

RELEASE IN FULL OF ALL CLAIMS

This **RELEASE IN FULL OF ALL CLAIMS** by and between (i) **DAVID A. RUSKO, AS GUARDIAN AND CONSERVATOR OF DAVID M. RUSKO**, (RELEASING PARTY, sometimes hereinafter referred to as "Plaintiff"); and (ii) **NATHAN L. STRIETBECK**, (RELEASED PARTY, sometimes hereinafter referred to as "Defendant").

WHEREAS, Plaintiff caused to be commenced in the Circuit Court of Monongalia County, West Virginia, the Civil Action bearing the caption *David A. Rusko, as Guardian and Conservator of David M. Rusko, Plaintiff, v. Sigma Alpha Epsilon Fraternity; Sigma Alpha Epsilon West Virginia Gamma Chapter; Ed Cole, individually, and as agent or employee of Sigma Alpha Epsilon; and Jane Doe, individually and as agent or employee of Sigma Alpha Epsilon and/or Sigma Alpha Epsilon West Virginia Gamma Chapter; Benjamin T. Flower, individually and as officer of Sigma Alpha Epsilon; Paul M. Perzynski; Jared R. Zickafoose; Cole Platt; Bryan P. Kondracki; Coltin J. Gore; Nathan L. Strietbeck; Zachary Pope; David J. Mauser; Brian R. Schneider; Brendan W. Dunn; Michael W. Geary; Justino Medeiros; and Andrew Aluisse; all individually, and as members of Sigma Alpha Epsilon; Nick Capote; Alpha Rho Corporation of West Virginia; and Greek System Support Corporation, Defendants*, Civil Action No. 19-C-188 (the "Civil Action");

WHEREAS, the Civil Action arises from an alleged fall by David M. Rusko that occurred at the Sigma Alpha Epsilon fraternity house located at 650 North Spruce Street in Morgantown, West Virginia, on or about November 10, 2018 and disputes over the actions and responses of various individuals following the alleged fall and disputes regarding the condition of the stairs where the alleged fall occurred (the "Incident");

WHEREAS, Plaintiff asserted claims of negligence, intentional infliction of emotion distress, invasion of privacy, and tort of outrage against Defendant (the "Claims");

WHEREAS, Plaintiff and Defendant have settled all matters in dispute between them, Plaintiff agreed in the settlement of these matters to release Defendant and the insurance carrier from any and all liability related to, or arising out of, the Civil Action, the Incident, or the Claims; and

WHEREAS, the Circuit Court of Monongalia County, West Virginia has reviewed and approved the settlement set forth herein pursuant to W.Va. Code §44A-3-1 *et. seq.* by Order entered in the Civil Action on _____, 2020.

NOW, THEREFORE, in consideration for the resolution of the matters set forth in the recitals to this Release, Plaintiff hereby executes the following agreement:

1. THE PAYMENT

In consideration for this Release for which the terms are set forth below, Plaintiff and Defendant have agreed to a settlement in the amount of \$100,000 and Erie Insurance Property & Casualty Company has delivered to counsel for Plaintiff its check which has been made payable to the order of "*David A. Rusko, as Guardian and Conservator of David M. Rusko, Plaintiff, and William M. Tiano, Tiano O'Dell PLLC, his attorney*" in the amount of \$100,000.

2. THE RELEASE

2.1. Plaintiff shall and, by the execution of this document does, **RELEASE, REMISE, ACQUIT AND FOREVER DISCHARGE** Defendant and the insurance carrier, from any past, present, or future, known or unknown, suspected or unsuspected, claims, obligations, rights, damages, costs and liens whether based in tort, contract, extra-contractual, equity, or any other principles of law or equity and whether for the recovery or reimbursement of compensatory, general, special, attorneys' fees, or any other kind of damages that Plaintiff has had, presently has, or may have arising out of or relating in any manner to (i) the Civil Action; (ii) the subject matters that were set forth, or could have been set forth, in the complaint commencing the Civil Action or in any other pleading that was or could have been filed in the Civil Action; (iii) the Claims; (iv) the Incident; and (v) any of the matters set forth in the recitals to this Release (collectively the "Released Matters").

2.2. Plaintiff and Defendant agree that this Release does not release Sigma Alpha Epsilon West Virginia Gamma chapter and/or Sigma Alpha Epsilon Fraternity, related entities or affiliates or any act, omission, activity, participation, membership, or affiliation of Defendant which may be attributed to Sigma Alpha Epsilon West Virginia Gamma Chapter and/or Sigma Alpha Epsilon Fraternity, related entities or affiliates and for which they, individually or collectively, may be found liable.

2.3. Plaintiff agrees to pay any Medicare/Medicaid liens, medical liens, subrogation liens or any other liens and hold Defendant and the insurance carrier harmless for any such liens.

