No. S13G1555

In the

SUPREME COURT OF GEORGIA

Georgia Department of Corrections,
Appellant,

v.

David Lee Couch,
Appellee.

AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

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STATEMENT OF THE ISSUE

This brief addresses only the second question presented: Did the Court of Appeals "err by failing to prorate the 40 percent contingency fee to reflect that some of the fees were incurred before the settlement offer was rejected?"

STATEMENT OF THE INTEREST OF THE *AMICUS CURIAE*

The Georgia Defense Lawyers Association ("GDLA") has more than 700 members, ranging from sole practitioners to lawyers in large firms. Though its members are diverse, they share a common interest in supporting and improving the civil defense bar, improving the adversary system of jurisprudence, eliminating delay in litigation, and otherwise improving the administration of justice.

The GDLA respectfully submits this *amicus curiae* brief because neither party to this appeal has fully analyzed the problems associated with using contingency fee agreements as a basis for awarding attorney's fees under the offer-of-settlement statute, O.C.G.A. § 9-11-68. As discussed below, it is the GDLA's position that a court errs if it uses a contingency percentage to award fees in this context because: (1) a contingency fee does not fit the temporal restrictions of O.C.G.A. § 9-11-68; (2) the terms of a contingency fee contract bind only the parties to the contract; and (3) public policy weighs against awarding contingency fees under this statute.

STATEMENT OF FACTS AND CONTEXT

In this case, a prisoner named David Lee Couch sued the Department of Corrections (the "DOC") based on injuries he suffered while working at the warden's house. *See Georgia Dep't of Corr. v. Couch*, 322 Ga. App. 234 (2013). After the Court of Appeals affirmed a judgment in his favor that was more than 125% of his pretrial offer, Mr. Couch sought attorney's fees under Georgia's offer-of-settlement statute, O.C.G.A. § 9-11-68(b)(2), which entitles such a plaintiff to "reasonable attorney's fees," but only "from the date of the rejection of the offer of settlement through the entry of judgment." *Id.* at 235, 238.

The evidence on Mr. Couch's attorney's fee claim included both his 40% contingency fee agreement with his counsel and a calculation based on the number of hours spent by his counsel after the rejection of the settlement offer multiplied by an hourly rate. *Id.* at 238. The contingency fee was significantly lower than the hourly fees, however, and the trial judge awarded Mr. Couch attorney's fees in the full amount of the 40% contingency percentage – $49,542. The Court of Appeals affirmed, rejecting the DOC's argument "that the trial court erred in failing to prorate Couch's contingency fee under O.C.G.A. § 9-11-68." *Id.* at 238-39.

Plaintiffs' lawyers are now relying on the Court of Appeals decision in this case to seek attorney's fees under O.C.G.A. § 9-11-68 based only on contingency fee agreements without supporting evidence of hours or rates – and some trial

courts have been granting substantial fee awards on that basis. For example, in a case that is currently pending in the Court of Appeals, a trial court awarded $13.9 million under O.C.G.A. § 9-11-68 based solely on the contingency percentage without examining hours or rates. *See Landstar Ranger Inc. v. Foster*, Case No. A140063 (Ga. App.) (argued on January 15, 2015).

In another case that is still in the trial court, a plaintiff is asking for $13 million under § 9-11-68 based on a 40% contingency percentage with no proof of hours or rates. *See* Appendix, Plaintiff's Motion for Attorney's Fees, *Martin v. Six Flags*, Case No. 09-A-55-4 (Cobb State Ct.). Relying on the Court of Appeals' decision in this case, that plaintiff claims that a 40% contingency percentage is a valid measure of attorney's fees based solely on affidavits from his counsel and expert asserting that this percentage is a reasonable indicator of the value of attorney services in a personal injury case. *Id.* at App-5-App-8. While that plaintiff does offer an alternative figure in response to the grant of certiorari in the present case, that alternative calculation – $12 million – is not tied to the actual work done in the post-offer period. It just subtracts the 40% contingency fee that plaintiff's counsel would have received had the settlement offer been accepted from a 40% contingency fee calculation based on the amount of the verdict. *Id.* at App-8.

These examples of current practice under the Court of Appeals' ruling below should be kept in mind when deciding the second question presented in this case.

ARGUMENT AND CITATION OF AUTHORITIES

The Court of Appeals erred in upholding an attorney's fee award that was based on a contingency percentage because: (1) a contingency fee does not fit the temporal restrictions of O.C.G.A. § 9-11-68; (2) the terms of a contingency fee contract bind only the parties to the contract; and (3) public policy weighs against awarding contingency fees under this statute.

I. A contingency fee does not fit the temporal limits of O.C.G.A. § 9-11-68

As the DOC has pointed out, the 40% contingency percentage was designed to compensate Mr. Couch's attorney for his work on the entire case and thus does not serve the goals of the offer-of-settlement statute. The offer-of-settlement statute is designed to award reasonable attorney's fees relating only to the time period "from the rejection of the offer of settlement through entry of judgment." O.C.G.A. § 9-11-68(b)(2). Thus it was error to award fees based on the 40% contingency percentage because this award does not conform to the period after the rejection of the settlement offer. *See* Brief of Appellant at 20-22.

Mr. Couch does not dispute that the 40% contingency fee covers work done on the entire case. He defends the award only on the ground that "Couch did not incur any legal fees unless and until a recovery was obtained." *See* Brief of Appellee at 16-17. Mr. Couch says that, "[b]y the very nature of a contingency fee, no fee is incurred or earned unless and until the contingency occurs, i.e., a recovery

is obtained." *Id.* (citing *Ellerin & Assoc. v. Brawley*, 263 Ga. 860, 861 (2003); *May v. May*, 180 Ga. App. 581, 582 (1986)). But the cases cited by Mr. Couch expose the fallacy of his position because they hold that, in this context, a "recovery" does not occur until the plaintiff has "collected" on the judgment – which inevitably occurs after entry of the judgment. As the Court of Appeals explained in *Ellerin*:

> The meaning of the term "recovery" or "amount recovered" was "established in *May v. May*, 180 Ga. App. 581 (1986)." *Greer, Klosik & Daugherty v. Yetman*, 269 Ga. 271, 273 (1978). . . .
>
> > "Counsel must be held to the strict language of the instrument [counsel] prepared. 'All sums recovered,' therefore, means just that. The attorney was entitled to receive 25% of the monies [the attorney] recovered … only to the extent of the sums *collected*."

Ellerin & Assocs., 263 Ga. App. at 861-62 (emphasis supplied by *Ellerin* decision) (distinguishing a "recovery" from entry of a "judgment," and holding that the "recovery" occurred at a later date).

