

## EXHIBIT "D"

IN THE CIRCUIT COURT OF THE  
THIRTEENTH JUDICIAL CIRCUIT IN AND FOR  
HILLSBOROUGH COUNTY, FLORIDA

CASE NO. 05-CA-001962 Division J

JANET GRAY and PAUL GRAY,  
husband and wife,

Plaintiffs

vs.

JAMES E. McCORMICK; McCORMICK  
INTERNATIONAL, INC., d/b/a  
McCORMICK WATER-SKI SCHOOL;  
ERICK THIFALT; and TATIANA  
NIEBUHR,

Defendants.

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**ORDER AND JUDGMENT APPROVING CONSENT JUDGMENT ON  
ASSIGNMENT, SETTLEMENT AGREEMENT AND COVENANT NOT TO EXECUTE**

Pursuant to the Joint Motion of the Plaintiffs and Defendants  
and the stipulations contained therein, it is **ORDERED AND ADJUDGED:**

1. That the Court hereby approves the parties' Assignment,  
Settlement Agreement and Covenant Not to Execute attached hereto as  
Exhibit "A".

2. That Judgment is hereby entered in favor of Janet Gray and  
Paul Gray, and against the Defendants, James E. McCormick;  
McCormick International, Inc., d/b/a McCormick Water Ski School,  
and Tatiana Niebuhr, in the amount of \$3,400,000.00 (Three Million  
Four Hundred Thousand Dollars) for Janet Gray and \$100,000.00 (One  
Hundred Thousand Dollars) for Paul Gray.

3. That the judgment amounts shall bear interest at the legal  
rate.

4. That this Order and Final Judgment shall not be executed  
against Defendants and shall not be recorded with the Secretary of

State or any other Florida agency, but that Plaintiffs shall not be foreclosed from executing against the Defendants' insurer(s).

**DONE AND ORDERED** at Tampa, Hillsborough County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
CIRCUIT COURT JUDGE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order and Final Consent Judgment was entered and conformed copies were provided to ORMAN L. KIMBROUGH, JR., ESQ., Wooten, Kimbrough & Normand, P.A., PO Box 568188, Orlando, FL 32856-8188; GUY S. HAGGARD, ESQ., Gray Robinson, P.A., 301 E. Pine Street, #1400, Orlando, FL 32801; and to LEE W. MARCUS, ESQ., 1515 Park Center Drive, #2G, Orlando, FL 32835.

\_\_\_\_\_  
JUDICIAL ASSISTANT

**ORIGINAL SIGNED**  
**MAR 1 - 2011**  
**JAMES D. ARNOLD**  
**CIRCUIT JUDGE**

ASSIGNMENT, SETTLEMENT AGREEMENT  
AND COVENANT NOT TO EXECUTE

The Parties hereto, Janet and Paul Gray ("Claimants") on the one hand; and McCormick International, Inc. d/b/a McCormick Water-ski School, James E. McCormick, Erick Thifault, and Tatiana Niebuhr (collectively "Defendants") and Mike McCormick, on the other hand; do hereby agree as follows:

1. With respect to the civil action brought by Claimants against Defendants in the Circuit Court in and for Hillsborough County, Florida, case number 05-1962 ("the Litigation"), Claimants and Defendants jointly agree and acknowledge that Claimants suffered injuries, damages and losses as a direct result of the incident described in the Amended Complaint in the Litigation. In an effort to adequately compensate Claimants for their losses, which include past and future lost wages, past and future medical expenses, and past and future pain and suffering, Defendants hereby agree that final judgment will be entered in favor of Claimants and against Defendants in the Litigation, for the sum of Three Million Five Hundred Thousand Dollars (US\$3,500,000.00). All parties agree that this amount is a fair and adequate sum for past and future damages in light of the severity of the injuries and extent of the losses. The total amount of the agreed upon final judgment is Three Million Five Hundred Thousand Dollars (US\$3,500,000.00), which is apportioned between the Claimants as follows: Three Million Four Hundred Thousand Dollars (US\$3,400,000.00) for Janet Gray and One Hundred Thousand Dollars (US\$100,000.00) for Paul Gray. It is further agreed that liability shall be joint and several among the Defendants. Moreover, the parties agree and stipulate that James E. McCormick, Erick Thifault and Tatiana Niebuhr were at all times relevant to the Litigation acting within the course and scope of their employment with McCormick International, Inc., such that McCormick International, Inc. is

