

RESOLUTION NO. 16-2006

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A SETTLEMENT AGREEMENT AND RELEASE WITH COREGIS INSURANCE COMPANY AND ARTHUR J. GALLAGHER AND CO. OHIO AGENCY, INC. IN THE CASE OF *VILLAGE OF RICHFIELD V. CLARENDON NATIONAL INSURANCE CO., ET AL.*, SUMMIT COUNTY COMMON PLEAS COURT CASE NO. 2005 10 6343 AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

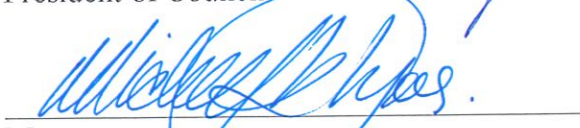
SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Settlement Agreement and Release with Coregis Insurance Company and Arthur J. Gallagher and Co. Ohio Agency, Inc. in the case of *Village of Richfield v. Clarendon National Insurance Co., et al.*, Summit County Common Pleas Court Case No. 2005 10 6243, a copy of which Settlement Agreement and Release is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason it is immediately necessary in order to terminate pending litigation at the earliest possible time without incurring further expense to the Village; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 3/7/06




President of Council



Mayor

Dated: 3/14/06

ATTEST:


Clerk of Council

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Release") is entered into and effective as of February ___, 2006, by and between Village of Richfield ("Richfield"), a municipality organized under the laws of the State of Ohio, the Arthur J. Gallagher and Co. Ohio Agency, Inc. ("Gallagher"), an Ohio corporation licensed to sell or whose agents are licensed to sell insurance in the State of Ohio, and Coregis Insurance Company ("Coregis"), an Indiana corporation (collectively referred to as the "Parties").

WHEREAS, on or about September 11, 2000, Jennifer King filed a sex discrimination charge with the Ohio Civil Rights Commission against Richfield (the "King Claim").

WHEREAS, on or about June 7, 2002, King sued Richfield and Chief Stopak. King voluntarily dismissed her lawsuit on March 10, 2003. King re-filed her lawsuit against Richfield and Stopak on or about April 5, 2005 (the "King Suit"); that suit is captioned *Jennifer King v. Village of Richfield Fire Department and Joseph Stopak* and was filed in the Court of Common Pleas Summit County, Ohio.

WHEREAS, on or about October 24, 2005, Richfield sued Clarendon National Insurance Co. and Gallagher; that suit is captioned *Village of Richfield v. Clarendon National Insurance Co. and Arthur J. Gallagher and Co. Ohio Agency, Inc.*, has a case number of 2005 10 6243, and was filed in the Court of Common Pleas Summit County, Ohio (the "Richfield Suit").

WHEREAS, Richfield alleged that Gallagher breached its duties to Richfield by "failing to obtain a policy providing Plaintiff [Richfield] and Chief Stopak with a defense, coverage and indemnity," "by "failing to obtain the requested insurance coverage and by

failing to provide the Village with all relevant information concerning its insurance coverage." Richfield Complaint ¶¶ 27 & 33.

WHEREAS, Richfield sought an amount in excess of \$25,000.00 from Gallagher, joint and severally with Clarendon Insurance Co.

WHEREAS, Coregis was not a party to the King Suit or the Richfield Suit.

WHEREAS, the Parties to this Release desire to avoid the uncertainties, risks, and costs of litigation, and by this Release the Parties intend to settle, compromise and resolve their claims against each other in the manner set forth herein.

