

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

FEB 28 2006

LUTHER G. THOMAS, CLERK  
By: *[Signature]*

PETER EVANS AND	)	
DETREE JORDAN,	)	CIVIL ACTION
Plaintiffs,	)	FILE NO. 3:01-CV-009-JTC
	)	
v.	)	
	)	
CITY OF ZEBULON, GEORGIA,	)	
ROBERT LUMMUS, Individually and	)	
in his capacity as POLICE CHIEF OF	)	
THE CITY OF ZEBULON, GEORGIA,	)	
and DENNIS STEPHENS,	)	
Defendants.	)	

**ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiffs, having filed a motion to dismiss with prejudice pursuant to Fed.R.Civ.P. 41(a)(2), and it appearing to the Court that the Defendants have paid the sum of \$300,000.00 to Plaintiffs, and Plaintiffs have executed a written Settlement Agreement and Release, thereby releasing all claims against all defendants, there are no further justiciable issues pending before the Court.

Based on the foregoing, it is hereby **ORDERED, ADJUDGED, AND DECREED**, that the forgoing matter is **DISMISSED WITH PREJUDICE**, all costs are cast against the Plaintiffs.

This 24 day of Feb, 2006.

*[Signature]*  
JACK T. CAMP  
United States District Court  
Northern District of Georgia

Presented by:  
Chris Jensen  
Attorney for Plaintiffs

Memorandum of Settlement

In Re: Evans and Jordan v

The parties to this matter have reached a settlement through mediation. This Memorandum is prepared by the mediator to set out the basic terms. It is contemplated that a formal Settlement Agreement will be prepared by counsel for the parties in which the details of the compromise may be further enumerated.

1. The Defendants agree to pay and the Plaintiffs agree to accept \$300,000 in full and final satisfaction of all claims made or which could have been made in the litigation underlying this mediation.
2. The parties shall bear their own costs and fees, including attorneys fees *except*, the Defendant agrees to pay the Plaintiffs' share of the mediator's fee.
3. The parties will work in good faith to prepare a formal Settlement Agreement which shall incorporate appropriate releases.
4. Upon execution of the Agreement and receipt of the settlement funds the Plaintiffs shall dismiss their case with prejudice.
5. In the event the parties have any disagreement as to the wording of the Settlement Agreement which cannot be resolved they shall ask for the mediator's assistance in the resolution of such matter before seeking the assistance of the Court.

This the 4<sup>th</sup> day of January 4, 2006.

Michael E. Fisher  
Mediator

EXHIBIT A

## SETTLEMENT AGREEMENT AND RELEASE

### RECITALS

A. Peter Evans and Detree Jordan have alleged that on the evening of January 22, 1999 Denis Stephens conducted a traffic stop of the vehicle which Evans was driving and Jordan was a passenger. Without reciting all of the alleged facts, Evans' and Jordan's claims center around the conduct of Stephens during the traffic stop, the ride to the Pike County Jail, and the events which occurred within the Pike County Jail on the evening of January 22, and the morning of January 23, 1999. All of Stephens' actions complained of are collectively referred to herein as "the Incident." Additionally, Evans and Jordan named the City of Zebulon, Georgia and then Chief of Police, Robert Lummus under various theories of liability. The incident was the subject of a lawsuit styled Peter Evans and Detree Jordan v. City of Zebulon, Georgia, Robert Lummus, Individually and in his capacity as Police Chief of the City of Zebulon, Georgia and Denis Stephens, United States District Court for the Northern District of Georgia, Newnan Division, Civil Action File No. 3:01-CV-0009-JTC.

B. The parties to the above styled action (the "Subject Lawsuit") conducted discovery and the lawsuit proceeded to summary judgment in which the trial court dismissed defendants Lummus and the City of Zebulon but allowed the trial of Plaintiffs' claims against Stephens to proceed.

C. Stephens appealed the trial court's ruling to the 11<sup>th</sup> Circuit Court of Appeals which sustained the trial court's ruling and held that a trial against Stephens could proceed.

D. The parties desire to resolve this matter and to provide for a certain payment in full settlement and complete discharge of any and all claims which have arisen or may arise against Stephens as well as all other named defendants in the lawsuit, including all of their

respective subsidiaries, divisions, affiliates, directors, officers, agents, employees, shareholders, successors, assignees, insurers, and attorneys, and all of the subsidiaries, divisions, affiliates, directors, officers, agents, employees, insurers, attorneys, heirs, executors, administrators, successors, and assignees of all those persons and entities.

E. Chris Jensen, Clark E. Gulley, Norman J. Slawsky, as counsel for Plaintiffs, by their respective signatures to this Agreement, acknowledge representations in this Agreement attributed to Plaintiff's attorney and agree for themselves and their respective law firms to be bound by provisions applicable to Plaintiff's attorneys.

