

D O C K E T S H E E T

STYLE: RICKMAN V DALTON  
ACTION: TORT/PERS INJ-VEHICULAR  
JUDGE : THOMAS E MOUNTJOY

CASE NO. 105CC3528

FILED: 8/08/05

\*\*\*\*\*

P 001

DAWN RICKMAN

ATTORNEY(S) :

THOMAS G MORRISSEY  
1650 E BATTLEFIELD RD  
STE 110  
SPRINGFIELD, MO 65804  
PHONE: 417 887-0529  
FAX: 417 887-8558

\*\* VS \*\*

D 001

JOHN MARK DALTON  
941 MARTINS BRANCH ROAD

ATTORNEY(S) :

BETH C BOGGS  
7912 BONHOMME AVE SUITE  
400  
ST LOUIS, MO 63105  
PHONE: 314 726-2310  
FAX: 314 726-2360

APT R  
FORDLAND, MO 65652

D 002

TRANSLAND INC  
R/A GLENDON WALKER  
815 SPARKS AVE  
SPRINGFIELD, MO 65802

BETH C BOGGS  
7912 BONHOMME AVE SUITE  
400  
ST LOUIS, MO 63105  
PHONE: 314 726-2310  
FAX: 314 726-2360

D 003

RAYCORE CARRIERS INC  
R/A GLENDON WALKER  
815 SPARKS AVE  
SPRINGFIELD, MO 65802

BETH C BOGGS  
7912 BONHOMME AVE SUITE  
400  
ST LOUIS, MO 63105  
PHONE: 314 726-2310  
FAX: 314 726-2360

\*\*\*\*\*

DATE DESCRIPTION 105CC3528 RICKMAN V DALTON

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D O C K E T S H E E T

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CASE NO. 105CC3528

ACTION: TORT/PERS INJ-VEHICULAR

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JUDGE : THOMAS E MOUNTJOY

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7/28/06 DEFENDANT JOHN MARK DALTON'S NOTICE OF HEARING AS TO MOTION TO ENFORCE SETTLEMENT SET FOR AUGUST 29, 2006 AT 9:00 AM; AND CERTIFICATE OF SERVICE FILED./kjh

8/07/06 PLAINTIFF'S MOTION TO COMPEL DISCOVERY AGAINST DEFENDANTS TRANSLAND, INC. AND RAYCORE CARRIERS, INC.;SUGGESTIONS IN OPPOSITION TO DEFENDANT'S MOTION TO ENFORCE SETTLEMENT; AND NOTICE OF HEARING SET FOR 8/29/06 FILED. MJE

8/29/06 PLNTF BY ATTY MORRISSEY.DEFTS BY ATTY THOMPSON.ARGUMENTS HEARD ON DEFTS' MOTION TO ENFORCE SETTLEMENT.TAKEN UNDER ADVISEMENT.TEM/MDS

8/30/06 DEFTS' MOTION TO ENFORCE SETTLEMENT IS DENIED. COPY OF DOCKET ENTRY TO ATTYS OF RECORD.TEM/MDS

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

DAWN RICKMAN

Plaintiff,

vs.

Case No. 105CC3528

JOHN MARK DALTON,  
TRANSLAND, INC., and  
RAYCORE CARRIERS, INC.

Defendants.

**SUGGESTIONS IN OPPOSITION TO DEFENDANT'S  
MOTION TO ENFORCE SETTLEMENT**

**I. STATEMENT OF FACTS**

Plaintiff agrees with the statements of fact contained in paragraphs 1 through 3 in Defendants' Motion to Enforce Settlement. Plaintiff will not comment on the remaining allegations of fact contained in defendants' motion as they are not relevant to the issues presented to this court to determine that no settlement agreement has been reached.

**II. POINT RELIED ON**

- A. No settlement agreement was reached between the parties because an agreement to settle is governed by contract law which requires a definite offer and 'mirror-image' acceptance and any acceptance that includes new or variant terms from the offer presented amounts to a counter-offer and rejection of the original offer**  
**in that defendants agreement to settle was not pursuant to plaintiff's release in her offer but pursuant to a release which included new and variant terms constituting a counter-offer and rejection of plaintiff's original offer.** Tirmenstein v. Cent. States Basement & Found. Repair, Inc., 148 S.W.3d 849, 851 (Mo.App.E.D. 2004); Pride v. Lewis, 179 S.W.3d 375, 379 (Mo.App.W.D. 2005).

