

OCT 30 2015

FILED

STATE OF MINNESOTA

IN SUPREME COURT

A15-0111

Koua Fong Lee,

Claimant,

vs.

State of Minnesota,

Respondent.

ORDER GRANTING JOINT MOTION FOR SUMMARY DISPOSITION

It is hereby ordered that:


1. The parties joint motion for summary disposition is granted.
2. A settlement, as provided in Exhibit A attached hereto, of \$395,148.13, is hereby approved, as follows:
 - a. \$20,645.13 for criminal case legal fees/expenses pursuant to Minn. Stat. §611.365, subd. 2(a)(1).
 - b. \$84,000 for lost wages pursuant to Minn. Stat. §611.365, subd. 2(a)(1).
 - c. \$4,503 for educational expenses pursuant to Minn. Stat. §611.365, subd. 2(a)(4).
 - d. \$270,000 for mental health damages pursuant to Minn. Stat. §611.365, subd. 2(a)(3).
 - e. \$16,000 for attorney fees under Minn. Stat. §611.365, subd. 2(b).
3. The Commissioner of Minnesota Management & Budget shall submit the amount of the award to the Legislature in the next regular session, as provided by Minn. Stat. §611.367.
4. Neither the Respondent, nor Minnesota Management & Budget, nor any other past, present or future agency, entity, official, employee or representative of the State of Minnesota, shall have any obligation to pay any amount under the Imprisonment and Exoneration Remedies Act unless and until an award is approved by the Legislature, and an amount is appropriated by the Legislature for the purpose of payment of the award, as provided by Minn. Stat. §611.367. Neither the Respondent, nor Minnesota Management & Budget, nor any other past, present or future agency, entity, official, employee or representative of the State of Minnesota, shall have any authority or obligation to pay any amount other than the amount, if any, that is approved and appropriated by the

Legislature, even if that amount is less than the amount agreed upon in the parties' settlement agreement and/or the amount of this award.

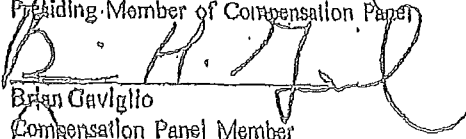
Dated: 10-27 . 2015

Dated: Oct. 19 . 2015

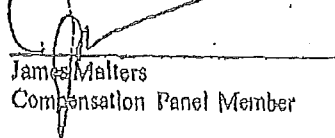
Dated: Oct. 19 . 2015



The Hon. Margaret Daly
Presiding Member of Compensation Panel



Brian Caviglio
Compensation Panel Member



James Walters
Compensation Panel Member

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS UNDER THE
IMPRISONMENT AND EXONERATION REMEDIES ACT

1. Purpose of Agreement and Release

This is an agreement made between the State of Minnesota ("Respondent"), and Koua Fong Lee ("Claimant") as a complete and final settlement of the claims described herein.

2. Description of Claim

Claimant was determined eligible for compensation under the Imprisonment and Exoneration Remedies Act ("Act") by the December 1, 2014 Order of the Ramsey County District Court, file No. 62-k8-07-000965. Claimant timely served a claim for compensation under the Act, and filed the claim on January 20, 2015.

3. Terms of Settlement

Upon complete execution of this agreement, the parties agree that they shall make a joint motion for summary disposition of Claimant's claim, as provided by Minn. Stat. § 611.364, subd. 1. The parties agree that they shall seek summary disposition of the claim on the following terms, subject to approval by the Compensation Panel:

A. The parties stipulate and agree that \$395,148.13 constitutes a fair and reasonable settlement of Claimant's claim under the Act, as follows:

- a. \$20,645.13 for criminal case legal fees/expenses pursuant to Minn. Stat. §611.365, subd. 2(a)(1).
- b. \$84,000 for lost wages pursuant to Minn. Stat. §611.365, subd. 2(a)(1).
- c. \$4,503 for educational expenses pursuant to Minn. Stat. §611.365, subd. 2(a)(4).
- d. \$270,000 for noneconomic injuries pursuant to Minn. Stat. §611.365, subd. 2(a)(3).
- e. \$16,000 for attorney fees under Minn. Stat. §611.365, subd. 2(b).