Thus, such a contingency fee cannot be a relevant measure of fees under O.C.G.A. § 9-11-68 because it is not effective until after a judgment has been entered, affirmed, and collected – whereas the statute measures fees only "from the rejection of the offer of settlement through entry of judgment." *See also* Supplemental Brief of Appellant at 12.

II. Privately negotiated fee agreements cannot bind third parties

It is error to award attorney's fees against a party based on a contract to which the party never agreed. *See Accurate Printers, Inc. v. Stark*, 295 Ga. App. 172, 178 (2008). In *Accurate Printers*, a business sued to enforce an asset purchase agreement but was found to lack standing because the agreement was signed by the business owner in his individual capacity. Later, the trial court held that the business must pay prevailing-party attorney's fees pursuant to a fee provision in the asset purchase agreement. But the Court of Appeals vacated the award because "[i]t is axiomatic that a person who is not a party to a contract is not bound by its terms." *Id.* at 178. For the same reason, a defendant should not be subject to the terms of a contingency fee agreement between a plaintiff and his or her counsel.

"Reasonable attorney's fees" is the pivotal term in O.C.G.A. § 9-11-68(b)(2). That term denotes a quantum meruit approach, not an award based on a privately negotiated contingency fee contract. After all, "quantum meruit" is defined as "[t]he reasonable value of services; damages awarded in an amount considered reasonable… ." *Black's Law Dictionary* (9th ed. 2009); *accord Heritage Healthcare of Toccoa v. Ayers*, 323 Ga. App. 172, 177 n.7 (2013). And it is well established that quantum meruit is the proper measure for fees when a contractual contingency was not triggered within the requisite time period. *See, e.g., Ellerin* at 862-63.

Moreover, any assumption that O.C.G.A. § 9-11-68 requires an award of attorney's fees "incurred by the plaintiff" is wrong because that view ignores common usage and rules of statutory construction. In O.C.G.A. § 9-11-68(b)(2), the words "incurred by the plaintiff or on the plaintiff's behalf" constitute a participial phrase that, under customary American usage, modifies the noun immediately preceding the phrase – "expenses of litigation." *See* Bryan A. Garner, *The Redbook, A Manual on Legal Style* (20029) at 145.

Notably, the General Assembly made no effort to insert the words "incurred by the plaintiff" after the earlier term "reasonable attorney's fees," as would be expected if it intended for that participial phrase to apply to attorney's fees. And, the General Assembly knows how to structure a statute to make clear that the same standard applies to both attorney's fees and expenses of litigation, but it did not follow that phraseology here. *Cf.* O.C.G.A. § 9-11-37(a)(4). Similarly, plaintiffs' lawyers often use "incurred" terminology to describe how litigation expenses are handled but not how attorney's fees are handled. *See* App-26, ¶¶ 3-4. Thus, considering common usage, the structure of the statute at issue as contrasted with other statutory fee provisions, and the rule that statutes in derogation of common law must be strictly construed, the Court should reject the notion that an attorney's fee award under O.C.G.A. 9-11-68 is subject to the "incurred" language that is clearly tied to the term "expenses of litigation."

Indeed, a contingency fee contract has never been accepted as a substitute for proof of "reasonable attorney's fees." As noted by the Court of Appeals:

> [E]vidence of the existence of a contingent fee contract, without more, is not sufficient to support the award of attorney fees. An attorney cannot recover for professional services without proof of the value of those services. A naked assertion that the fees are "reasonable," without any evidence of hours, rates, or other indication of the value of the professional services actually rendered is inadequate.

Couch, 322 Ga. App. at 238-39 (citations omitted); *see also Sosebee v. McCrimmon*, 228 Ga. App. 705, 707 (1997) ("It is error to rely blindly upon the contingency fee contract percentage in fixing this amount").

Though the opinion of the Court of Appeals states this rule, it accepted the contingency percentage as a valid measure of "reasonable attorney's fees" under O.C.G.A. § 9-11-68(b)(2) without any explanation of why the percentage was superior to evidence of value based on hours and rates. And the Court of Appeals' articulation of a rule having the catch-all phrase "other indication of the value of the professional services" is so vague that it is useless. Without a more definite rule, litigants – like the plaintiffs in *Landstar* and *Six Flags* – will argue that a contingency percentage is enough if accompanied solely by counsel's assertions of value without any detail as to hours, rates, or what work actually was performed. But that should not be the law. *See Rowen v. Estate of Hughley*, 272 Ga. App. 55, 59 (2005); *S. Cellular Telecom v. Banks*, 209 Ga. App. 401, 402 (1993).

To eliminate the problems caused by the unworkable standard adopted by the Court of Appeals, this Court should hold that the term "reasonable attorney's fees" as used in O.C.G.A. § 9-11-68 requires proof of hours and reasonable rates along with detailed descriptions of the work actually performed.

III. Public policy weighs against awarding contingency fees in this context

Decisions from other jurisdictions elaborate on the policy considerations that weigh against awarding contingency fees under an offer-of-settlement statute. *See, e.g., Sarkis v. Allstate Insurance Co.*, 863 So.2d 210 (Fla. 2003) (rejecting the use of contingency factors in attorney's fee awards under the Florida statute); *Texarkana Nat'l Bank v. Brown*, 920 F. Supp. 706, 711-12 (E.D. Tex. 1996) (rejecting use of contingency factor to award fees under the Texas offer-of-settlement statute because it is inequitable to shift a contractual risk/reward mechanism to a defendant who was not a party to the contract).

For example, the *Sarkis* court focused on the difference between the policy underlying an offer-of-settlement statute and the policy underlying the use of contingency fee contracts. A contingency factor is usually a fee enhancement designed to provide an incentive to lawyers to accept cases that they would not otherwise take. 863 So. 2d at 216. On the other hand, an attorney's fee provision in an offer-of-settlement statute is designed to encourage early settlement. *Id.* The attorney's fee claim under such a statute attaches to the rejection of the offer, not to

the entire cause of action as is the case with a contingency factor. *Id.* at 222. Because the plaintiff already has counsel at that point, the policy underlying use of a contingency fee is not relevant. *Id.*

The potential for disparate treatment of defense and plaintiff's counsel also weighs against using a contingency factor for a fee award under an offer-of-settlement statute. *Id.* at 216; *see also* Brief of Appellant at 3. It is difficult and rare for defense lawyers to work under a contingency fee contract. *Sarkis*, 863 So.2d at 216. Thus, defense lawyers would have little chance of contingency enhancements in awards under these statutes. But – as shown by the *Landstar* and *Six Flags* cases – if plaintiffs' lawyers are allowed to recover contingency fees under these statutes, they will likely recover far more than defense counsel regardless of the time and effort invested in the case. *See id.*

The value of attorneys' services under an offer-of-settlement statute should not turn on whether the prevailing party is a plaintiff or a defendant. Georgia's offer-of-settlement statute sets out corresponding provisions for each side, which are intended to ensure equal treatment of plaintiffs and defendants. *Cf.* O.C.G.A. § 9-11-68(b)(1) and 9-11-68(b)(2). Thus, it is not appropriate to rely on contingency percentages to award attorney's fees under Georgia's offer-of-settlement statute.