**III. ARGUMENT**

- A. No settlement agreement was reached between the parties because an agreement to settle is governed by contract law which**

**requires a definite offer and 'mirror-image' acceptance and any acceptance that includes new or variant terms from the offer presented amounts to a counter-offer and rejection of the original offer**

**in that defendants agreement to settle was not pursuant to plaintiff's release in her offer but pursuant to a release which included new and variant terms constituting a counter-offer and rejection of plaintiff's original offer.** Tirmenstein v. Cent. States Basement & Found. Repair, Inc., 148 S.W.3d 849, 851 (Mo.App.E.D. 2004); Pride v. Lewis, 179 S.W.3d 375, 379 (Mo.App.W.D. 2005).

### **I. PLAINTIFF'S OFFER**

Plaintiff Dawn Rickman offered to settle her claims against defendant for \$50,000.00 pursuant to the terms of an attached Release. (See Affidavit ¶ 1, and letter of August 3, 2005, and § 537.060 R.S.Mo. Release attached to Motion to Enforce Settlement.) The offer specifically expired within sixty (60) days unless it was rejected earlier. (Id.) As seen below the Defendants rejected Plaintiff's offer with a counter-offer thereby terminating Plaintiff's offer.

### **II. DEFENDANTS COUNTER-OFFER AND REJECTION**

Defendants admit they offered to settle the claim for \$50,000.00 but pursuant to a release that differed from Plaintiff Dawn Rickman's offer. (See Affidavit ¶ 2, and document entitled "General Release and Settlement of Claim.") A side by side comparison of Plaintiff Dawn Rickman's Release and the Release provided by Defendants readily shows that the Defendants did not make a 'mirror-image' acceptance but instead attempted to make an acceptance that included new and variant terms from the offer presented constituting a counter-offer and rejection of Plaintiff Dawn Rickman's original offer. Tirmenstein v. Cent. States Basement & Found. Repair, Inc., 148 S.W.3d 849, 851 (Mo.App.E.D. 2004).

In fact, Plaintiff's counsel pointed out the new and variant terms to representatives of defendants and specifically rejected the offer. (See Affidavit ¶ 3, and Exhibit C attached to Motion to Enforce Settlement.)

Tirmenstein involved identical issues of offer and rejection based upon an original release offer and a modified release acceptance:

“As in Custom Builders, Central States' proposed release constituted an offer, and Tirmenstein's proposed modified release constituted a counter-offer. Because Central States did not accept Tirmenstein's counter-offer, no valid settlement agreement was reached between the parties. Therefore, the judgment of the trial court is reversed.”

Tirmenstein at 852.

### **III. DEFENDANT'S SECOND OFFER**

Defendants' second offer is irrelevant since Defendants' counteroffer constituted a rejection and termination of Plaintiff's original offer. However, Defendants acknowledge that Plaintiff has not accepted Defendants' second offer by ignoring it and proceeding with the underlying lawsuit. (See Affidavit ¶ 4, and Exhibit D attached to Motion to Enforce Settlement.)

### **CONCLUSION**


No settlement agreement has been reached for this court to enforce because Defendants' first proposed modified release constituted a counter-offer and rejection and Plaintiff has not accepted Defendants' second offer.

**WHEREFORE**, Plaintiff Dawn Rickman respectfully requests this court enter its order overruling Defendants' Motion to Enforce Settlement.

Respectfully submitted,

THE MORRISSEY LAW FIRM, P.C.  
Attorney for Plaintiff

By

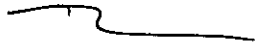
  
\_\_\_\_\_

Thomas G. Morrissey  
Missouri Bar No. 47335  
1650 E. Battlefield Road, Ste. 130  
Springfield, Missouri 65804  
Telephone: (417) 887-0529  
Facsimile: (417) 887-8558

**CERTIFICATE OF SERVICE**

I hereby certify the service of the foregoing to the following attorneys via facsimile transmission this 4<sup>th</sup> day of August, 2006:

Beth Boggs, Esq.  
Boggs, Boggs & Bates, LLC  
7912 Bonhomme, Ste. 400  
Saint Louis, MO 63105-1912  
Telephone: (888) 942-2310  
Facsimile: (314) 726-2360

  
\_\_\_\_\_  
Thomas G. Morrissey

FEB 06 2006

F:\LOK\_data\569\036\MotEnforce5ett.wpd\JST/md

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

DAWN RICKMAN,	)	
	)	
Plaintiff,	)	
	)	Case No. 105 CC 3528
v.	)	
	)	Division 4
JOHN MARK DALTON, TRANSLAND, INC.	)	
and RAYCORE CARRIERS, INC.,	)	
	)	
Defendants.	)	

**MOTION TO ENFORCE SETTLEMENT**

Come now Defendants, by and through their attorneys, Beth C. Boggs, Jeffry S. Thomsen, and BOGGS, BOGGS & BATES, L.L.C., and for this Motion, state:

1. Plaintiff offered to settle the claims asserted herein for the sum of \$50,000.00 per the terms of an attached Release. (See attached Affidavit ¶ 1, and letter of August 3, 2005 and § 537.060 R.S.Mo. Release document attached thereto).