The parties agree and understand that the panel's order granting summary disposition of the claim has the same effect as an award under Minnesota Statutes §611.365. Upon the Compensation Panel's granting of the joint motion, Respondent, by and through the Commissioner of Minnesota Management & Budget, agrees that it "shall submit the amount of the final award to the legislature for consideration during the next session of the legislature," as provided by Minn. Stat. §611.367. The parties agree and understand that the claim shall be submitted at the next regular session of the Legislature. The parties also agree and understand that neither the Respondent, nor Minnesota Management & Budget, nor any other past, present or future agency, entity, official, employee or representative of the State of Minnesota, have authority to pay any amount unless and until an award is approved by the Legislature, and an amount is appropriated by the Legislature for the purpose of payment of the award. The parties further understand and agree that the payment of any award pursuant to this agreement is contingent upon approval and appropriation by the Legislature. The parties also understand and agree that neither the Respondent, nor Minnesota Management & Budget, nor any other past, present or future agency, entity, official, employee or representative of the State of Minnesota, have any authority or obligation to pay any amount other than the amount, if any, that is approved and appropriated by the Legislature, even if that amount is less than the amount agreed upon in this agreement.

B. Claimant hereby agrees to accept the sum of \$395,148.13 in settlement of all his claims as provided herein, if that amount is appropriated by the Legislature. If such amount is appropriated by the Legislature, MMB shall make payment of the \$395,148.13 in full to the Claimant within 45 days following the effective date of an appropriation by the Legislature.

If the Legislature appropriates an amount of less than \$395,148.13, Claimant shall provide written notice to Minnesota Management & Budget of whether he elects, in his sole discretion, to accept the amount appropriated. Such notice shall be provided within 45 days of the governor's signature on the bill appropriating the money or within 45 days of the end of the session during which the award was presented to the Legislature, whichever comes first.

If Plaintiff elects to accept a lesser amount appropriated, Minnesota Management & Budget shall make payment to Claimant within 45 days of the date that Claimant notifies Minnesota Management & Budget of his acceptance of the appropriated amount, or within 45 days following the effective date of the appropriation by the Legislature, whichever is later. The parties understand that the acceptance of any amount appropriated by the Legislature shall be subject to the terms and conditions of this settlement agreement.

If Claimant notifies Minnesota Management & Budget within 45 days that he elects not to accept an amount appropriated by the Legislature that is less than \$395,148.13, Paragraph 4 of this agreement shall have no effect, subject to the reservation of rights set forth in Paragraph 5. Claimant understands that if he elects not to accept the appropriated amount, he is not entitled to receive payment of any portion of any amount appropriated by the Legislature. If the Legislature fails to appropriate any money to pay Claimant's claim, Paragraph 4 shall have no effect, subject to the reservation of rights set forth in Paragraph 5. In the event that Claimant elects not to accept the amount appropriated, or in the event of a non-appropriation, the parties reserve the claims and defenses as set forth in Paragraph 5 herein.

4. **Consideration: Discharge of Claims Under the Imprisonment & Exoneration Remedies Act.**

In consideration of this agreement, the sufficiency of which is acknowledged, if the Legislature appropriates the amount of \$395,148.13, or if claimant agrees to accept a lesser appropriated amount as provided in Paragraph 3, Claimant fully and completely releases the State of Minnesota, Minnesota Management & Budget, and all other agencies of the State of Minnesota, including all of its past and present agents, officers, and employees, predecessors, and successors in interest of the State of Minnesota, in their official and individual capacities, from any and all claims which Claimant has, may have, or could have brought, under the Act, whether presently known or unknown, arising in law or in equity, which were made, or which could have been made, including but not limited to any claims for damages or other relief compensable under the Act.

