

FLOYD COUNTY RESOLUTION NO. 77-1

WHEREAS, on or about the 13th day of September, 1973, Calbert Cree was a passenger in an automobile driven by Samuel Cain and was injured when the vehicle driven by Samuel Cain collided with an embankment at the intersection of Greenwood Road in Clark County, Indiana and County Line Road, the same forming the boundary between Clark County and Floyd County; and

WHEREAS, as the result of the injuries sustained by Calbert Cree an action was filed for damages against Floyd County, Indiana, Clark County, Indiana and the driver of the vehicle, Samuel Cain, which action is pending in the Montgomery Circuit Court, Crawfordsville, Indiana, and being Cause No. C-75-22; and

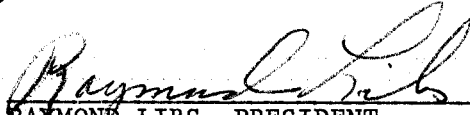
WHEREAS, Floyd County, Indiana expressly denies any and all liability to Calbert Cree or his wife Marjorie Cree concerning any and all damages past, present and future arising out of or resulting from this accident, but, nevertheless, the Board of Commissioners of the County of Floyd have deemed it in the best interest of the County to enter into an Agreement with the said Calbert Cree, Marjorie Cree, and the other defendants in this cause of action for the purpose of settling all claims, demands, actions or causes of action, expenses, damages and losses of every kind arising from and out of this accident, a copy of which Agreement is attached to and made a part of this Resolution as Exhibit "A".

NOW THEREFORE, pursuant to the authority vested in the Board of Commissioners of the County of Floyd by the provisions of I.C. 1971, 34-4-16.5-15:

BE IT RESOLVED, that the settlement agreement expressly made a part of this Resolution be, and the same hereby is approved for the purpose of settling any and all claims, demands, actions or causes of action, expenses, damages and losses of every kind arising out of the accident occurring on the 13th day of September, 1973, and giving rise to the cause of action in the Montgomery Circuit Court, Crawfordsville, Indiana, bearing Cause No. C-75-22.

BE IT FURTHER RESOLVED, that upon presentation of claims by Calbert Cree and Marjorie Cree upon forms provided by the State Board of Accounts, the same be approved for payment in accordance with the settlement agreement made a part of this Resolution.

Dated this 7 day of February, 1977.


RAYMOND LIBS, PRESIDENT


VINCENT FREIBERGER, MEMBER


FRANCIS J. LOFTUS, MEMBER

ATTEST:


AUDITOR, FLOYD COUNTY, INDIANA

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims is made and entered into this _____ day of _____, 1977, by and between Calbert Cree and Marjorie Cree ("Crees"), Samuel Cain ("Cain"), Board of Commissioners of Floyd County, Indiana, and Floyd County Highway Department ("Floyd County"), and Board of Commissioners of Clark County, Indiana, and Clark County Highway Department ("Clark County"), and witnesseth that:

WHEREAS, on or about September 13, 1973, Crees were husband and wife and the said Calbert Cree was riding as a passenger in an automobile operated by Cain on Payne-Koehler Road (Greenwood Road) in Clark County when said automobile collided with an embankment at the head of a "T" intersection in Floyd County; and

WHEREAS, Crees filed an action for damages against Cain, Floyd County and Clark County, which action is pending in the Montgomery Circuit Court, Crawfordsville, Indiana, Cause No. C75-22; and

WHEREAS, Calbert Cree contends that Cain, Floyd County and Clark County are liable to him for damages for permanent personal injuries, loss of present and future income and loss or impairment of earning capacity, physical pain and mental suffering, expenses for medical care, treatment and services and expenses of future medical care, treatment and services, deformity and disfigurement, and any and all other damages of every kind and nature arising as a result of said collision; and

WHEREAS, Marjorie Cree contends that Cain, Floyd County, and Clark County are liable to her for the reasonable value of loss of consortium incurred by her as a result of said accident and injuries sustained by her husband, Calbert Cree, as of the present time, and the value of the loss of consortium which she may incur in the future including but not limited to the conjugal fellowship of husband and wife and the right of each to the company, cooperation, affection and aid of the other in every conjugal relationship, including the exclusive right to the services of her husband and to his society, companionship and conjugal affection, past, present and future and any and all other damages as a result of said collision; and

WHEREAS, Cain, Floyd County and Clark County expressly deny any and all liability to Crees concerning any and all damages, past, present and future and it is expressly stated by Cain, Floyd County and Clark County and understood by Crees that by making the payments mentioned herein and by accepting this Settlement Agreement and Release of All Claims Cain, Floyd County and Clark County are not in any way admitting any liability to anyone for the aforesaid accident, injuries, loss or damages resulting therefrom.