2. Defendants' insurance company agreed to settle this claim for the sum of \$50,000.00 on the basis of the execution of a three page Release document for the protection of its insureds. (See the attached Affidavit ¶ 2, document entitled "General Release and Settlement of Claim").

3. After Plaintiff's attorney refused to sign the three page document, Defendants submitted a revised Release document and Stipulation for Dismissal of the lawsuit filed by Plaintiff's attorney on or about August 8, 2005. (See the attached Affidavit ¶¶ 3 and 4, and attachments thereto).

4. Since the letter to Plaintiff's attorney of October 5, 2005, Plaintiff has failed and refused to sign any Release or to dismiss the case with prejudice, and Plaintiff's attorney has

Respectfully submitted,

**BOGGS, BOGGS & BATES, L.L.C.**

By:

  
Beth C. Boggs, #43089

Jeffrey S. Thomsen, #21128

Boggs, Boggs & Bates, L.L.C.

7912 Bonhomme Ave., Suite 400

St. Louis, MO 63105

(314) 726-2310 Phone

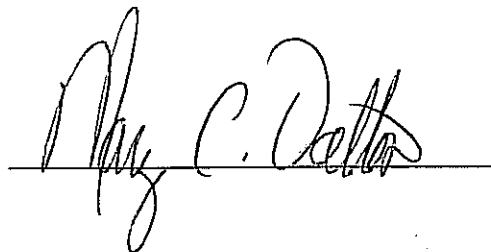
(314) 726-2360 Fax

**Attorneys for Defendant John Mark Dalton**

**CERTIFICATE OF SERVICE**

Now, on this 2 day of February, 2006, a true and correct copy of the foregoing document was forwarded to:

Thomas G. Morrissey, #47335  
THE MORRISSEY LAW FIRM, P.C.  
1650 E. Battlefield Road, Suite 130  
Springfield, MO 65804  
417-887-0529  
417-887-8558 FAX  
**Attorney for Plaintiff**

  
\_\_\_\_\_  
Mary C. Dalton



AFFIDAVIT

BARBARA E

My name is TRUSCOTT - Hammer, I am over the age of 21, and I am an authorized representative of Lincoln General Insurance Company, and I have personal knowledge of the following facts:

1. Lincoln General Insurance Company provides a policy of liability insurance coverage applicable to the claim asserted by Dawn Rickman in Case No. 105CC3528 in Division 4 of the Circuit Court of Greene County, Missouri. In connection with said claim, Lincoln General Insurance Company received a letter from attorney, Thomas G. Morrissey, dated August 3, 2005, demanding to settle the claim of Dawn Rickman for \$50,000.00 and enclosing a proposed \$ 537.060 Release, true copies of which are attached hereto, and marked as Exhibit A.

2. In response to the foregoing, Lincoln General Insurance Company agreed to settle the claim of Dawn Rickman for \$50,000.00, and sent attorney Morrissey the enclosed three page release document entitled "General Release and Settlement of Claim", marked as Exhibit B.

3. In response, attorney Morrissey sent the attached e-mail of September 8, 2005, marked as Exhibit C. Thereafter, Lincoln General Insurance Company retained the services of BOGGS, BOGGS & BATES, L.L.C., and attorney Jeffrey S. Thomsen of BOGGS, BOGGS & BATES, L.L.C., sent a letter to attorney Morrissey dated October 5, 2005, with another proposed release document and Stipulation for Dismissal With Prejudice pleading, true copies of which are attached hereto, and marked as Exhibit D.

The foregoing facts are true and accurate to the best of my knowledge, information, and belief.