5. **Reservation of rights**

The parties disagree about the effect of the Legislature's failure to appropriate any money to pay Claimant's claim, and the effect of Claimant's decision not to accept an amount less than \$395,148.13. Claimant believes that he could bring a new claim under the Imprisonment and Exoneration Remedies Act, proceed with the present claim, and/or pursue other remedies that may be available based on the Legislature's failure to appropriate any money to pay Claimant's claim or Claimant's decision not to accept an amount less than \$395,148.13. Respondent believes that the Act provides for a process by which Claimant may seek compensation based on exoneration; that proceedings under the Act terminate as provided therein; that the Legislature explicitly reserved for itself final authority to decide whether to appropriate money for said compensation, and if so, in what amount; that MMB's submission of the Panel's award to the Legislature will terminate Claimant's rights under the Act; that the Act does not provide for

multiple proceedings by a single claimant; and disputes the availability of "other remedies based on the Legislature's failure to appropriate any money to pay the claim or Claimant's decision not to accept an amount less than \$395,148.13." The parties explicitly reserve their respective claims, defenses, and arguments in the event that the Legislature fails to appropriate any money to pay Claimant's claim, or Claimant elects not to accept an appropriated amount which is less than \$395,148.13. This paragraph shall not be interpreted as a waiver of any other claim, defense and/or argument that could be made by either party in the event that the Legislature fails to appropriate any money to pay Claimant's claim, or Claimant elects not to accept an amount less than \$395,148.13.

6. Prior Agreements

The terms of this Settlement Agreement and Release supersede and terminate all prior agreements and communications between the parties.

7. Governing Law.

This Settlement Agreement and Release will be construed and enforced in accordance with the laws of the State of Minnesota.

8. Representation.

All parties acknowledge that they have been represented by counsel in this matter, have fully negotiated this Settlement Agreement and Release, and have not relied upon any statements by the other parties, their employees, or agents, insurers, or attorneys, in agreeing to this Release and Settlement Agreement.

9. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and the counterparts shall together constitute one in the same Agreement.

10. Release of Government Data.

The parties to the Settlement Agreement understand and agree that this agreement is a public record, and that the release of information pertaining to this matter is subject to the provisions of the Act, in particular Minn. Stat. § 611.364, subd. 2(b), and other applicable law.

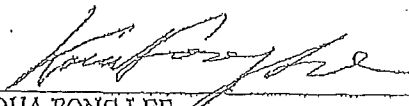
11. Tax treatment

Claimant represents and agrees that no representations as to taxability, tax treatment, or tax consequences have been made to him by the Respondent. Claimant is responsible for, and will indemnify and defend, save and hold harmless, Respondent for the payment of any and all state and federal tax liabilities and/or penalties.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth.

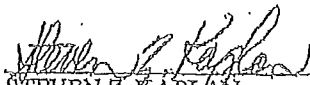
Signatures on Following Page

Dated: 10/5/15


KOUA FONG LEE

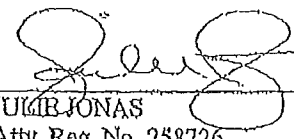
Dated: 10/4/15

FREDRIKSON & BRYON, P.A.


STEVEN Z. KAPLAN
Atty Reg. No. 53739
200 S. Sixth St., Suite 4000
Minneapolis, MN 55402
Telephone: (612) 492-7169
Attorney for Plaintiff

Dated: 10/5/15

MINNESOTA INNOCENCE PROJECT


JULIE JONAS
Atty, Reg. No. 258726
1600 Utica Avenue, Suite 140
St. Louis Park, MN 55416
Telephone: (651) 523-3152
Attorney for Plaintiff

Dated: 10/6/15

MINNESOTA MANAGEMENT & BUDGET


By: Eric C. Halstrom
Its: Deputy Commissioner

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Koua Fong Lee,

Petitioner,

vs.

