In the event both Billy Gambriel and Virginia Gambriel predecease Jennifer Gambriel, any remaining guaranteed monthly payments shall be continued to be paid out pursuant to this agreement to the estate of Jennifer Gambriel.

\* It is the intention of the parties and it is clearly understood that the payments made to Jennifer Gambriel are not income payments, but rather are payments in full discharge of the claim against Pleasant Hope School and Terry Halleran, and are being made in payment of consideration of the release.

\* Neither Jennifer Gambriel, her estate, nor any subsequent beneficiary or recipient of any payment or any part of any payments under this agreement, shall have the right to accelerate, commute, or otherwise reduce to present value or to a lump sum, any of the payments or any part of any payments due under this agreement.

\* Neither Jennifer Gambriel, her estate, nor any subsequent beneficiary or recipient shall have the right to transfer, assign, anticipate, mortgage, or otherwise encumber in advance any payment or any part of any payment due under this agreement.

All parties to this agreement warrant and represent each to the other that they have been fully informed and have full knowledge of the terms, conditions, and effects of this agreement. All parties to this agreement warrant and represent, each to the other, that they have, either personally or through their attorney or attorneys, fully investigated to such parties' full satisfaction all the facts surrounding the various claims, controversies and disputes between them, and are fully satisfied with the terms and effects of this agreement. All parties warrant and represent, each to the other, that no promise or inducements have been offered or made except as set forth, and that this release and agreement is executed without reliance on any statement or representations made by any other party or his agent, except as herein set forth.

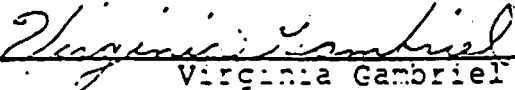
It is understood and agreed that all payments to be made after the execution of this agreement may be made by check or draft, which check or draft need not include the Gambriels' attorney as a payee.

It is further agreed that Jennifer Gambriel, Billy Gambriel and Virginia Gambriel shall execute a separate "Release of All Claims" whereby additional parties will be released. Such release shall be in consideration of the payments called for herein, provided, however, that in no event shall any entity other than Wausau Underwriters Insurance Company be required to make any of the future payments called for herein.

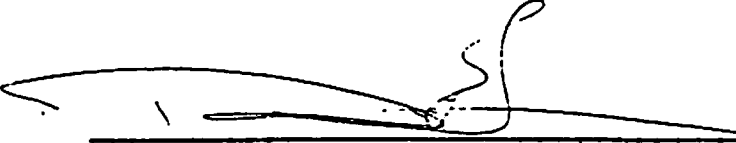
Executed at Springfield, Missouri, the \_\_\_\_\_ day of \_\_\_\_\_, 1987.

  
\_\_\_\_\_  
Jennifer Gambriel

  
\_\_\_\_\_  
Billy Gambriel

  
\_\_\_\_\_  
Virginia Gambriel

THE UNDERSIGNED ATTORNEY WITNESSES  
AND APPROVES THIS AGREEMENT AND  
ACKNOWLEDGES RECEIPT OF LUMP SUM  
PAYMENTS:

  
\_\_\_\_\_  
Attorney for Jennifer Gambriel,  
Billy Gambriel and Virginia Gambriel

WAUSAU UNDERWRITERS INSURANCE  
COMPANY

By \_\_\_\_\_  
Its Authorized Agent

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT AKRON**

<b>IN RE:</b>	)	<b>CASE NO. 05-56111</b>
	)	
<b>TERRY M. KENNEDY and JENNIFER L. KENNEDY</b>	)	<b>ADVERSARY PROCEEDING</b>
	)	<b>NO. _____</b>
	)	
<b>Debtors</b>	)	<b>IN PROCEEDINGS UNDER CHAPTER 7</b>
	)	
<b>HAROLD A. CORZIN, Trustee Commonwealth Square 304 N. Cleveland-Massillon Road Akron, OH 44333</b>	)	<b>BANKRUPTCY JUDGE</b>
	)	<b>MARILYN SHEA-STONUM</b>
	)	
<b>Plaintiff</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>TERRY M. KENNEDY 3255 E. 100 South Lagrange, IN 46761</b>	)	
	)	
<b>and</b>	)	
	)	
<b>JENNIFER L. KENNEDY 3255 E. 100 South Lagrange, IN 46761</b>	)	
	)	
<b>and</b>	)	
	)	
<b>NATIONWIDE MUTUAL LIFE INSURANCE COMPANY Attn: Officer, Managing or General Agent 1 Nationwide Plaza Columbus, OH 43216</b>	)	<b>COMPLAINT</b>
	)	<b>TYPE: DETERMINATION OF LIEN</b>
	)	<b>VALIDITY AND PRIORITY</b>
	)	
<b>and</b>	)	

**STONE STREET SERVICES, INC.** )  
**c/o Steven W. Mastrantonio** )  
**1500 One Cascade Plaza** )  
**Akron, OH 44308** )  
**Defendants** )

Now comes the plaintiff, Harold A. Corzin, Trustee, by and through his attorney, and for his cause of action states as follows:

### **I - JURISDICTION AND PARTIES**

1. This court has jurisdiction over the within adversary proceeding pursuant to 20A USC section 1334 and 20A USC section 157 and the claims set forth herein are court proceedings within the meaning of the United States Bankruptcy Code.