#### AGREEMENT

NOW, THEREFORE, for an in consideration of the foregoing and of the mutual agreements, promises, covenants and general release set forth below, and for and in consideration of the payment of Three Hundred Thousand Dollars and 00/100 (\$300,000.00) on behalf of Defendant Denis Stephens, the City of Zebulon, Robert Lummus, Gallagher Bassett Services, Inc., and Georgia Interlocal Risk Management Agency ("Releasees") to Plaintiffs, Peter Evans and Detree Jordan("Releasers") and their attorneys, Chris Jensen, Clark E. Gulley, and Norman J. Slawsky, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. General Release. The Releasers and their, executors, administrators, successors, privies and assigns, hereby agree to release, discharge, acquit, defend and hold harmless Releasees, and their heirs, executors, administrators, insurers, insureds, suppliers, distributors, successors, privies, assigns, associations, partnerships, employees, employers, agents, representatives, parent and subsidiary corporations and other entities and individuals in any way

related or associated with each of them, of and from any and all claims, actions, causes of action, demands, payments, attorneys' fees, benefits, rights, damages, costs, loss of service, liens, expenses and compensation whatsoever which the Releasors now have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily, mental and personal injuries and property damage and any consequences thereof resulting or to result from the Incident.

The Releasors declare and represent that the injuries and damages sustained are or may be permanent and progressive and that recovery is uncertain and indefinite, and in making this Release it is understood and agreed that the Releasors rely wholly upon the Releasor's individual judgment, belief and knowledge of the nature, extent, effect and duration of said injuries, and Releasors assume full responsibility for any injuries, damages, or losses that Releasors have incurred or may incur in the future from the above-mentioned Incident.

This Settlement Agreement and Release is freely and voluntarily executed by Releasors after having been apprised of all relevant information and data furnished by their consultants and/or attorneys. The Releasors, in executing this Release, do not rely on any inducements, promises or representations made by Releasees or any of the Releasees' representatives. No promise, inducement or agreement, not herein set forth, has been made to the Releasors, and this Release contains the entire agreement between the parties hereto.

2. **Unknown Facts.** It is expressly understood and agreed by the Parties that this Settlement Agreement and Release is intended to and does cover any and all losses, injuries, damages and claims of every kind and nature whatsoever, whether direct or indirect, known or unknown, suspected or unsuspected by Releasors. Releasors acknowledge that they may hereafter discover facts different from, or in addition to, those which are now known to be or

believed to be true with respect to their injuries, the Incident, and the claims in the subject lawsuit, and agree that this Settlement Agreement and Release shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof, forever.

3. **Payment; Non-Admission of Liability.** For and in consideration of the sum of Three Hundred Thousand and no/100 Doillars (\$300,000.00), the receipt and sufficiency of which is hereby acknowledged, the Plaintiffs and their attorneys hereby enter into this Agreement with the promises and covenant set forth herein.

The Releasors acknowledge and agree that this settlement is the compromise of doubtful and disputed claims, and that the parties hereby have specifically denied any liability to the undersigned, and that the consideration of this settlement is not to be construed as an admission of liability on the part of the persons, firms, authorities, government entities or past or present officers, agents, or employees thereof, released hereby.

4. **Liens.** From the settlement proceeds, Plaintiffs and Plaintiff's' counsel shall discharge any claim for attorneys fees, and expenses incurred in prosecution of this action. Plaintiffs further agree and contract to satisfy any liens, claims of liens, subrogated interests and all other rights, demands and actions arising from said Incident out of the above described payment, prior to distribution of the proceeds.

5. **Indemnification and Hold Harmless.** Releasors Peter Evans and Detree Jordan, agree to defend and fully indemnify Releasees, and to hold Releasees harmless against all claims, liens, demands and obligations that Releasors have or may have in the future arising out of the Incident. Further, Releasors have or will discharge or indemnify, defend and hold harmless the Releasees, their heirs, executors, administrators, insurers, insureds, suppliers, distributors,

successors, privies, assigns, associations, partnerships, employees, employers, agents, representatives, parent and subsidiary corporations and other entities and individuals in any way related or associated with each of the Releasees, from any and every claim, right, action, demand, and lien known or unknown, to or against any party hereto of every kind or character which may ever be asserted by reason of or in relation to injuries, illness, or disease or the effects, consequences or treatment thereof, or damage to property or person resulting from said Incident

6. **Statutory Attorney Fees Claims.** Plaintiffs and Plaintiffs' counsel each for themselves, by their signature below, hereby waives and gives up any claim against any and all named defendants in the subject lawsuit any claims for costs, expenses of litigation and attorney's fees under any state or federal statute which provides for assessment of costs, expenses of litigation and attorney's fees in favor of any prevailing party as to any issue arising from the above described Incident.