CONCLUSION

The GDLA agrees with the DOC that the Court of Appeals erred in upholding fees under O.C.G.A. § 9-11-68 based on a full contingency percentage. But this problem cannot be cured by simply allocating a portion of the contingency fee to the period preceding the rejection of the settlement offer. The GDLA urges the Court to adopt a workable rule that is adjusted to the language and intent of the statute – a rule that places the burden on the claimant to come forward with proof of hours, rates, and detailed descriptions of the work actually done to show "reasonable attorney's fees" relating to the period "from the rejection of the offer of settlement through entry of judgment."

Respectfully submitted this 31st day of January, 2014.

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CERTIFICATE OF SERVICE

I certify that on January 31, 2014, before filing, I served a true and correct copy of the foregoing on all parties to this action, or their attorney of record, by email and by placing it in the United States Mail, first class postage prepaid, and properly addressed as follows:

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APPENDIX

STATE COURT OF COBB COUNTY
GEORGIA

JO-ANN TAYLOR, as conservator for JOSHUA L. MARTIN, Plaintiff, v. SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, WILLIE GRAY FRANKLIN, JR., BRAD MCGAIL JOHNSON, DEANDRE EVANS, CLAUDE MOREY III, and JOHN DOES NOS. 1-15, Defendants.	Civil Action File No. 09-A-04531-3 JURY TRIAL

PLAINTIFF'S MOTION FOR ATTORNEY FEES

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INTRODUCTION

Plaintiff moves this Court for an award of reasonable attorney fees and expenses of litigation pursuant to the offer of settlement statute. *See* O.C.G.A. § 9-11-68. Plaintiff requests that the Court amend the judgment to include an award of reasonable attorney fees and expenses of litigation and enter the amended judgment *nunc pro tunc*, effective as of November 20, 2013, which is the day the jury returned a verdict for Plaintiff.

Plaintiff made two written offers to settle all of Joshua Martin's claims – one on July 27, 2010 for $2,500,000.00 and another on September 16, 2013 for $4,374,888.00. Six Flags Over Georgia did not accept either offer and chose to continue litigating. At trial, the jury awarded Plaintiff $35,000,000.00 and assigned 92% of the fault to Six Flags Over Georgia – which provides a judgment that is more than 125% of either Plaintiff's offers. Thus, pursuant to the offer of settlement statute, Plaintiff is entitled to recover reasonable attorney fees and expenses of litigation incurred after Six Flags Over Georgia rejected Plaintiff's first offer of settlement.

To calculate the award of reasonable attorney fees and expenses of litigation, this Court should apply *Georgia Department of Corrections v. Couch*, 322 Ga. App. 234 (2013). In *Couch*, the Court of Appeals held that, under the offer of settlement statute, reasonable attorney fees may be measured by a 40% contingency fee agreement, so long as there is evidence "of the value of the professional services actually rendered." *Id.* at 239. After confirming that the plaintiff had provided such evidence, the Court of Appeals affirmed the trial court's decision to award the plaintiff reasonable attorney fees measured at 40% of the total recovery. *Id.* The Court of Appeals expressly rejected the Department's argument that "the trial court erred by awarding Couch the full amount of the contingency fee." *Id.* at 238.

Along with this motion, Plaintiff submits evidence proving that she is entitled to

reasonable attorney fees and expenses of litigation. Plaintiff's evidence establishes that (1) Plaintiff made written offers to settle Joshua's claims pursuant to the offer of settlement statute; (2) Six Flags Over Georgia did not accept Plaintiff's offers; (3) the judgment against Six Flags Over Georgia is 125% more than the Plaintiff's offers; (4) Plaintiff's fee agreement requires payment of at least 40% of the total recovery as attorney fees; and (5) a 40% contingency fee agreement is a reasonable measure of the value of the professional services provided by Plaintiff's attorneys. Plaintiff's evidence also establishes the expenses of litigation she incurred.

Plaintiff has also submitted a proposed order that contains a calculation of the reasonable attorney fees and the expenses of litigation and includes relevant factual findings. As set forth below, Plaintiff's reasonable attorney fees are **$13,082,396.22**, which is 40% of the total recovery against Six Flags Over Georgia, and Plaintiff's expenses of litigation are **$171,567.60**.

FACTUAL BACKGROUND

On January 6, 2009, Joshua Martin filed this suit against Six Flags Over Georgia II, LP, SFOG II, Inc., SFG-II, LLC, Willie Gray Franklin, Jr., Brad McGail Johnson, DeAndre Evans, Claude Morey III, and John Does Nos. 1-15. Compl. filed Jan. 6, 2009. Joshua sought damages for a brutal attack he suffered because of the negligent failure of Six Flags Over Georgia to keep its premises safe and to provide adequate security. *Id.*

On July 27, 2010, Plaintiff made a written offer of settlement to Six Flags Over Georgia. Aff. of Michael L. Neff ¶ 21, Attached as Exhibit 1 to this Motion. Plaintiff sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. *Id.* Plaintiff offered to settle all of Joshua's claims against Six Flags Over Georgia for $2,500,000.00. *Id.*, Ex. F ¶ 4. Plaintiff stated expressly that "[t]his Offer of Settlement is made to Defendants SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC,

SFOG II, INC., and SFG-II, LLC pursuant to O.C.G.A. § 9-11-68." *Id.*, Ex. F ¶ 1. Six Flags Over Georgia did not accept Plaintiff's offer. *Id.* ¶ 22. Instead, on September 15, 2010, Six Flags Over Georgia made its own offer of settlement to Plaintiff. *Id.* ¶ 23. Six Flags Over Georgia offered to pay Plaintiff $200,000.00 to settle Joshua's claims. *Id.* Plaintiff did not accept Six Flags Over Georgia's offer. *Id.*

On September 5, 2013, Plaintiff made another written offer of settlement to Six Flags Over Georgia. Aff. of Michael L. Neff ¶ 24. Plaintiff sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. *Id.* Plaintiff offered to settle all of Joshua's claims against Six Flags Over Georgia for $2,380,000.00. *Id.*, Ex. G ¶ 4. However, on the same day, Six Flags Over Georgia made its own written offer of settlement to Plaintiff. *Id.* ¶ 25. Six Flags Over Georgia offered to pay Plaintiff $750,000.00 to settle Joshua's claims. *Id.*, Ex. H ¶ 5. Neither side had known that that the other was making an offer of settlement on the same day, and the two offers were in effect made simultaneously. Plaintiff later withdrew the September 5 offer. *Id.* ¶ 26.