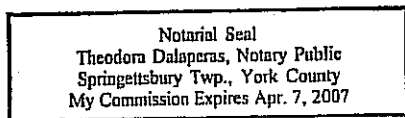
Barbara Truscott Hammer

Authorized Representative of  
Lincoln General Insurance Company

BARBARA TRUSCOTT - Hammer

[Print name]

On this 25<sup>th</sup> day of January, in the year of 2006, before me, Theodora Dalaperas, a Notary Public in and for said state, personally appeared Barbara Truscott - Hammer known to me to be the person who executed the within Affidavit, and acknowledged to me that he executed the same for the purposes therein stated:



Member, Pennsylvania Association of Notaries

Theodora Dalaperas  
Notary Public

My commission expires:

# The Morrissey Law Firm, P.C.

TELEPHONE  
(417) 887-0529

FACSIMILE  
(417) 887-8558

SUITE 130  
1650 EAST BATTLEFIELD ROAD  
SPRINGFIELD, MISSOURI 65804-3766  
thomas@morrisseylawfirm.com

FAITH EARLEY  
PARALEGAL

JAMI A. SALYERS  
PARALEGAL

-----Practice limited exclusively to injury and death litigation-----

August 3, 2005

**CERTIFIED MAIL**  
**ARTICLE NUMBER: 7003 1680 0001 9744 0439**

Lincoln General Insurance Company  
2401 Pleasant Valley Road  
PO Box 3608  
York, PA 17402

Attn: Debra Jones

RE: My client: Dawn Rickman  
Your insured: John Mark Dalton  
Date of Loss: 2/19/2002  
Claim number: 62240

Dear Ms. Jones:

We hereby demand settlement in the amount of \$50,000.00 plus taxable costs to settle Dawn Rickman's claims associated with the above claim pursuant to the terms contained in the attached release.

Pursuant to R.S.Mo. § 408.040, this offer shall remain open for a period of sixty (60) days unless rejected earlier.

My client reserves the right to file suit during the time this offer remains open.

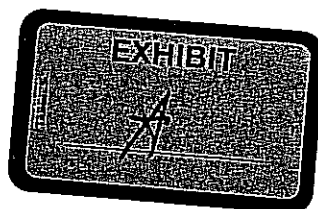
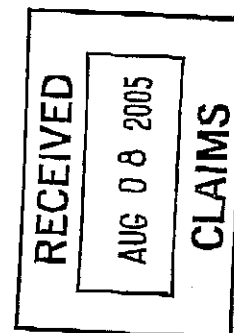
Very truly yours,



Thomas G. Morrissey

TGM/fe

cc: Dawn Rickman



**SECTION 537.060 RSMo. RELEASE**

FOR THE CONSIDERATION of *Fifty-Thousand Dollars*, (\$50,000.00), the receipt of which is acknowledged, and for all other valuable consideration recited herein, Dawn Rickman fully and forever releases and discharges only John Mark Dalton and his servants, agents, employees, successors, assigns, representatives, administrators, executors, and all other persons and organizations who are or might be liable through him or on his behalf from any and all liability, claims, demands, obligations, actions, and causes of action, including contribution, contractual or non-contractual, whether known or unknown and whether accrued or yet to accrue, for all damages which Dawn Rickman sustained as a result of a car wreck occurring in MO 125 and Route AD, Missouri on 2/19/2002.

It is acknowledged that the sum paid herein shall not be construed as an admission of liability by any of the parties herein released. In recognition that the total dollar value of all damages suffered by Dawn Rickman herein exceeds the sum being paid under this release and that such sum does not fully satisfy and compensate Dawn Rickman for all such damages, it is further agreed and is a part of the legal consideration of this agreement, that this release does not release and does expressly reserve to the undersigned all of his rights, claims, and causes of action for all damages, including the rights to pursue the same, against any party not expressly herein released as such are expressly reserved to the undersigned pursuant to Section 537.060 RSMo., and limited to that extent the terms of which are incorporated herein by reference.

As further consideration for this Agreement Dawn Rickman agrees to dismiss, with prejudice, any action filed as a result of a car wreck occurring in MO 125 and Route AD, Missouri on 2/19/2002 against John Mark Dalton with John Mark Dalton to pay all taxable costs.

The undersigned stipulate that this release and the settlement agreement will be governed by Missouri law.

I understand this release contains the entire agreement between the parties. I have carefully read this Release, and know the contents, and sign as my own free act.

**CAUTION: READ BEFORE SIGNING, THEN SIGN BELOW.**

\_\_\_\_\_  
Dawn Rickman

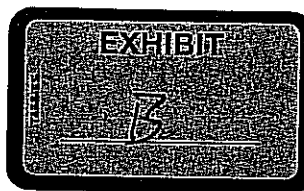
Signed and Sealed at \_\_\_\_\_ on \_\_\_\_\_, 2005.

