



# City of Grand Island

Tuesday, June 28, 2016

Council Session

## Item S-1

### Update on Wrongful Death Claim of Dumale Bariyiga

Staff Contact: Jerry Janulewicz

# Council Agenda Memo

**From:** Jerry Janulewicz, City Attorney

**Meeting:** June 28, 2016

**Subject:** Claim of Dumale Bariyiga and on behalf of the Estate of Nubari Koffree

**Presenter(s):** Jerry Janulewicz, City Attorney

## Background and Discussion

On September 11, 2015, the City of Grand Island received the Claim of Dumale Bariyiga made under the Political Subdivisions Tort Claims Act. The claim arose out of the July 18, 2015 death of Nubari Koffree, the Claimant's daughter, which occurred at Island Oasis Water Park. While the claim was on file with the City, the Claimant, the City, and the City's liability insurance carrier participated in mediation of the claim. Through mediation, attended by the City Attorney, a settlement agreement was reached whereby the Claimant would execute a full and complete release of the City of Grand Island, its officers and employees, from all claims arising out of the death of Nubari Koffree, including those for the wrongful death of Nubari Koffree and Claimant's individual claims, in consideration of \$240,000 to be paid by the City's insurance carrier. An exchange of the settlement release and consideration for the release was completed on June 16, 2016. Nebraska Revised Statute Section 84-713 requires that a settlement agreement such as this be included as an agenda item on the next regularly scheduled public meeting of the public body for informational purposes. A copy of the Settlement Release and Release is included with this memo.

No Council action is required. This matter is submitted for informational purposes and to comply with the above-cited statute.

## SETTLEMENT RELEASE AND RELEASE

### 1. INTRODUCTION, DESCRIPTION OF PARTIES

The parties referred to in this release are as follows:

- a. Dumale Kuene Bariyiga as Personal Representative of the Estate of Nubari Koffree, Deceased, as well as her agents, employees, heirs, executors, administrators, successors and assigns ("Bariyiga, PR").

Dumale Kuene Bariyiga in her individual capacity (Bariyiga").

- b. The Released Parties are:

The City of Grand Island, Nebraska, together with its successors, assigns, employees, attorneys, agents, officers, elected officials, insurers, all of whom are collectively referred to in this release as "Released Parties."

### 2. CLAIMS RELEASED

Bariyiga PR, as Personal Representative of the Estate of Nubari Koffree, under and by virtue of the authority granted to her as Personal Representative of the Estate of Nubari Koffree, Deceased, and by order of the County Court of Lancaster County entered on the 7 day of June, 2016, for herself and for the heirs, next of kin and successors of Nubari Koffree, Deceased, finally and forever releases and discharges the Released Parties from any and all claims, actions, causes of action, demands, and damages of any kind, including but not limited to damages for or in any way relating to the hospitalization, treatment, care, burial, pain and suffering, injuries and death of Nubari Koffree, Deceased, as well as all consequential damages and any and all other derivative claims on account of or in any way related to or growing out of the "Incident" described in paragraph 3 of this release.

Bariyiga in her individual capacity finally and forever releases and discharges the Released Parties from any and all claims, actions, causes of action, demands, and damages of any kind, including but not limited to damages for emotional distress, bystander damages of any type, or any other damages in any way relating to the hospitalization, treatment, care, burial, pain and suffering, injuries and death of Nubari Koffree, Deceased, as well as all consequential damages and any and all other derivative claims on account of or in any way related to or growing out of the "Incident" described in paragraph 3 of this release.

Bariyiga, PR and Bariyiga acknowledge and represent that this release covers all injury and damages to Dumale Bariyiga individually, or in her capacity as Personal Representative of the Estate of Nubari Koffree, Deceased, whether those claims are known or not, or those claims which may develop after the signing of this release. Bariyiga, PR and Bariyiga acknowledge that in some cases damages may be progressive, and they have had the opportunity to seek any and all medical care, consultation or treatment before executing this release. Bariyiga, PR and

Bariyiga understand that this release covers all injuries and damages, even though the injuries or damages may later be found to be more severe or of a different nature than now believed. Bariyiga, PR and Bariyiga waive any claim that they are mistaken about the nature of their injuries or their damages.

**3. INCIDENT**

The "Incident" described in this release refers to the following:

The drowning death of Nubari Koffree which occurred on or about July 18, 2015, at the Island Oasis Water Park in Grand Island, Nebraska.

**4. CONSIDERATION**

The consideration for signing this release is the sum of \$240,000, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Bariyiga, PR and Bariyiga who, by signing this release, stipulate and agree to the adequacy of the consideration. Bariyiga, PR and Bariyiga acknowledge the sum of \$240,000 was paid in the following manner:

\$100,000 to Dumale Kuene Bariyiga as Personal Representative of the Estate of Nubari Koffree, Deceased;

\$140,000 to Dumale Bariyiga for her individual claims.