WHEREAS, for valuable consideration, including, but not limited to the payment by Gallagher and Coregis set forth below and the mutual releases contained herein, the Parties agree and covenant as follows:

1. Richfield's Release and Discharge

In consideration of the payment and the mutual releases and discharges contained herein, Richfield along with its elected and appointed officials, heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, insurers, reinsurers, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, hereby fully releases and discharges:

- (a) Coregis, along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents,

insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated; and,

- (b) Gallagher, along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated

from any and all past, present or future claims, demands, obligations, actions, causes of actions, rights, damages, costs, loss of services, expenses, and compensation of any nature whatsoever, whether known or unknown whether in law, contract, tort, by statute, equity, or otherwise, including but in no way limited to claims for a declaration of any right, breach of contract claims, breach of fiduciary claims, negligence claims, failure to obtain requested coverage claims, breach of duty of good faith claims, claims for injunctive relief, or claims arising from additional costs and/or expenses incurred or alleged to have been incurred by any of the Parties, which touch upon, involve or relate to any alleged conduct or services relative to the King Claim, the King Suit, the Richfield Suit and/or the Parties' course of conduct, that are known or reasonably should have been known as of the date of this Release, including, but not limited to all costs and expenses related in any way to the King Claim, the King Suit, and/or the Richfield Suit.

2. Coregis's Release and Discharge

In consideration of the payment and the mutual releases and discharges contained herein, Coregis along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, insurers, reinsurers, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, hereby fully releases and discharges:

- (a) Richfield, along with its elected and appointed officials, heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated; and,
- (b) Gallagher, along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns

and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated from any and all past, present or future claims, demands, obligations, actions, causes of actions, rights, damages, costs, loss of services, expenses, and compensation of any nature whatsoever, whether known or unknown whether in law, contract, tort, by statute, equity, or otherwise, including but in no way limited to claims for a declaration of any right, breach of contract claims, breach of fiduciary claims, negligence claims, failure to obtain requested coverage claims, breach of duty of good faith claims, claims for injunctive relief, or claims arising from additional costs and/or expenses incurred or alleged to have been incurred by any of the Parties, which touch upon, involve or relate to any alleged conduct or services relative to the King Claim, the King Suit, the Richfield Suit and/or the Parties' course of conduct, that are known or reasonably should have been known as of the date of this Release, including, but not limited to all costs and expenses related in any way to the King Claim, the King Suit, and/or the Richfield Suit.

3. Gallagher's Release and Discharge

In consideration of the payment and the mutual releases and discharges contained herein, Gallagher along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, insurers, reinsurers, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, hereby fully releases and discharges:

- (a) Coregis, along with its heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated; and,
- (b) Richfield, along with its elected and appointed officials, heirs, successors, predecessors, assigns and beneficiaries, their agents and employees, and their past, present and future officers, directors, stockholders, estates and heirs, attorneys, agents, insurance carriers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated
- from any and all past, present or future claims, demands, obligations, actions, causes of actions, rights, damages, costs, loss of services, expenses, and compensation of any nature whatsoever, whether known or unknown whether in law, contract, tort, by statute, equity, or otherwise, including but in no way limited to claims for a declaration of any right, breach of contract claims, breach of fiduciary claims, negligence claims, failure to obtain requested coverage claims, breach of duty of good faith claims, claims for injunctive relief, or claims arising from additional costs and/or expenses incurred or alleged to have been incurred by any of the Parties, which touch upon, involve or relate to any alleged conduct or services relative to the King Claim, the King Suit, the Richfield Suit and/or the Parties' course of

conduct, that are known or reasonably should have been known as of the date of this Release, including, but not limited to all costs and expenses related in any way to the King Claim, the King Suit, and/or the Richfield Suit.

4. Payment by Gallagher to Richfield

This Release is made for and in consideration of Twelve Thousand Dollars (\$12,000), to be paid by Gallagher to Richfield, the receipt and sufficiency of which Richfield acknowledges. Gallagher is liable for the Twelve Thousand Dollars (\$12,000), and no more. Should Gallagher fully perform but not Coregis, Richfield's and Coregis's releases (*supra* paragraphs 1 and 2, respectively) are valid and enforceable by Gallagher against Richfield and Coregis, respectively.

4. Payment by Coregis to Richfield

This Release is made for and in consideration of Five Thousand Dollars (\$5,000), to be paid by Coregis to Richfield, the receipt and sufficiency of which Richfield acknowledges. Coregis is liable for the Five Thousand Dollars (\$5,000), and no more. Should Coregis fully perform but not Gallagher, Richfield's and Gallagher's releases (*supra* paragraphs 1 and 3, respectively) are valid and enforceable by Coregis against Richfield and Gallagher, respectively.