vicariously liable for the acts and omissions of James E. McCormick, Erick Thifault and Tatiana Niebuhr.

2. It is agreed that Defendants and Michael McCormick hereby do give an assignment to Claimants of the right, title and interest to all benefits, proceeds, and payments owed to Defendants by ACE American Insurance Company, Inamar Recreational Marine Insurance Company the ACE Group of Companies and all affiliated entities (collectively "the Insurer") under policy number SS0679606, with effective dates of October 23, 2003 through October 23, 2004 ("the Policy"). By this assignment, Defendants and Michael McCormick assign any and all claims and causes of action they might have against the Insurer, whether contractual or extra-contractual, based on the Insurer's failure to defend and indemnify Defendants relative to the Litigation and the claims made therein. The assignment is given as a part of the consideration for this Agreement between Claimants and Defendants, and but for the assignment, Claimants would not enter into this Agreement.

3. Notwithstanding the above-described entry of final judgment and assignment of rights, it is further agreed that upon the conclusion, resolution and/or abandonment of all claims by Claimants against the Insurer, Claimants shall execute a satisfaction of judgment in favor of Defendants and a general release in favor of Michael McCormick. As a portion of the consideration for this Agreement, Claimants agree that they shall not at any time record the final judgment against Defendants, or make any attempt to satisfy the judgment against Defendants by execution, levy or otherwise. Specifically, the Parties agree that Claimants will be limited to satisfying the judgment against the Insurer pursuant to Claimants' own rights and Defendants' assigned rights, pursuant to Florida law. This Agreement shall not be

construed to impair Claimants' right and ability to file this document with the Clerk of Court of any court of competent jurisdiction in any action or lawsuit brought against the Insurer.

4. It is contemplated by the parties that this agreement is controlled by *Shook v. Allstate Insurance Company*, 498 So. 2d 498 (Fla. 4th DCA 1986) and *Steil v. Florida Physicians' Insurance Reciprocal*, 448 So. 2d 589 (Fla. 2d DCA 1984). It is further agreed that the assignment of rights to Claimants by Defendants occurred prior to any release of the Defendants, and that a separate general release and satisfaction of judgment will be executed in favor of Defendants upon the conclusion, resolution and/or abandonment of any lawsuit and/or negotiations between Claimants and the Insurer relative to the incident described in the Amended Complaint of the Litigation. This contemplates the sequence of settlement performance to occur consistent with the ruling in *Wachovia Insurance Services, Inc. v. Toomey*, 994 So.2d 980 (Fla. 2008), as it is the intent of the parties to this Agreement that the Defendants and Mike McCormick assign all of their rights against the Insurer, relative to the subject incident and the Litigation, to Claimants.

5. The Parties agree and acknowledge that this Assignment supercedes any other prior agreements between them, and that any such prior agreements are hereby null and void with no effect whatsoever. The Parties agree that this document shall be construed under Florida law.

6. Defendants have stated and represented that the Policy was in full force and effect at the time of the incident described in the Amended Complaint of the Litigation. They represent that they did not have any other insurance applicable to the incident at that time. Defendants have also stated and represented that the Insurer has failed and refused to provide a defense or indemnification in this matter up through and including the date of this

Agreement, despite Defendants having provided the Insurer with all pleadings in the Litigation in a timely manner. The Parties understand and agree that Claimants have relied upon these statements and representations in entering into this Agreement, and that falsity of these statements and representations shall be grounds for avoidance and rescission of this Agreement, as though it were never entered into by the Parties.