On September 16, 2013, Plaintiff made a counteroffer, which also constitutes an offer of settlement, to Six Flags Over Georgia. *Id.* ¶ 27. Plaintiff sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. *Id.* Plaintiff offered to settle all of Joshua's claims against Six Flags Over Georgia for $4,374,888.00. *Id.*, Ex. J ¶ 4. Plaintiff stated expressly that "[t]his offer to settle is made to Defendants SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, SFOG II, INC., and SFG-II, LLC pursuant to O.C.G.A. § 9-11-68." *Id.*, Ex. J ¶ 1. Six Flags Over Georgia did not accept Plaintiff's offer.

In short, Plaintiff made two written offers to settle all of Joshua's claims – one on July

27, 2010 for $2,500,000.00 and another on September 16, 2013 for $4,374,888.00. Six Flags Over Georgia did not accept either offer and chose to continue litigating. Beginning on November 11, 2013, this Court held a jury trial on Plaintiff's claims. On November 20, 2013, the jury found "for the Plaintiff, and against the Defendants and award[ed] total damages in the sum of $35 million for Joshua Martin." Verdict filed Nov. 20, 2013. The jury found "Six Flags Over Georgia 92% at fault." *Id.*

ARGUMENT

The offer of settlement statute entitles a plaintiff in tort action to recover reasonable attorney fees and expenses of litigation where a defendant does not accept an offer of settlement and the plaintiff later recovers a judgment that is more than 125% of the offer. It provides that:

> If a plaintiff makes an offer of settlement which is rejected by the defendant and the plaintiff recovers a final judgment in an amount greater than 125 percent of such offer of settlement, the plaintiff shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred by the plaintiff or on the plaintiff's behalf from the date of the rejection of the offer of settlement through the entry of judgment.

O.C.G.A. § 9-11-68 (b)(2). It also provides that "[a] counteroffer shall be deemed a rejection but may serve as an offer under this Code section if it is specifically denominated as an offer under this Code section." O.C.G.A. § 9-11-68 (c).

When the statute applies, "[t]he court shall order the payment of attorney's fees and expenses of litigation upon receipt of proof that the judgment is one to which the provisions of either paragraph (1) or paragraph (2) of subsection (b) of this Code section apply." O.C.G.A. § 9-11-68 (d)(1). A court may only decline to order attorney fees and expenses when the court "determine[s] that an offer was not made in good faith in an order setting fortj the basis for such a determination." O.C.G.A. § 9-11-68 (d)(2).

To calculate the award of reasonable attorney fees in this case, this Court must apply

Couch. In *Couch*, the plaintiff made an offer to settle his claims for $24,000.00, which the defendant did not accept and at trial the jury awarded the plaintiff $105,417.00. The plaintiff moved for an order awarding him reasonable attorney fees and expenses, and he included as evidence of his fees a 40% contingency fee agreement. The trial court granted the plaintiff's motion and awarded him fees measured at 40% of the total recovery:

> The Court finds that [Couch] had a contingency fee agreement with his attorneys that required him to pay 40% of any recovery as attorneys' fees. The ultimate recovery in this matter, after an appeal, totaled $123,855.65, which included post-judgment interest and court costs. Therefore, the Court awards [Couch] $49,542.00 in attorneys' fees incurred by [Couch] which represents the 40% contingency fee based on the total recovery of $123,855.65.

Couch, 322 Ga. App. at 236 (quoting the trial court's order). The trial court also awarded $4,782 in litigation expenses, which included "expenses for mileage, hotels, and meals." *Id.* at 239.

On appeal, the defendant argued that "the trial court erred by awarding Couch the full amount of the contingency fee." *Id.* at 238. But the plaintiff countered that "he is entitled to the entire contingency fee because no fee was due until the jury returned the verdict, which was after the Department rejected his settlement offer." *Id.* The Court of Appeals agreed with the plaintiff. It found that "the right to the 40 percent contingency fee was fixed by the judgment entered on the verdict, and the fee awarded by the trial court reflected that percentage." *Id.* The Court of Appeals recognized that "the existence of a contingent fee contract, without more, is not sufficient to support the award of attorney fees." *Id.* But a contingency fee may be awarded as reasonable attorney fees where there is "evidence of hours, rates, or *other indication of the value of the professional services* actually rendered." *Id.* at 238-39 (emphasis added).

With this motion, Plaintiff submits evidence proving that she is entitled to reasonable attorney fees and expenses of litigation. Plaintiff's evidence establishes that (1) Plaintiff made written offers to settle Joshua's claims pursuant to the offer of settlement statute; (2) Six Flags

Over Georgia did not accept Plaintiff's offers; (3) the judgment against Six Flags Over Georgia is 125% more than the Plaintiff's offers to settle; (4) Plaintiff's fee agreement requires payment of at least 40% of the total recovery as attorney fees; and (5) a 40% contingency fee agreement is a reasonable measure of the value of the professional services provided by Plaintiff's attorneys and their staff. *See* Aff. of Michael L. Neff; Aff. of Gilbert H. Deitch, Attached as Exhibit 2 to this Motion; Aff. of Andrew T. Rogers, Attached as Exhibit 3 to this Motion; Aff. of T. Shane Peagler, Attached as Exhibit 4 to this Motion; Aff. of Dwayne D. Adams, Attached as Exhibit 5 to this Motion; Aff. of Susan M. Cremer, Attached as Exhibit 6 to this Motion; Aff. of Beverly R. Gable, Attached as Exhibit 7 to this Motion; Aff. of Tabitha S. Hudson, Attached as Exhibit 8 to this Motion; Aff. of Sara Stouffer, Attached as Exhibit 9 to this Motion; Aff. of Michael Gorby, Attached as Exhibit 10 to this Motion.