2.4. This Release shall be binding upon Plaintiff and the respective heirs, devisees or legatees of Plaintiff or the beneficiaries and administrators of Plaintiff's estate, and this Release shall inure to the benefit of Defendant and the respective heirs, devisees, or legatees and the beneficiaries and administrators of Defendant's estate.

2.4. Plaintiff hereby agrees to indemnify Defendant, and his attorneys, and to hold them harmless from any and all claims, obligations, rights, damages, costs and liens relating to the Released Matters including but not limited to for any claims filed against them pursuant to the Medical Care Recovery Act, 42 U.S.C. § 2651, the Medicare, Medicaid and SCHIP Extension Act of 2007, and for any other public or private subrogation liens arising out of the settlement and the payment recited herein, to the extent that undersigned is properly placed on notice of said claim and said claim is legally determined to be valid and owed. It is not the purpose of this Release to shift responsibility for medical care in this matter to the Medicare program in contravention of 42 U.S.C. § 1395(y)(b). The parties have resolved this matter in compliance with both state and federal law.

3. DISMISSAL OF CIVIL ACTION

The parties, pursuant to the approval of the settlement as set forth herein by the Circuit Court of Monongalia County, West Virginia, have executed a Dismissal Order pertaining to the Civil Action, and the parties do agree and acknowledge that the dismissal of this Civil Action against the Defendant was, and is, a consideration for the settlement of the dispute as set forth in the provisions of this Release.

4. GENERAL PROVISIONS

4.1. Plaintiff acknowledges that the settlement was made as to matters that were disputed, and that Defendant or the insurance carrier's performance of any duties or obligations arising out of the settlement shall not be, at any time or for any reason, construed as, or considered to be, an admission of liability by Defendant.

4.2. Plaintiff represents and warrants that he has not assigned, transferred or distributed to any person or any other entity, including through subrogation, operation of law, or the enforcement of a lien, any portion of the claims or rights that are affected by this Release.

4.3. Plaintiff represents and warrants that no promise or agreement have been made by or to him other than the promises or agreements that have been expressly and specifically set forth in this Release or its recitals.

4.4. Plaintiff and Defendant represent and warrant that each of them had the benefit of legal counsel regarding the settlement of the matters in dispute; and Plaintiff and Defendant further represent and warrant that each of them has relied upon their counsel solely and not upon any representation or other statement of any other person, firm, corporation or any other legal entity.

4.5. Plaintiff shall execute, and shall cooperate fully in obtaining, any and all additional documents and shall take, and shall cooperate fully in taking, any and all additional actions which may be necessary in order to fulfill the intent of, or the terms of, this Release.

4.6. This Release, and the terms of, and conditions to, this Release shall be governed by, and shall be construed or applied in accordance with, the law of the State of West Virginia. If any part of this Release and Settlement Agreement is declared void as a matter of law, the parties expressly agree that all remaining portions and provisions of this Release shall remain in full force and shall remain binding on the parties hereto

4.7 Plaintiff represents and warrants that he has read this Release in its entirety and acknowledges he understands the contents and has signed the same freely and voluntarily and with the belief that it is in his best interests to do so.

4.8 The Plaintiff and Defendant mutually agree that neither they nor their attorneys nor their representatives shall reveal to anyone, other than financial or tax advisors or as may be mutually agreed to in writing or as required by law, any of the terms of this Release, or any of the amounts, numbers, terms or conditions of any sums payable to Plaintiff as set forth. While Plaintiff and Defendant represent that this agreement would not have been consummated absent the foregoing confidentiality covenants, Plaintiff and Defendant acknowledge that no portion of the settlement amount represents consideration for the mutual promise to maintain strict confidentiality of all the terms of this Release. Rather, the Plaintiff and Defendant expressly have agreed that each other's reciprocal confidentiality covenant is the sole consideration given in exchange for that of the other.

4.8 This Release contains the entire agreement between the parties and the terms of this Release are contractual and not mere recitals.

IN WITNESS WHEREOF, Plaintiff has executed this Release which shall be in full force and effect as of the date set forth below.

I HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND AND AGREE WITH ITS TERMS.

7/24/20
DATE

David A. Rusko
DAVID A. RUSKO, AS GUARDIAN
AND CONSERVATOR OF DAVID M. RUSKO

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, TO-WIT:

I, Greta H. McHugh a Notary Public in and for said County and State, do hereby certify that David A. Rusko whose name is signed to the foregoing writing bearing date of the 24th day of July, 2020, has this day acknowledged the same before me in my said County.

Given under my hand this the 24th day of July, 2020.

Greta H. McHugh
Notary Public

My commission expires: Sept. 20, 2021