## **GENERAL RELEASE AND SETTLEMENT OF CLAIM**

**Claim No. 62240**

For the said consideration of **Fifty Thousand and 00/100 Dollars ,(\$50,000.00)** the sufficiency and receipt of which is hereby acknowledged, the undersigned, **Dawn Rickman**, hereinafter referred to "**Releasor(s)**", and any or all of her agents, servants, successors, heirs, executors, administrators and all other related persons, firms, corporations, associates or partnerships, hereby release and forever discharge **John Mar, Dalton, Transland Inc, Raycore Carriers and Lincoln General Insurance Company**, (hereinafter referred to as "**Releasees**") and any or all of their agents, servants, successors, heirs, executors, administrators and all other related persons, firms, corporations, associates or partnerships, from any and all known or unknown, suspected or unsuspected, past, present or future claims, actions, causes of action, third-party actions, suits in law and/or equity, demands, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, rights, damages, costs, loss of services, expenses, and compensations of any kind the undersigned, **Releasor(s)** now has or may have due to any or all known or unknown, foreseeable or unforeseeable, suspected or unsuspected bodily, mental and/or emotional personal injuries, economic injuries or damages and property damage from actions done, omitted or suffered to be done and/or an accident that occurred on or about **February 2, 2002** at or near **MO 125 near Route AD, Greene County MO** . Furthermore, this release expresses a full and complete settlement of all liability claimed, and payment is not an admission of liability by any party. All rights of **Releasees**, and the rights of all persons in privity or connected with **Releasees** are reserved; including the right to pursue legal or equitable remedies, including, but not limited to claims for contribution, subrogation, property damage and personal injuries against the undersigned, **Releasor(s)**.

Furthermore, the undersigned, **Releasor(s)**, shall defend, indemnify and hold harmless **Releasees**, from and against all actual or potential claims, demands, liabilities, damages, losses and out-of-pocket expenses including reasonable attorney's fees, whether or not reduced to judgment, order or award, brought by or on behalf of the undersigned, **Releasor(s)**, or by anyone subrogated to the rights of **Releasor(s)**, caused by or arising out of the above-referenced accident, incident or omission.



Furthermore, the undersigned, **Releasor(s)**, represents, warrants and covenants that s/he is solely responsible for the satisfaction of any and all subrogation liens and the reimbursement of any and all medical expenses and wage loss benefits and any other benefits paid to him or her, or on his or her behalf arising out of the above described accident out of the proceeds of this settlement.

Furthermore, it is understood and agreed, and made a part hereof, that neither the **Releasor(s)**, his or her attorneys nor any and all of their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associates or partnerships, will in any way publicize or cause to be publicized, in any news or communications media, including but not limited to newspapers, magazines, journals, radio or television, "E-Zines" or other INTERNET publication or communication, including but not limited to electronic mail, the facts of or the terms and conditions of this Release and settlement agreement. All parties to this agreement expressly agree to decline comment on any aspect of this settlement to any member of the news media. This paragraph is intended to become part of the consideration for settlement of this claim.

Furthermore, **Releasor(s)**, personally and/or by their legal counsel, have given notice to all potential lien-holders and/or holders of subrogatable interests of this settlement.

Furthermore, **Releasor(s)**, hereby declare and represent that in making this release and agreement it is understood and agreed that **Releasor(s)** rely wholly upon **Releasor(s)** own judgment, belief and knowledge of the nature extend an duration of said claims, and that **Releasor(s)**, have not been influences to any extent whatsoever in making this release by and representations or statements regarding said injuries, or regarding any other matters made by their persons, firms or corporations who are hereby released or by any other person represent him or them, or by any physician or surgeon by him or them employed.

Furthermore, **Releasor(s)**, further state that if **Releasor(s)**, have been represented by counsel of **Releasor's**, own choosing in this matter an that **Releasor(s)**, counsel has explained this to **Releasor(s)**, the terms and effect of this release. **Releasor(s)**, have voluntarily and freely chose to enter into this settlement and believe that this settlement is in the best interests of all concerned and that **Releasor(s)**, have not been coerced or tricked by anyone into this release, nor are

Releasor(s), under any economic duress which necessitates or requires that they enter into this release.

Furthermore, this release is to be governed by statutory and common laws of the state in which the Releasor(s) maintain their permanent residence.