7. **Costs.** Each of the Parties will pay for all costs, expenses and attorneys' fees which were incurred by each in prosecuting or defending the subject lawsuit and reaching this settlement with the exception that Releasees shall be responsible for all fees and expenses incurred during the mediation of this matter payable to Michael E. Fisher.

8. **Dismissal of Subject Lawsuit.** Upon receipt of the payment promised herein and negotiation of the payment instrument, Plaintiffs, by and through Counsel of Record shall submit a Voluntary Dismissal with Prejudice for the Court's signature pursuant to the Federal Rules of Civil Procedure Rule 41(a)(2). All named parties in the subject lawsuit will be served a copy of the dismissal to the last counsel of record.

9. **Cooperation.** All parties agree to cooperate fully and to execute any and all supplemental documents and to take all additional action that may be necessary to give full force and effect to the basic terms and intent of this Settlement Agreement and Release, and which are not inconsistent with its terms.

10. **Warranty of Capacity to Execute This Settlement Agreement.** Plaintiffs, each individually represents and warrants that:

- a. He has the right and authority to execute this Settlement Agreement and Release and to receive the considerations specified in it;
- b. No other person or entity has or will have any interest in the claims, demands, obligations and causes of action referred to in this Settlement Agreement and Release;
- c. He has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations and causes of action referred to in this Settlement Agreement and Release; and
- d. There are no other persons or entities who now have or may hereafter acquire the rights of either Plaintiff to proceed against any defendant named in the subject lawsuit, or on any other action, claim, demand, cause of action or controversy arising out of or relating in any manner whatsoever to the Incident and any of the claims, demands, obligations and causes of action referred to in this Settlement Agreement and Release.

11. **Advice of Counsel.** Plaintiffs acknowledge that they have been represented by Chris Jensen, Clark E. Gulley, and Norman J. Slawsky, throughout these proceedings and that Plaintiffs have executed this Settlement Agreement and Release with the advice and consent of their own attorneys and hereby authorize and instruct said attorneys to carry out the intent and purpose of this Agreement.

12. **Binding Effect.** This Settlement Agreement and Release shall be binding on and inure to the benefit of the Parties and their respective successors, purchasers, assigns, heirs and survivors of the Parties.



13. **Complete Agreement.** This Settlement Agreement and Release constitutes and represents the entire agreement and supersedes all prior and contemporaneous agreements, negotiations, representations, warranties and understandings of the Parties with regard to the subject matter set forth herein. This document consists of Seventeen (17) numbered paragraphs on eight (8) typed pages, including the signature pages.

14. **Supplements, Modifications, Amendments and Waiver.** No supplement, modification or amendment of this Settlement Agreement and Release shall be binding unless executed in writing by the Parties. No waiver of any provisions of this Settlement Agreement and Release shall be deemed or constitute a waiver of any other provision, whether similar or not similar; nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless set forth in writing signed by the Party making the waiver.


15. **Severability.** If any provision of this Settlement Agreement and Release is held to be invalid or unenforceable on any occasion or in any circumstance, such holding shall not be deemed to render this Settlement Agreement and Release invalid or unenforceable, and to that extent the provisions of this Settlement Agreement and Release are severable; provided, however, that this provision shall not preclude a court of competent jurisdiction from refusing to sever any provision if severance would be inequitable to one or more of the Parties.

16. **Interpretation and Construction.** Should any provision of this Settlement Agreement and Release require interpretation or construction, this document shall be interpreted and construed according to the laws of the State of Georgia. Because this document has been reviewed by counsel for the parties, and every effort has been made to present the agreements of the parties clearly, concisely, and without ambiguity, the parties agree that there shall be no presumption or construction against the party who initially prepared and drafted this document

17. Execution in Counterparts. This Release and Settlement Agreement may be executed in one or more original counterparts. All counterparts bearing one or more original signatures shall, together, be and constitute one instrument, and all such counterparts shall be considered duplicate originals.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement and Release to be duly executed as of the day and year subscribed by each signature on the following pages:

PLAINTIFFS:


 1, 25, 06 (SEAL)  
PETER EVANS, Plaintiff

 1, 25, 06 (SEAL)  
DETREE JORDAN, Plaintiff

PLAINTIFF'S COUNSEL:

 1, 25, 06 (SEAL)  
CURTIS JENSEN, Plaintiffs' Counsel of Record

 1, 25, 06 (SEAL)  
CLARK E. GULLEY, Plaintiffs' Counsel of Record

 1, 25, 06 (SEAL)  
NORMAN J. SLAWSKY, Plaintiffs' Counsel of Record