As to the value of the professional services actually rendered, Plaintiff submits affidavits from each of her attorneys and their staff. Their testimony establishes that a 40% contingency fee is commensurate with the value of the professional services actually rendered by her attorneys. *See* Aff. of Michael L. Neff; Aff. of Gilbert H. Deitch; Aff. of Andrew T. Rogers; Aff. of T. Shane Peagler; Aff. of Susan M. Cremer; Aff. of Beverly R. Gable; Aff. of Tabitha S. Hudson; Aff. of Sara Stouffer.

Plaintiff also submits an affidavit from Michael Gorby, who is qualified as an expert in assessing the reasonableness of attorney fees. Gorby's expert testimony also establishes that a 40% contingency fee is commensurate with the value of the professional services actually rendered by her attorneys and is consistent with industry practice. *See* Aff. of Michael Gorby.

Because Plaintiff has provided evidence of a 40% contingency fee agreement and evidence demonstrating the value of the professional services actually rendered by her attorneys,

pursuant to *Couch* this Court should award her reasonable attorney fees measured at 40% of the total recovery against Six Flags Over Georgia. The judgment entered by the Court against Six Flags Over Georgia is for $32,705,990.56 (which is the amount awarded by jury verdict plus prejudgment interest), and so Plaintiff's award of reasonable attorney fees should be **$13,082,396.22**.

Although *Couch* is binding authority on this Court and is correctly decided, the Supreme Court has granted certiorari in *Couch* to review whether the defendant has a sovereign immunity defense as to the plaintiff's request for an award of attorney fees and, if necessary, whether 40% contingency fee should be prorated to reflect that some of the work was done before the defendant rejected the offer. *Ga. Dep't of Corr. v. Couch*, no. S13C1555, 2013 Ga. LEXIS 908, at *1-*2 (Nov. 4, 2013). To address the possibility that the Supreme Court may adopt a new rule regarding attorney fees in a contingency fee case, Plaintiff requests that the Court make factual findings that would facilitate possible appellate review without the need for remand to this Court.

Plaintiff asks the Court to make a factual finding that, if the contingency fee must be allocated to account for work performed before the offer was rejected and after, Plaintiff's award of reasonable attorney fees should be $12,082,396.22. Plaintiff's allocation is based on the following facts. If Six Flags Over Georgia had accepted Plaintiff's July 27, 2010 offer of settlement, Plaintiff would have recovered $2,500,000.00, and Plaintiff's 40% contingency fee would have been $1,000,000.00. But Six Flags Over Georgia did not accept Plaintiff's good faith offer of settlement, and so Plaintiff recovered $32,705,990.56 and Plaintiff's 40% contingency fee is now $13,082,396.22. Thus, the attorney fees for work performed after the rejection of Plaintiff's July 27, 2010 offer of settlement is $12,082,396.22 – which is the difference between the total contingency fee and the contingency fee if Six Flags Over Georgia

had accepted Plaintiff's offer.

In other words, by rejecting Plaintiff's July 27, 2010 offer, Six Flags Over Georgia increased the fee Plaintiff must pay her attorneys by $12,082,396.22, and so $12,082,396.22 should be Plaintiff's award *only if* the Supreme Court changes the law and requires a contingency fee to be allocated between fees incurred before the offer was rejected and fees incurred after. As for now, *Couch* remains binding law on this Court, and so this Court should award Plaintiff reasonable attorney fees measured at 40% of the total recovery – which is **$13,082,396.22**.

Plaintiff's evidence also establishes that she incurred **$171,567.60** in expenses of litigation. Her counsel at Deitch & Rogers, LLC incurred $110,217.10 in expenses of litigation, and her counsel at the Law Offices of Michael L. Neff, P.C. incurred $61,350.50 in expenses of litigation. Aff. of Michael L. Neff ¶ 29; Aff. of Gilbert H. Deitch ¶ 30.

Lastly, Plaintiff requests that the Court amend the judgment to include an award of reasonable attorney fees and expenses of litigation and enter the amended judgment *nunc pro tunc*, effective as of November 20, 2013, which is the day the jury returned a verdict for Plaintiff. A court is allowed to "amend and control its process and orders, so as to make them conformable to law and justice, and to amend its own records, so as to make them conform to the truth." O.C.G.A. § 15-1-3; *see also* O.C.G.A. § 9-12-9 ("Judgment and execution shall conform to the verdict."). And, in *Coleman v. Fortner*, 260 Ga. App. 373, 373 (2003), the Court of Appeals held that a trial court may enter judgment *nunc pro tunc*, effective as of the date the jury returns a verdict for a plaintiff – even if the signing of the final judgment happens many months later. *Id.* at 376-77 ("The trial court signed the final judgment on May 6, 2002, *nunc pro tunc* December 21, 2001, stipulating that Fortner would receive [post judgment] interest 'from the date of this

judgment, plus costs of this action.' Clearly, the trial court's order simply gave effect to the jury verdict entered in December.").

Along with this motion, Plaintiff submits a proposed order that contains a calculation of the reasonable attorney fees and the expenses of litigation and includes factual findings regarding how to allocate fees to account for work performed before the offer was rejected and after – if and only if the Supreme Court were to require that a contingency fee be allocated in such a way. Attached as Exhibit 11 to this Motion. Plaintiff also submits a proposed amended judgment that includes reasonable attorney fees and the expenses of litigation as part of the judgment. Attached as Exhibit 12 to this Motion.

CONCLUSION

For those reasons, Plaintiff moves this Court for an award of reasonable attorney fees and expenses of litigation. Plaintiff requests that the Court amend the judgment to include an award of reasonable attorney fees and expenses of litigation and enter the amended judgment *nunc pro tunc*, effective as of November 20, 2013, which is the day the jury returned a verdict for Plaintiff. Plaintiff is also filing a motion for entry of judgment and prejudgment interest and a request for oral hearing on its motions. Plaintiff asks that the Court first hear oral argument, next enter Plaintiff's proposed judgment, then enter Plaintiff's proposed order regarding attorney fees, and finally enter an amended judgment incorporating attorney fees.

Plaintiff submits this motion on December 23, 2013.

Naveen Ramachandrappa

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Ga. Bar No. 702582
Naveen Ramachandrappa

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on December 20, 2013, I served a copy of **PLAINTIFF'S MOTION FOR ATTORNEY FEES** by email and US mail on the following:

Wayne D. McGrew III
Charles M. McDaniel, Jr.
Kim M. Ruder
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Atlanta, GA 30303
dmcgrew@carlockcopeland.com
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Earl W. Gunn
Shannon V. Barrow
WEINBURG, WHEELER, HUDGINS, GUNN & DIAL, LLC
3344 Peachtree Rd NE Ste 2400
Atlanta, GA 30326
bgunn@wwhgd.com
sbarrow@wwhgd.com

This certification is submitted on December 20, 2013.