NOW, THEREFORE, for the sole and only consideration of the sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00) paid to Calbert A. Cree and Marjorie Cree, individually, and as husband and wife, the sufficiency of which sum is hereby acknowledged, the undersigned, Calbert Cree and Marjorie Cree, do hereby fully and finally release and forever discharge the said Cain and his legal successors and assigns, and Floyd County and Clark County, and their legal successors and assigns, and all past, present or future officials, officers, employees, agents, and representatives, and all other persons, firms or corporations and their successors in interest and assigns, of and from any and all claims, demands, actions or causes of action, expenses, damages and losses of every kind, which they, or either of them, might otherwise now or hereafter have or assert on account of or in any way related to or arising out of the aforesaid accident and Crees do hereby accept said sum in full, final and complete settlement and satisfaction for all damages of every kind and character growing out of or in any way connected with said accident, all without admission of liability by or on behalf of Cain, Floyd County or Clark County.

It is understood and agreed by and between the parties to this Settlement Agreement and Release of All Claims that the above-referred to sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00) is to be payable in the following manner:

1. The sum of Fifty-five Thousand Dollars (\$55,000.00) shall be paid by and on behalf of Samuel Cain to Calbert Cree and Marjorie Cree;
2. The sum of Thirty-five Thousand Dollars (\$35,000.00) shall be paid by and on behalf of Floyd County to Calbert and Marjorie Cree in the following manner:

a. Crees shall submit a claim on a standard claim form to Floyd County in the amount of \$ 15,000.00 which claim form shall be processed in the manner prescribed by law and said sum shall be paid to the Crees within 90 days after the submission thereof;

b. The balance of said settlement amount in the sum of \$ 20,000.00 shall likewise be submitted by Crees on a standard claim form and processed in accordance with statute and said amount shall be paid on or before 180 days.

3. The sum of Eighty-five Thousand Dollars (\$85,000.00) shall be paid by Clark County to Calbert Cree and Marjorie Cree in the following manner:

a. Fifty Thousand Dollars (\$50,000.00) shall be paid upon execution of this Settlement Agreement and Release of All Claims and the filing of a Stipulation For Dismissal and the entry of an Order On Dismissal;

b. Crees shall submit a claim on a standard claim form to Clark County in the amount of \$ _____ which claim form shall be processed in the manner prescribed by law and said sum shall be paid to the Crees within _____ days after the submission thereof;

c. The balance of said settlement amount in the sum of \$ _____ shall likewise be submitted by Crees on a standard claim form and processed in accordance with statute and said amount shall be paid on or before _____.

It is understood and agreed by and between the parties to this Settlement Agreement and Release of All

Claims that this settlement is the compromise of a doubtful and disputed claim, and that the payments to be made hereunder are not to be construed as an admission of liability on the part of Cain, Floyd County and Clark County, by whom liability is expressly denied.

The undersigned, Calbert A. Cree and Marjorie Cree, further hereby agree, in consideration of the sums to be paid, to dismiss with prejudice and in bar, their lawsuit against Cain, Floyd County and Clark County now pending as Cause No. C75-22 in the Montgomery Circuit Court, Crawfordsville, Indiana, with the respective parties to bear their own costs.

The undersigned, Calbert A. Cree and Marjorie Cree, further represent and covenant that at the time of the execution of this Settlement Agreement and Release of All Claims they are of lawful age and legally competent to execute and deliver the same, and that before the signing, sealing and delivering of the same, they have read this Settlement Agreement and Release of All Claims and fully informed themselves of its contents and the consequences of executing the same and that they have executed and delivered the same voluntarily with full knowledge thereof.

This Settlement Agreement and Release of All Claims contains the entire settlement agreement between the parties, and the terms hereof are binding and contractual in nature and are not mere recitals. The said terms are and shall be binding upon the parties hereto, their respective legal successors and assigns.

Executed this _____ day of _____, 1977.

Calbert A. Cree

Marjorie Cree

Approved and agreed to by Samuel Cain

Lawrence F. McTurnan, his attorney

Approved and agreed to by Board of
Commissioners of Floyd County, Indiana,
and Floyd County Highway Department

Raymond G. Libs

Vincent H. Freiberg

F. Jerry Loftis
Commissioners of Floyd County

Max Mason, Jr.
Max Mason, Jr., attorney for the
Commissioners of Floyd County

C. William Lohmeyer
C. William Lohmeyer, attorney for
Floyd County

Approved and agreed to by Board of
Commissioners of Clark County, Indiana,
and Clark County Highway Department

Samuel Bradshaw, County Attorney

Russell H. Hart, attorney for
Clark County

Approved and agreed to on behalf of
Calbert A. Cree and Marjorie Cree
and the signatures of Calbert and
Marjorie Cree witnessed by

Warren N. Eggleston

Michael J. Stapleton
Attorneys for Calbert A. Cree and
Marjorie Cree