Furthermore, this release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE OR DEFRAUD ANY INSURER FILES AN APPLICATION OR CLAIM CONTAINING FALSE, INCOMPLETE OR MISLEADING INFORMATION SHALL, UPON CONVICTION, BE SUBJECT TO STATE AND FEDERAL CRIMINAL SANCTIONS.**

THE UNDERSIGNED RELEASOR(S) AND THEIR ATTORNEY, OR IF NOT REPRESENTED BY COUNSEL, HAVING HAD THE OPPORTUNITY TO CONSULT AN ATTORNEY, REPRESENT AND WARRANT THAT THEY HAVE READ THE FOREGOING RELEASE AND SETTLEMENT OF CLAIM, AND FULLY UNDERSTAND IT, AND VOLUNTARILY ACCEPT THE TERMS AND CONDITIONS THEREOF.

IN WITNESS THEREOF, I have hereunto set my hand(s) and seal(s) this \_\_\_\_ day of \_\_\_\_\_, 2005.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Releasor / Claimant - Dawn Rickman

: \_\_\_\_\_

: \_\_\_\_\_

State of )  
County of )

ss

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2001, by \_\_\_\_\_, who ( ) is personally known to me, or ( ) has provided \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_

( notarial seal )

**Faith Earley**

From: "Thomas Morrissey" <thomas@morrisseylawfirm.com>  
 To: "Barbara Hammer" <Barbara.Hammer@lincolngeneral.com>  
 Cc: "Faith Earley" <faith@morrisseylawfirm.com>  
 Sent: Thursday, September 08, 2005 1:51 PM  
 Subject: Re: Proposed release, Dawn Rickman

Ms. Hammer:

I cannot advise my client to accept your release. I have a problem with the following sections:

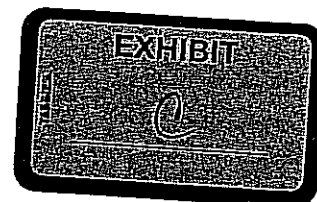
(1) "and all other related persons, firms, corporations, associates or partnerships..."

This provision makes this a general release. My client is allowed to preserve any claim she may have against any other party. My release completely protects your insured and preserves all other claims my client may have. I believe it could, under the right circumstances, be malpractice for me to agree to a general release.

(2) Furthermore, the undersigned, Releasor(s), shall defend, indemnify and hold harmless Releasees, from and against all actual or potential claims, demands, liabilities, damages, losses and out-of-pocket expenses including reasonable attorney's fees, whether or not reduced to judgment, order or award, brought by or on behalf of the undersigned, Releasor(s), or by anyone subrogated to the rights of Releasor(s), caused by or arising out of the above-referenced accident, incident or omission.

This provision places a burden on my client which she will not have once a verdict and/or judgment is rendered against your insured. She has no affirmative duty to protect your insured. I never agree to a hold harmless agreement. I can send you a copy of the law that requires notice, the form of notice and mailing certified mail return receipt requested in order for a lien to exist. All of this must be sent to you. You are the only person who really knows if a lien exists or not. I can not agree to this provision.

(3) Furthermore, it is understood and agreed, and made a part hereof, that neither the Releasor(s), his or her attorneys nor any and all of their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associates or partnerships, will in any way publicize or cause to be publicized, in any news or communications media, including but not limited to newspapers, magazines, journals, radio or television, "E-Zines" or



9/22/2005

other INTERNET publication or communication, including but not limited to electronic mail, the facts of or the terms and conditions of this Release and settlement agreement. All parties to this agreement expressly agree to decline comment on any aspect of this settlement to any member of the news media. This paragraph is intended to become part of the consideration for settlement of this claim.

This provision is unacceptable. This is a \$50,000.00 case. We have no intention of publicizing it. What would be the incentive? However, once you insert a confidentiality agreement you open my client up to potential tax consequences. The IRS has issued an opinion and ruling that has held up that the consideration given for the confidentiality agreement is taxable income. Otherwise, as a general rule, it is not taxable income. My client can not agree to this provision.

(4) Furthermore, Releasor(s), personally and/or by their legal counsel, have given notice to all potential lien-holders and/or holders of subrogatable interests of this settlement.

Once again, in order for a lien to exist, it must be sent to you certified mail return receipt requested. We are not going to create the potential for a lien where it does not exist. My client has no legal duty to notify lienholders. This is unacceptable.

Once again, my offers have been made based upon the release provided with the original demand. I believe a fair argument could be made that we settled this pursuant to the terms of my release.

My release fully protects your insured from any further claim arising out of this wreck.