7. The Defendants have also confirmed that the incident occurred during a Covered Practice Session for a USA Water Ski event, and that McCormick Water Ski School was a member club of USA Water Ski at the time of the incident. As part of the consideration for this Agreement, Defendants agree that they will provide sworn testimony as to these facts to the extent necessary. To the extent that a court of competent jurisdiction determines that the incident did not occur during a Covered Practice Session or that the insurer had no obligation to provide coverage for the subject incident, such determinations shall not invalidate this Agreement.

8. As Defendants are the parties in privity of contract with the Insurer relative to the Policy, and may have information available to them that would not otherwise be available to Claimants, Defendants agree that they will provide such documentation as Claimants reasonably request in the pursuit of the assigned rights against the Insurer and shall provide testimony and other such assistance as may be required, upon the request of Claimants. This obligation of cooperation in pursuing the assigned rights and benefits, which is a part of the consideration for this Agreement, shall be continuing until such time as they are afforded a release by Claimants pursuant to the terms described herein.

Dr. Janet Gray M.D.  
Janet Gray

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this 15<sup>th</sup> day of December, 2010 by Janet Gray, who is personally known to me or has produced passport as identification, and who did take an oath.

Diana Stephens

Signature

DIANA STEPHENS

Print Name

My Commission Expires: 2015

SEAL




  
Paul Gray

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this 15<sup>th</sup> day of December, 2010 by Paul Gray, who is personally known to me or has produced Passport as identification, and who did take an oath.

  
Signature

DIANA STEPHENS  
Print Name

My Commission Expires: 2015

SEAL

James E. McCormick  
James E. McCormick,

For himself and as an authorized representative  
of McCormick International, Inc. d/b/a McCormick  
Water-ski School,

STATE OF FLORIDA

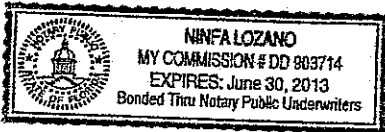
COUNTY OF Hillsborough

Sworn to and subscribed before me this 6<sup>th</sup> day of December, 2010 by James  
E. McCormick, who is personally known to me or has produced FLDL M265445381410 as  
identification, and who did take an oath.

Ninfa Lozano  
Signature

Ninfa Lozano  
Print Name

My Commission Expires: June 30, 2013



SEAL

\_\_\_\_\_  
Erick Thifault

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2010 by Erick Thifault, who is personally known to me or has produced  
\_\_\_\_\_ as identification, and who did take an oath.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

My Commission Expires:

SEAL

Tatiana Niebuhr  
Tatiana Niebuhr

STATE OF FLORIDA

COUNTY OF Sarasota

Sworn to and subscribed before me this 7th day of December,  
2010 by Tatiana Niebuhr, who is personally known to me or has produced  
DRIVER Passport as identification, and who did take an oath.

Larry R. Haag  
Signature

Larry R. Haag  
Print Name

My Commission Expires: 3/25/12

NOTARY PUBLIC-STATE OF FLORIDA  
Larry R. Haag  
Commission #DD757166  
Expires: MAR. 25, 2012  
BONDED THIRD ATLANTIC BONDING CO., INC.

SEAL

[Handwritten Signature]  
Mike McCormick

STATE OF FLORIDA

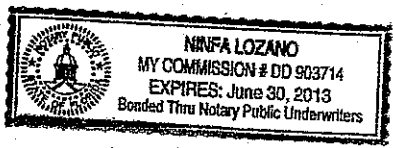
COUNTY OF Hillsborough

Sworn to and subscribed before me this 6th day of December,  
2010 by Mike McCormick, who is personally known to me or has produced  
FL DL M165557400 as identification, and who did take an oath.

[Handwritten Signature]  
Signature

Ninfa Lozano  
Print Name

My Commission Expires: June 30, 2013



SEAL