Naveen Ramachandrappa

Exhibit 1

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

JO-ANN TAYLOR, as conservator for JOSHUA L. MARTIN,

Plaintiff,

v.

SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, WILLIE GRAY FRANKLIN, JR., BRAD MCGAIL JOHNSON, DEANDRE EVANS, CLAUDE MOREY III, and JOHN DOES NOS. 1-15,

Defendants.

Civil Action
File No. 09-A-04531-3

JURY TRIAL

AFFIDAVIT OF MICHAEL L. NEFF

Personally appeared before me, the undersigned Notary Public authorized to administer oaths, MICHAEL L. NEFF, after being duly sworn, deposes and says:

1. My name is Michael L. Neff. I am over eighteen years of age, suffer no legal disability and make this Affidavit under oath. The facts stated here are true and correct and are of my personal knowledge.

2. I am an attorney licensed to practice law in the State of Georgia. I represent the Plaintiff in the above referenced matter. I have been practicing law for 20 years. I have represented all types of clients, including victims of trucking wrecks, victims of sexual assault, and those who have suffered traumatic brain injuries. A true copy of my current work experience, education, and awards is attached as Exhibit A to this affidavit.

3. I have personal knowledge with regard to the matters that have occurred during this litigation.

4. On July 7, 2007, Joshua L. Martin retained my firm under a contingency fee agreement. A true copy of the agreement is attached as Exhibit B to this affidavit.

5. I enlisted co-counsel Gil Deitch on July 11, 2007, and Josh signed an engagement agreement that also listed Gil Deitch's firm as counsel. A true copy of the co-counsel agreement is attached as Exhibit C to this affidavit. A true copy of the new agreement with Josh is attached as Exhibit D to this affidavit.

6. On May 31, 2013, Jo-Ann Taylor, Josh's conservator, signed a similar a contingency fee agreement with my firm and Gil Deitch's firm. A true copy of the agreement is attached as Exhibit E to this affidavit.

7. The agreement signed by Josh is a standard contingency agreement. It is the same or similar to the contingency agreements I have with all of my clients, and it is the same or similar to the contingency agreements I have seen other attorneys in my practice area use in Georgia.

8. I would not take this type of case without a contingency fee arrangement because of the risks, time, and expenses associated with this type of case, which exist even though case had strong merits.

9. Neither Josh nor anyone on his behalf could have paid for this case on an hourly rate basis.

10. Under the terms of the contingency agreement, Josh did not incur any attorney fees or expenses until there was a recovery, either by settlement or judgment. If and until there was a recovery, Josh did not owe any attorney fees or expenses. Those fees and expenses were paid by either my firm or Gil Deitch's firm prior to any recovery. This is standard practice for contingency agreements.

11. In my 20 year career, this was the most expansive litigation in which I have been involved. This case was hard fought. 58 depositions were taken. That is approximately twice as many depositions as any other case I've been involved with during my career.

12. Upon being retained, I went to the scene with Gerard Martin and Jeff Gross to get a better understanding of where things occurred. I also began obtaining and reviewing the medical records from over twenty health care providers in order to understand the enormous gravity of Josh's injuries.

13. Gil Deitch primarily handled drafting the complaint, although I reviewed and discussed the various drafts with him.

14. My office requested various 911 calls and police reports associated with Six Flags. In addition, Gil hired Alexander Hamilton to do further investigation of prior incidents which led to our discovery of the July 4, 2006 shooting at the Six Flags bus stop. This was an important fact in this litigation, which required the expenditure of a great deal of time and expense.

15. I received a phone call from a former Six Flags employee regarding Solutions and Specialized Innovations Ltd. (SASI), which is the company Six Flags had hired to train its employees.

16. I spent countless hours pursuing and reviewing document discovery from Six Flags in this case. Important documents included the security policies and procedures as well as security training documents. Other important documents included internal reports on crime from Six Flags. The review of these documents required the expenditure of a great deal of time and expense, and without this review, it would not have been possible to obtain a successful result in this case.

17. The parties took 58 depositions. I attended the majority of them, conducted many of the depositions, defended some, and reviewed the transcripts of the depositions I could not attend.

18. I spent at least one full week reviewing transcripts and other documents in order to respond to the Defendants' Statement of Material Facts and to develop Plaintiff's fact section of the summary judgment motions. I also spent considerable time reviewing and commenting on the Plaintiff's briefs – the majority of which were drafted by Deitch & Rogers.

19. Motions in limine were a joint effort of the two firms. Because of another trial commitment by Deitch & Rogers, I was primarily responsible for attending and arguing pre-trial evidentiary issues as several pretrial conferences conducted by the Court. In addition to the time I spent attending and arguing the pre-trial matters, I also spent considerable time preparing for these hearings.

20. At trial, I was responsible for the Plaintiff's Voir Dire, the Plaintiff's Opening Statement, the examination of many witnesses on direct and cross, and the "Closing" Closing Argument (the "Opening" Closing Argument was well handled by Andy Rogers). I also spent considerable time preparing for trial – at least 12 weeks were spent preparing for trial, in which all of or nearly all of my time was dedicated to Josh's case.

21. On July 27, 2010, I made a written offer of settlement on behalf of Joshua L. Martin to Defendants Six Flags Over Georgia II, LP; Six Flags Over Georgia, LLC; SFOG II, Inc.; and SFG-II, LLC. I sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. I offered to settle all of Josh's claims against Six Flags Over Georgia for $2,500,000.00. I stated expressly that "[t]his Offer of Settlement is made to Defendants SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, SFOG

II, INC., and SFG-II, LLC pursuant to O.C.G.A. § 9-11-68." A true copy of the offer I sent is attached as Exhibit F to this affidavit.

22. Six Flags did not accept the July 27, 2010 offer.

23. On September 15, 2010, Six Flags Over Georgia offered to pay $200,000.00 to settle Josh's claims. We did not accept this offer.

24. On September 5, 2013, I made another written offer of settlement on behalf of Joshua L. Martin to Defendants Six Flags Over Georgia II, LP; Six Flags Over Georgia, LLC; SFOG II, Inc.; and SFG-II, LLC. I sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. I offered to settle all of Josh's claims against Six Flags Over Georgia for $2,380,000.00. A true copy of the offer I sent is attached as Exhibit G to this affidavit.

25. On September 5, 2013, Six Flags also made its own written offer of settlement. Six Flags offered to pay $750,000.00 to settle Josh's claims. A true copy of the offer I received is attached as Exhibit H to this affidavit.