Let me know if we have this case settled pursuant to the terms of my release.

Very truly yours,

Thomas G. Morrissey  
The Morrissey Law Firm, P.C.  
1650 E. Battlefield Road, Ste. 130  
Springfield, Missouri 65804

Telephone: (417) 887-0529  
Facsimile: (417) 887-8558

[thomas@morrisseylawfirm.com](mailto:thomas@morrisseylawfirm.com)

— Original Message —

From: "Barbara Hammer" <[Barbara.Hammer@lincolngeneral.com](mailto:Barbara.Hammer@lincolngeneral.com)>

To: <[thomas@morrisseylawfirm.com](mailto:thomas@morrisseylawfirm.com)>

9/22/2005



Sent: Tuesday, September 06, 2005 1:03 PM  
Subject: Proposed release, Dawn Rickman

# BOGGS, BOGGS & BATES

LLC

ATTORNEYS AT LAW

7912 BONHOMME

SUITE 400

ST. LOUIS, MISSOURI 63105-1912

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TOLL FREE (888) 942-2310

FAX (314) 726-2360

EMAIL: BBBLAWYERS@AOL.COM

WEBSITE: WWW.BBBLAWYERS.COM

October 5, 2005

BETH C. BOGGS  
T. DARIN BOGGS  
MARK R. BATES  
VICTOR T. AVELLINO  
JEFFRY S. THOMSEN\*  
MICHAEL J. LACH  
ERNEST F. BRASIER  
VINCENT H. VENKER, II

JACQUELINE E. MOORE  
DAVID W. LAWS  
KEVIN P. CLARK  
NANCY QUACKENBUSH  
MARCUS K. GNADE\*  
H. EDWARD RYALS  
JAMES P. MCCUNE, III\*  
BRADLEY J. SYLWESTER+  
JOSEPH R. MINNER\*  
MATTHEW C. MORRIS  
BRANDY L. JOHNSON  
DEBORAH L. WHITESELL\*  
BRIAN D. KENNEDY  
JOHN E. KEATH\*  
RYAN M. HATCHER

*Members of Missouri & Illinois Bars*  
\* *Member of Missouri Bar Only*  
\* *Also Member of Pennsylvania Bar*  
+ *Also Member of Kansas Bar*

Thomas G. Morrissey, #47335  
THE MORRISSEY LAW FIRM, P.C.  
1650 E. Battlefield Road, Suite 130  
Springfield, MO 65804

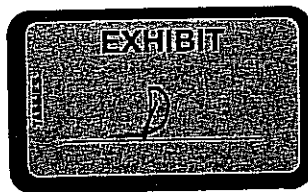
Re: Dawn Rickman v. Transland  
D/L: 2/19/02  
Our File: 569-036

Dear Mr. Morrissey:

I understand that you reached a settlement agreement with the liability insurer for Mr. Dalton and his employer, Lincoln General Insurance Company, in the sum of \$50,000.00, but there arose then a dispute regarding the language to be contained in the Release document. I further understand that you filed suit in the Circuit Court of Green County, and obtained service on Transland, Inc. and Raycore Carriers, Inc., but that you have not obtained service on Mr. Dalton.

I have made some additions to your suggested Release; and enclose a copy for your review. In addition, we would require a letter from you stating that any liens which might attach to this settlement will be satisfied out of the proceeds of this settlement. I also enclose a Stipulation for Dismissal pleading.

If it is agreeable to you and your client, please have the enclose Release and Stipulation for Dismissal properly executed and returned to me, after which I will forward the \$50,000.00 settlement draft



**Kansas City, Missouri**  
1300 N. W. JEFFERSON COURT  
KANSAS CITY, MISSOURI  
64015  
(816) 472-5599  
FAX (816) 472-0870  
EMAIL: BBBLAWYERS@AOL.COM

**St. Clair County, Illinois**  
23 S. FIRST STREET  
BELLEVILLE, ILLINOIS  
62220-2029  
(618) 746-9540  
FAX (618) 746-9541  
EMAIL: BBBLAWYERSBV@AOL.COM

**Madison County, Illinois**  
120 EAST CHURCH STREET  
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62234  
(618) 343-0031  
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**Jackson County, Illinois**  
3200 FISHBACK ROAD  
CARBONDALE, ILLINOIS  
62901  
(618) 351-8600  
FAX (618) 351-8603  
EMAIL: BBBLAWYERS@NETZERO.COM

Mr. Thomas G. Morrissey

October 5, 2005

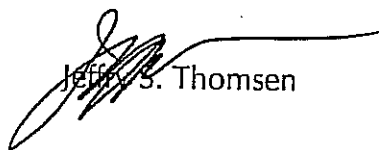
Page 2

If your client was married at the time of the accident, I will need the spouse's name so that it can be included in the Release document and on the settlement draft with the potential loss of consortium claim, or we will need to go through the steps of the spouse joinder letter. Also, if you are aware of any Medicare or Medicaid liens which would not be satisfied out of the proceeds of the settlement, please advise, as we will need to include Medicare and/or Medicaid as payees on the draft. Lastly, if we do not already have your federal tax ID number, we will need that.