2. The plaintiff, Harold A. Corzin, Trustee, is the duly appointed, qualified, and acting trustee for the debtors, Terry M. Kennedy and Jennifer L. Kennedy, having been appointed trustee pursuant to designation of the United States Trustee.

3. The defendants, Terry M. Kennedy and Jennifer L. Kennedy, are debtors in bankruptcy having filed their joint petition seeking relief under Chapter 13 of the United States Bankruptcy Code on the 16<sup>th</sup> day of September 2005 which was thereafter converted to a proceeding under Chapter 7 of the United States Bankruptcy Code on the 17<sup>th</sup> day of August 2006.

4. The defendants, Nationwide Life Insurance Company and Stone Street Services, Inc. are entities engaged in business including the sale and administration of annuities and/or the rights thereunder.

### **II - FIRST CLAIM FOR RELIEF**

1. The debtors or one of them is the holder of certain rights to payment under an annuity of which the defendant, Nationwide Life Insurance Company is the owner.

2. That such annuity contract or the rights thereunder are property of the estate of the debtors of the United States Bankruptcy Code.

3. That on information and belief, the defendants have or may claim to have an interest in the right to receive payments from said annuity by virtue of the assignment of certain rights thereunder or by virtue of certain claimed exemptions or otherwise.

4. That a resolution of the ownership interest, liens or other claims or encumbrances of all parties in and/or to said annuity contract and the rights thereunder is necessary for the proper administration of this estate.

5. That in the event this court determines that such property constitutes property of the estate of the debtors to which the trustee has an entitlement, this court should enter its order directing the debtors, Nationwide Mutual Life Insurance Company and all others who have or control the disbursement of such funds to cause all payments under said annuity to be delivered to the plaintiff or plaintiff's assignee as such payments fall due, and for such other and further relief as is just and proper.

WHEREFORE, plaintiff prays that this court declare and determine the rights of all parties in and or to the annuity or the rights thereunder, direct turnover of such property as constitutes property of this estate, and for such other and further relief as is just and proper.

GIBSON & LOWRY

/s/ Michael J. Moran

Michael J. Moran (#0018869)

Attorney for Plaintiff

234 W. Portage Trail

P.O. Box 535

Cuyahoga Falls, OH 44222

(330) 929-0507

(330) 929-6605 - Fax

[moranecf@yahoo.com](mailto:moranecf@yahoo.com)

**PROOF OF SERVICE**

A copy of the foregoing was filed electronically and served via the court's electronic docketing system and/or via regular U.S. mail, postage prepaid, on the \_\_\_\_\_ day of April 2007, upon the following:

**TERRY and JENNIFER KENNEDY**  
3255 E. 100 South  
Lagrange, IN 46761

**HAROLD A. CORZIN, TRUSTEE**  
304 N. Cleveland-Massillon Road  
Akron, OH 44333

**STONE STREET SERVICES, INC.**  
c/o Steven W. Mastrantonio  
1500 One Cascade Plaza  
Akron, OH 44308

**NATIONWIDE MUTUAL LIFE INSURANCE COMPANY**  
Attn: Officer, Managing or General Agent  
I Nationwide Plaza  
Columbus, OH 43216

**U.S. TRUSTEE**  
U.S. Courthouse  
201 Superior Avenue East  
Suite 441  
Cleveland, OH 44114

**DAVID A. MUCKLOW**  
Attorney for Defendants Kennedy  
767 E. Turkeyfoot Road, Suite 4B  
Akron, OH 44319

**CHRISTOPHER J. NIEKAMP**  
Bernlohr Wertz, LLP  
23 S. Main St., Suite 301  
Akron, OH 44308

**JAMES S. CALLENDER, JR.**  
Attorney for State of Ohio  
8440 Station Street  
Mentor, OH 44060

**JOHN M. TKACIK, JR.**  
Attorney for IRS  
801 W. Superior Ave., Suite 400  
Cleveland, OH 44113

/s/ Michael J. Moran  
Michael J. Moran  
Attorney for Plaintiff