26. I did not know that Six Flags was making an offer of settlement at the time I sent my offer, and so I later withdrew my September 5, 2013 offer. A true copy of the withdrawal I sent is attached as Exhibit I to this affidavit.

27. On September 16, 2013, I made a counteroffer pursuant to O.C.G.A. § 9-11-68 to Defendants Six Flags Over Georgia II, LP; Six Flags Over Georgia, LLC; SFOG II, Inc.; and SFG-II, LLC. I sent the offer by FedEx Overnight delivery addressed to the counsel of record for Six Flags Over Georgia. I offered to settle all of Josh's claims against Six Flags for $4,374,888.00. I stated expressly that "[t]his offer to settle is made to Defendants SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, SFOG II, INC., and SFG-II,

LLC pursuant to O.C.G.A. § 9-11-68." A true copy of the offer I sent is attached as Exhibit J to this affidavit.

28. Six Flags Over Georgia did not accept the September 16, 2013 offer, and because Six Flags Over Georgia did not accept my offer, the case ultimately went to trial.

29. My firm expended $61,350.50 for which we seek reimbursement from Six Flags. These expenses were both reasonable and necessary to achieve a successful result in this case, and these are expenses that Josh will incur based on the judgment against Six Flags. An accurate breakdown of my firm's expenses are attached as Exhibit K.

FURTHER AFFIANT SAYETH NOT.

MICHAEL L. NEFF

Sworn to and subscribed before me
this 23rd day of December, 2013.

Notary Public, State of Georgia

TABITHA HUDSON NOTARY PUBLIC COBB COUNTY, GEORGIA
My Commission Expires June 10, 2017

EXHIBIT 10

STATE COURT OF COBB COUNTY
GEORGIA

JO-ANN TAYLOR, as conservator for JOSHUA L. MARTIN, Plaintiff, v. SIX FLAGS OVER GEORGIA II, LP, SIX FLAGS OVER GEORGIA, LLC, WILLIE GRAY FRANKLIN, JR., BRAD MCGAIL JOHNSON, DEANDRE EVANS, CLAUDE MOREY III, and JOHN DOES NOS. 1-15, Defendants.	Civil Action File No. 09-A-04531-3 JURY TRIAL

AFFIDAVIT OF MICHAEL J. GORBY

1. My name is Michael J. Gorby. I am an attorney in good standing with the Georgia State Bar Association. I am giving this affidavit specifically in support of plaintiff's motion for an award of attorneys' fees pursuant to O.C.G.A. § 9-11-68.
2. I am a partner in the law firm of Gorby Peters and Associates, L.L.C.
3. I am competent to testify about the matters in this Affidavit, and I am laboring under no disability. The matters herein affirmed are based on my personal knowledge and experience.
4. I received a B.A. from Georgia State University in 1971, with a major in accounting. I received my law degree from the University of Georgia in 1974.
5. I have been practicing law for more than 35 years.
6. I am a member of the Atlanta and American (Member, Litigation Section) Bar Associations and State Bar of Georgia (Member, Insurance Law and Litigation Sections).
7. I have been involved as lead counsel in the litigation of cases in Georgia and in other states

during my practice including cases that have received national media attention.

8. In 1997, I was requested by the Harrison Company to author a treatise on premises liability law in Georgia. In 1998 Harrison published my treatise *Premises Liability in Georgia.* From 1998 through 2007, I authored yearly updates to this book which were published by Harrison, and subsequently by Thompson Reuters which purchased Harrison. In 2008, I authored, and Thompson Reuters published, the second edition of *Premises Liability in Georgia.* I have provided yearly updates to the second edition.

9. Since 1994, I have been the program chair for the Institute of Continuing Legal Education's annual Premises Liability Seminar. Additionally, I have spoken at numerous other seminars on premises liability.

10. I have represented both plaintiffs and defendants in cases involving catastrophic personal injury and death including premises liability cases.

11. I have been asked by Plaintiff's counsel to review the instant case and express an opinion as to the reasonableness of the attorney fees Plaintiff is requesting pursuant to O.C.G.A. § 9-11-68. Plaintiff will incur attorney fees according to the "Contingency Fee Agreement" (Agreement) between JoAnn Taylor in Her Capacity as Conservator of Joshua Martin and plaintiff's counsel. A copy of the Agreement that I received from Plaintiff's counsel is attached as Exhibit 1 to my Affidavit.

12. I have reviewed the Brief in Support of Defendants' Motion for Summary Judgment filed by defendants in this matter, and Plaintiff's response brief. These briefs have given me background on the general nature of the claim and the work that Plaintiff's counsel had accomplished prior to the filing of the summary judgment motion.

13. I have also met with plaintiff's counsel to discuss the work performed by plaintiff's counsel in this matter beginning in 2006 and continuing through the trial of this case in November, 2013.

14. It is my opinion, based on my experience and my review of this matter that the 40% contingency fee called for in the Agreement is reasonable, appropriate, and customary for cases of this type. Under the contingency arrangement in this Agreement and agreements that are standard industry practice, the Plaintiff did not incur any attorney fees or expenses until there was a recovery, either by settlement or judgment.

15. My opinion is based on the following factors. First, third party criminal act cases in Georgia are very difficult for a plaintiff to win. Georgia case law that has developed in this area over the past 20 years has established fairly inflexible hurdles that plaintiffs must overcome to avoid summary judgment. The great majority of crime victims do not have the financial ability to underwrite the prosecution of their case through an hourly rate contract with an attorney. Therefore, a contingency fee arraignment is the only way such a case could move forward. However, an attorney undertaking the representation of a victim of a crime with a contingency fee contract is at risk of putting a tremendous amount of time and money into a case where he or she will not ultimately prevail.

Second, specific to this case, plaintiff's counsel have been litigating this matter for over 7 years. Their work included pre-suit investigation, drafting the pleadings and discovery, investigation of public records, document discovery, taking over 40 depositions, responding to summary judgment motions, and motions in limine, trial preparation and trial. This case was unique, complicated, and vigorously litigated.

Third, I am personally familiar with plaintiff's counsel in this matter. They are well known and skilled advocates in the prosecution of third party criminal act cases. In my opinion, their combined expertise and skill added measurable fire power to the case to the benefit of the plaintiff.

Fourth, despite the inherent complexities and risks involved in a case like this, plaintiff's counsel achieved a successful result and delivered an outcome that is commensurate with the 40% contingency fee that plaintiff will incur and that plaintiff is requesting from Six Flags pursuant to O.C.G.A.

I am executing this affidavit in Fulton County, Georgia, this 23rd day of December, 2013.