6. Conditions and Provisions of the Release

1. The Release is the result of a compromise of disputed claims and shall not at any time or for any purpose be considered an admission either (a) of liability or responsibility on the part of any of the Parties or (b) of the existence of any event, fact, or thing evidencing such liability or responsibility. Each Party denies and continues to deny the allegations and claims of the other Party.

2. The Parties to this Release covenant that they will never voluntarily commence, prosecute, or assist in any way in the commencement or prosecution of any claim, demand, or cause of action of any nature whatsoever that is based upon any claim, demand, damage, debt, liability, obligation, cost, expense, lien, action, or cause of action released by the terms of this Release.

3. This Release shall bind and inure to the benefit of all of the Parties' heirs, executors, administrators, successors, assigns, agents, partners, shareholders, owners, directors, officers, and employees. The Release shall also inure to the benefit of all persons, firms, associations, or corporations associated with any of the Parties, including but not limited to attorneys and insurers, against whom the claims herein released might be asserted.

4. There is a risk that, subsequent to the execution of this Release, one or more of the Parties will incur or suffer damages, losses, or injuries which are unknown and unanticipated at the time this Release is signed. There is also a risk that damages, losses, or injuries which are known may be or may become more serious than any of the Parties now expects or anticipates. The Parties hereby assume the aforementioned risks and agree that this Release shall apply to all unknown or unanticipated results of the occurrences or circumstances described herein.

5. It is agreed and understood that this Release and the terms and conditions set forth herein are not intended to be, and shall not be, used in any legal, equitable, administrative, or any other kind of action or proceeding, including arbitration, except to enforce this Release or any term thereof.

6. Each of the Parties shall be responsible for payment of its own attorneys' fees, legal expenses, and costs incurred in connection with the dispute which is resolved by this Release.

7. Each of the Parties represents and warrants that it has not assigned, conveyed, encumbered, or otherwise transferred any interest in the claims it releases under the terms of this Release, that no other person or entity has any right, title, or interest in or to those claims, and that this Release will be effective to fully release those claims.

8. This Release constitutes the entire agreement among the Parties with respect to the subject matter hereof. Each Party has made its own independent investigation of the matter settled, and has been advised concerning the terms of this Release by counsel of its choice, and is not relying upon any representations not specified herein.

9. This Release shall be governed by and construed in accordance with the laws of the State of Ohio.

10. This Release is the product of negotiation and preparation by and among each Party hereto and its attorneys. The Parties therefore acknowledge and agree that this Release shall not be deemed to have been prepared or drafted by one party or another, and that it shall be construed accordingly.

11. The Parties hereto shall reasonably cooperate with each other to carry out the purposes and intent of this Release, including executing all further documents, if any, that may be necessary in that regard.

12. This Release may be executed in counterparts by the Parties hereto. Each of said counterparts, when so executed and delivered, shall be deemed an original, and all such counterparts, taken together, shall constitute but one and the same instrument. As so

executed, this Release shall be as valid and binding on each Party as if all Parties had signed the same copy.

13. No supplement to, or modification, waiver, or amendment to this Release, or any portion thereof, shall be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, waiver, or amendment is sought.

14. The Parties hereto agree that this Release shall be deemed executed and of binding legal effect as of the date on which the last of the Parties hereto signs the Release.

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15. Each of the Parties hereby represents and warrants that it and the officer or other representative who signs this Release on its behalf have the authority to enter into this Release and that the requisite procedures have been followed to make the Release binding on itself.

The undersigned, Village of Richfield, Arthur J. Gallagher & Co., and Coregis Insurance Company represent that they have fully read the foregoing mutual release and know its contents and sign the same as their own free act.

DATE

2/20/06

DATE

2-22-06

DATE

VILLAGE OF RICHFIELD

ARTHUR J. GALLAGHER & CO.
OHIO AGENCY, INC.

COREGIS INSURANCE COMPANY

Subscribed and sworn to before me a notary public on this ____ day of February 2006.

Notary Public

My commission expires: _____