ORDER ESTABLISHING
ELIGIBILITY FOR EXONEREE
COMPENSATION UNDER MINN. STAT.
611.362-611.368

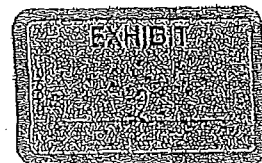
State of Minnesota,

Court File No: 62-K8-07-000965

Respondent.

FINDINGS OF FACT

1. On October 12, 2007, Petitioner was convicted of nine felony counts of Criminal Vehicular Homicide.
2. On January 8, 2008, Petitioner was sentenced to serve 96 months in prison. He was committed to the Minnesota Department of Corrections on January 11, 2008 and remained continually in custody until his exoneration on August 9, 2010. *8 yrs*
3. On August 5, 2010, Petitioner's Petition for Post-Conviction Relief was granted, and all of Petitioner's convictions were vacated and set aside and Petitioner was granted a new trial based on new evidence that was consistent with Petitioner's claim of innocence. *~ 2 yrs 7 months*



4. Petitioner was released from the custody of the Minnesota Department of Corrections on August 5, 2010.
5. On August 5, 2010, the Ramsey County Attorney's Office, acting on behalf of the State of Minnesota, dismissed all charges against the Petitioner.
6. Petitioner did not commit or induce another person to commit perjury or fabricate evidence to cause or bring about the conviction.
7. Petitioner was not serving a term of imprisonment for another crime while incarcerated on this matter.
8. The time for appeal of the order resulting in Petitioner's exoneration has expired.
9. The stipulation is brought within two years of the effective date of the enactment of Minn. Stat. Sec. 590.11 on July 1, 2014, but no less than 60 days after Petitioner was exonerated on August 5, 2010.

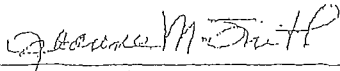
CONCLUSIONS OF LAW

1. Based on the findings listed above, the Petitioner meets the requirements of 590.11 and is eligible for compensation under Minn. Stat. 611.362-611.368 based on his exoneration and the following.
2. It is likely that the original complaint or indictment would not have been filed or sought or would have been dismissed with knowledge of all of the circumstances that were ascertained through the post-conviction process.
3. Petitioner should receive compensation in the interests of justice pursuant to Minn. Stat. 590.11 Subd. 3 (a).

IT IS HEREBY ORDERED THAT:

The stipulation of the parties is GRANTED and the Petitioner, Mr. Koua Fong Lee, is eligible for exonerat compensation under Minn. Stat. Sec. 611.362-611.368.

Date: 12/1/14



The Honorable Joanne Smith,
Judge of District Court

Koua Fong Lee

MS 611.365, subd. 2(a) minimum monetary damages of \$50,000/yr x 2.8 years= \$140,000

Statutory Damage Provision: MS 611.365, subd. 2	Statutory Damage Category	Amount of cap in statute	Amount in award
(a)(1)	Lost wages	Total cap (see below)	\$84,000
(a)(1)	Reimbursement for fees and costs associated with the criminal defense	Total cap (see below)	\$20,645.13
(a)(4)	Costs for education and training	≤35,000 (approx. cost of 4-yr degree) and total cap (see below)	\$4,503
(a)(5)	Reimbursement for child support/interest	Total cap (see below)	\$0
(a)(6)	Reimbursement for reintegrative expenses	Total cap (see below)	\$0
Total for Capped Damages	Subd. 3 limits capped damages to total of \$100,000/yr of imprisonment	(a)(1) + (4) + (5) + (6) ≤\$280,000 (2.8 years x \$100,000/yr)	\$109,148.13
(a)	Reimbursement for restitution, costs required by judgment and sentence	No cap	\$0
(a)(2)	Reimbursement for medical and dental expenses	No cap	\$0
(a)(3)	Noneconomic damages for personal physical injuries	No cap	\$0
(a)(3)	Noneconomic damages for personal injuries (nonphysical)	No cap	\$270,000
(b)	Reasonable attorney fees incurred for order of eligibility for exoneration compensation & exoneration claim	No cap	\$16,000
Grand Total			\$395,148.13