Michael J. Gorby

Sworn to and subscribed before me
this 23rd day of December, 2013.

Notary Public
My commission expires: Aug 7, 2017
(NOTARIAL SEAL)

PETER H STROTT NOTARY PUBLIC FULTON COUNTY, GEORGIA MY COMMISSION EXPIRES AUG 7, 2017

EXHIBIT 1

STATE OF GEORGIA
COUNTY OF FULTON

CONTINGENCY FEE AGREEMENT

THIS AGREEMENT, made this 31st day of May, 2013, by and between JO-ANN TAYLOR, in her capacity as Conservator of JOSHUA MARTIN (hereinafter referred to as "Client") and DEITCH & ROGERS, LLC, having its place of business at 5881 Glenridge Drive, Plaza 400, Suite 160, Atlanta, Georgia 30328 and THE LAW OFFICES OF MICHAEL LAWSON NEFF, P.C., having its place of business at 1770 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, Georgia 30326 ("Attorneys").

WITNESSETH:

WHEREAS, JOSHUA MARTIN was attacked at 7165 Six Flags Pkwy, Austell, GA 30168, Cobb County, Georgia which occurred on July 3, 2007; and

WHEREAS, Client was appointed Conservator of Joshua Martin by the Probate Court of Cobb County, Georgia on or about November 1, 2011; and,

WHEREAS, Client desires to employ DEITCH & ROGERS, LLC and THE LAW OFFICES OF MICHAEL LAWSON NEFF, P.C. to prosecute all claims and causes of action against the responsible parties and any other person, partnership, corporation or association for any and all claims arising out of said incident; and

WHEREAS, Attorneys are attorneys at law duly licensed and admitted to practice in Georgia.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto do hereby agree as follows:

1. Client agrees to and does hereby retain the said Attorneys to act as Client's attorneys to prosecute Client's claims and causes of action against the said responsible party or any other person, partnership, corporation or association who may be liable for the personal damages sustained by the Client as aforesaid and to bring any action, suit, or proceeding, or take any other step necessary to enforce or collect such claim or cause of action.

2. Attorneys accept such retainer and agree to act as attorneys for said Client and to perform or cause to be performed all services necessary for the prosecution of such claims and causes of action and to accept the compensation for such services as herein provided without making any other charge for such services except as herein set forth.

3. Client agrees to pay Attorneys as compensation for their services herein as follows:

CJ
initials (a) Forty percent (40%) of such amount offered to be paid to or recovered by Client in settlement or due to a Judgment of said claims and causes of action, exclusive of expenses.

CJ
initials (b) In the event that an interlocutory appeal (before trial) is granted to any party, or a new trial is granted any party, or a Notice of Appeal is filed after a Judgment is entered, fifty percent (50%) of such amount offered to be paid to or recovered by Client, exclusive of expenses.

4. In addition to the aforesaid fees, Client shall pay all actual expenses and disbursements paid or incurred by Attorneys in the prosecution of such claims or causes of action, including but not limited to: printing, photostating, travel, meals, lodging, consultants, expert fees, investigator fees, deposition costs, court costs, couriers, express mailing, preparation and purchase of exhibits, long distance telephone calls, telefax expenses, computerized case research, etc. In the event of no recovery, Client shall owe Attorneys nothing for services rendered or for costs advanced.

5. In the event that any offer or recovery is to be paid pursuant to a structured or other delayed payment, it is agreed that all fees and expenses shall be due and payable in lump sum at the time of such resolution. The fees would be based, in that event, on the present cash value of sums offered to be paid.

6. Client acknowledges that Attorneys have explained alternate dispute resolution procedures which may be available to Client in addition to conventional litigation before a judge and/or jury. Client understands the relative benefits and disadvantages of said alternative dispute resolution procedures and hereby directs Attorney to pursue litigation on her behalf.

7.(a) Client hereby designates and appoints Attorneys to be Client's true and lawful attorneys, hereby authorizing and empowering them to do any and all things necessary and proper in the enforcement and collection of said claims and causes of action. Client authorizes and empowers them to sign any and all pleadings and other documents necessary and proper in connection with the prosecution or enforcement of the said claims or causes of action, including collection of damages awarded or to be paid.

(b) Client hereby authorizes Attorneys to receive in the name and stead of Client any money or other things of value which may properly be payable or deliverable to Client on account of any Judgment recovered or any settlement agreed upon in connection with the said claims or causes of action, including endorsing and depositing said sums in Attorneys' trust account to be disbursed in accordance with this agreement after Client's review and execution of an itemized settlement statement.

8. In the event Attorneys deem it appropriate and efficient to the prosecution of Client's claim, or claims, Attorneys are expressly authorized to associate another attorney or attorneys who

Attorneys may deem appropriate. No substitution of law firms may otherwise be made by Client without Attorneys' consent. In the event of substitution, Client shall remain responsible for all costs and expenses as set forth hereinabove, and Client shall be obligated for attorney's fees on either the contingent fee set forth herein or a *quantum meruit* basis, at the election of Attorneys.

9. If, after pre-litigation investigation or litigation discovery, Attorneys deem they cannot prevail in Client's claims and causes of action or are claims and causes of action they do not desire to pursue further, Attorneys have the right to notify Client and withdraw from representing Client so long as such withdrawal does not interfere with filing (or trial) of Client's claims or causes of action and Client has a reasonable opportunity to locate other counsel, if Client desires.

ACKNOWLEDGEMENT OF 2005 GEORGIA LAW

In February 2005, a new Georgia law changed the way cases such as yours are litigated. You need to be aware that this law which may decrease or change your amount of recovery. This law is new has not been tested in the courts and we cannot tell you exactly how it will work.

How It Appears to Work: Any plaintiff or defendant will have the opportunity to make a written settlement offer prior to trial. If the offer is not accepted, and that party does not prevail or do as well as offered, the court may order payment of attorneys' fees and costs based on the final award at trial.

Your Acknowledgement: You acknowledge that you have received notice of this new law.

"CLIENT":

Jo-Ann Taylor
JO ANN TAYLOR, in Her Capacity
as Conservator of JOSHUA MARTIN

"ATTORNEYS":
DEITCH & ROGERS, LLC

By:_____
GILBERT H. DEITCH

THE LAW OFFICES OF
MICHAEL LAWSON NEFF, P.C.

By:_____
MICHAEL LAWSON NEFF

Client acknowledges receipt of a copy of this Agreement this 31st day of May, 2013.

JO-ANN TAYLOR, in Her Capacity
as Conservator of JOSHUA MARTIN