**5. RELEASE, FINAL AND BINDING**

Bariyiga, PR and Bariyiga acknowledge that this release and settlement is mutual, final and binding upon the parties, regardless of whether too much or too little has been paid. Bariyiga, PR and Bariyiga further acknowledge that the release is intended to cover any and all claims, several or otherwise, past, present or future, which have been or could be asserted by Bariyiga, PR and Bariyiga in any way relating to the Incident.

**6. NONADMISSION OF LIABILITY**

Neither this release, nor any payment, concession or other action by any of the Released Parties should be construed as an admission of liability, and Bariyiga, PR and Bariyiga understand that Released Parties expressly deny liability and acknowledge that this settlement is a result of compromise. Bariyiga, PR and Bariyiga agree that this release shall not be used as a defense or estoppel in any other action.

**7. INDEMNIFICATION**

Bariyiga, PR and Bariyiga hereby expressly agree to defend, indemnify, and hold harmless the persons released hereunder, insurance company, and any other persons, firms or corporations hereby released, against any and all claims of any kind or nature, including, but not limited to, liens, demands, obligations, actions, causes of action, claims of subrogation, damages, costs and

expenses, unpaid health care expenses incurred by Bariyiga, PR and Bariyiga, reimbursement for loss of wages and other employment benefits including workers' compensation, damages of any kind or nature, whether presently existing or hereafter acquired, as well as expenses, costs and attorney fees incurred by the Released Parties and/or insurance company in defending against said claims or demands, in any way arising out of the Incident.

**8. CONFIDENTIALITY**

Bariyiga, PR and Bariyiga and Released Parties, as well as their representatives, legal counsel and agents, acknowledge and agree that the terms of this release may be disclosed and made public to the extent required by law.

**9. REPRESENTATIONS AND WARRANTIES**

Bariyiga, PR and Bariyiga acknowledge, agree, represent and warrant as follows:

- a. They have the full right, power, authority and capacity to give this release, and no consent, approval, filing or other action is required as a condition to or in connection with the execution, delivery and performance of this release, other than approval by the County Court, which has been obtained. Bariyiga, PR and Bariyiga have no knowledge of any other individual or entity that has not been referred to in this release that has any interest in the claims referred to in this release.
- b. That in executing this release and compromising all claims, they are doing so voluntarily and of the parties' free will without coercion or duress, and this release constitutes a legal, valid and binding release, enforceable against each of them in accordance with its terms.
- c. They have neither received nor relied upon any statements, representations or promises made by any individual or entity, or any representatives of any such individual or entity, other than those representations and promises that are expressly set forth in this release.
- d. They have had an opportunity to review this release with legal counsel regarding the meaning of this release, the obligations imposed by it, and the legal implications and effect of this release as well as the advisability of providing this release.

**10. NO PRESUMPTION**

Each party acknowledges and agrees that he or she has had the opportunity through legal counsel to participate, and has participated, in the negotiation of the terms of this release and drafting the language incorporating such terms into this release. In the event that any ambiguity or question or intent, construction or interpretation of this release arises, this release shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of his or her role or participation in negotiating the terms of this release or drafting any of the provisions of this release.

**12. ENTIRE RELEASE; AMENDMENTS**

This release contains the entire release and understanding between the parties pertaining to the subject matter herein and supersedes any and all prior and/or contemporaneous oral or written releases and understandings, if any, of the parties in connection therewith.

**13. BINDING NATURE**

This release shall be binding upon and shall inure to the benefit of the parties and their respective legal representatives, successors and assigns.

**14. GOVERNING LAW; SEVERABILITY**

This release is made and entered into in the State of Nebraska and shall be governed by the laws of the State of Nebraska without regard to choice of law or conflicts of law principles. If any term of this release is held invalid or unenforceable to any extent, then the remaining terms of this release shall not be affected thereby, but each term of this release shall be valid and enforced to the fullest extent permitted by law.


**15. COUNTERPARTS**

This release may be executed in multiple counterparts and each such fully-executed counterpart shall constitute an original, all of which together shall constitute one and the same written release, and be binding and effective as to all of the parties. The exchange of signature pages by facsimile transmission or via electronic mail as pdf attachments shall constitute effective execution and delivery of this release by the parties.

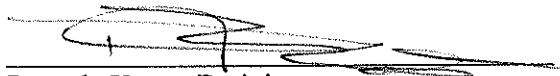
**16. OTHER ACTIONS**

The parties agree to execute and deliver instruments and take such other actions as may be reasonably requested by the parties in order to effectuate and implement the terms set forth in this release.

June 7 - 2014  
Date

  
Dumale Kuene Bariyiga,  
In Her Capacity as Personal Representative

June 7 - 2014  
Date

  
Dumale Kuene Bariyiga,  
By Her Individually

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