Please call should you have any questions.

Very truly yours,

BOGGS, BOGGS & BATES, L.L.C.



Jeffrey S. Thomsen

JST/md  
Enc.

SECTION 537.060 R.S.MO. RELEASE

FOR THE CONSIDERATION of **Fifty Thousand (\$50,000.00) Dollars**, the receipt of which is hereby acknowledged, and for other valuable consideration recited herein, Dawn Rickman, fully and forever releases and discharges only John Mark Dalton, Transland, Inc., Raycore Carriers, Inc., and Lincoln General Insurance Company to the extent it provides insurance coverage to the aforementioned parties to there herein mentioned parties for the occurrence mentioned herein, and their servants, agents, employees, successors, assigns, representatives, administrators, executors, and all other persons and organizations who are or might be liable through them or on their behalf, from any and all liability, claims, demands, obligations, actions, causes of action, including contribution, contractual or non-contractual, whether known or unknown, and whether accrued or yet to accrue, for all damages, known and unknown, which Dawn Rickman has sustained or which Dawn Rickman may sustain in the future as a result of a car wreck occurring in MO 125 and Route RAD, Missouri on 2/19/02.

It is acknowledged that the sum paid herein shall not be construed as an admission of liability by any of the parties herein released. In recognition that the dollar value of all damages suffered by Dawn Rickman herein may exceed the sum being paid under this Release, and that such sum may not fully satisfy and compensate Dawn Rickman for such damages. IT IS FURTHER AGREED and is a part of the legal consideration of this agreement, that this Release does not release and does expressly reserve to the undersigned all of her rights, claims, and causes of action for all damages, including the rights to pursue the same, against any party not expressly herein released, as such are expressly reserved to the undersigned pursuant to § 537.060 R.S.Mo., and limited to that extent the terms of which are incorporated herein by reference.

As further consideration for this Agreement, Dawn Rickman agrees to dismiss, with prejudice, Case Number 105 CC 3528 in the Circuit Court of Greene County, Missouri, Division 4, against John Mark Dalton, Transland, Inc. and Raycore Carriers, Inc., with each party to bear their own costs.

The undersigned stipulates that this Release and the settlement agreement will be governed by Missouri law.

I understand this Release contains the entire agreement between the parties. I have carefully read this Release, and know the contents, and sign as my own free act.

**CAUTION: READ BEFORE SIGNED, THEN SIGN BELOW**

\_\_\_\_\_  
DAWN RICKMAN

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

DAWN RICKMAN,	)	
	)	
Plaintiff,	)	
	)	Case No. 105 CC 3528
v.	)	
	)	Division 4
JOHN MARK DALTON, TRANSLAND, INC.	)	
and RAYCORE CARRIERS, INC.,	)	
	)	
Defendants.	)	

**STIPULATION FOR DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties that Plaintiff's claims and causes of action herein, including Counts I, II, and III of the Petition be, and the same are hereby dismissed with prejudice to the rights of Plaintiff. Each party is to bear their own costs.

\_\_\_\_\_  
DAWN RICKMAN, Plaintiff

Respectfully submitted,

**THE MORRISSEY LAW FIRM, P.C.**

By: \_\_\_\_\_  
Thomas G. Morrissey, #47335  
1650 E. Battlefield Road, Suite 130  
Springfield, MO 65804  
417-887-0529  
417-887-8558 FAX  
**Attorney for Plaintiff**

**BOGGS, BOGGS & BATES, L.L.C.**

By: \_\_\_\_\_

Beth C. Boggs, #43089

Jeffrey S. Thomsen, #21128

Boggs, Boggs & Bates, L.L.C.

7912 Bonhomme Ave., Suite 400

St. Louis, MO 63105

(314) 726-2310 Phone

(314) 726-2360 Fax

**Attorneys for Defendants Transland, Inc. and  
Raycore, Inc.**