

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is executed on this 30th day of September, 2021 by John and Seana Balman, as the parents and sole heirs of the late T. Wyatt Balman, hereinafter jointly referenced as "Claimants," and the City of Wamego, Kansas.

RECITALS

- A. T. Wyatt Balman died on October 13, 2020 while swimming at the Wamego Aquatic Center Indoor Pool.
- B. John and Seana Balman are the natural father and mother, respectively, of T. Wyatt Balman and they represent that, to their knowledge, T. Wyatt Balman had no children.
- C. Claimants have provided notice to the City of Wamego of their intention to file a lawsuit seeking damages for T. Wyatt Balman's death. Claimants allege that their son suffered a medical emergency while swimming and that his subsequent death resulted from the negligence of the City and its employees.
- D. The City, its employees and elected officials, hereinafter jointly referenced as "City," through their counsel, have denied Claimants' claims and any liability associated with T. Wyatt Balman's death.
- E. The parties now wish to resolve all potential claims Claimants may have against the City resulting from T. Wyatt Balman's death pursuant to the terms of the agreement detailed herein.

RELEASE AND AGREEMENT

The parties agree as follows:

1. The City of Wamego, or its insurer, will make the following payment to resolve all claims which have been or could have been asserted by Claimants arising out of the death of T. Wyatt Balman: Three Hundred Fifty Thousand Dollars (\$350,000.00). Such payment will be made in the form of a check made out to Riemann Injury Litigation LLC Trust Account and delivered to Claimants' counsel within 14 days of Claimants' counsel's providing a signed copy of this Agreement to the City's counsel.

2. The City of Wamego agrees to adopt the Updated Policies and Regulations for Wamego Aquatic Center Indoor Pool as detailed in Exhibit 1. The City acknowledges that, by entering into this Agreement, Claimants are not taking on any responsibility for the administration of the Wamego Aquatic Center Indoor Pool or the safety training of any City employees, all of which remains solely the City's responsibility.

3. The City of Wamego agrees to jointly release the press release as detailed in Exhibit 2. The press release will be dated and issued on the second Tuesday following Claimants' counsel's providing a signed copy of this Agreement to the City's counsel.

4. The City asserts that all claims of the Claimants are without merit but the City has resolved to settle those remaining claims in order to avoid significant defense costs, expenses, and the risks of litigation.

5. Claimants hereby RELEASE AND FOREVER DISCHARGE the City from any and all claims for any and all damages, costs, attorneys fees, or other losses or expenses which Claimants have or may have against the City as pertaining to the death of T. Wyatt Balman. Claimants accept the consideration set forth in Paragraph 1 as adequate consideration in complete compromise of their claims. It is understood by the parties that this settlement is a compromise of disputed claims, and the payments made hereunder are not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

6. The Claimants agree not to disparage or knowingly induce others to make, any statement, whether written or oral, now and at any time in the future to any media or social media outlet that is disparaging, negative, critical, or adverse of the business, reputation or competence of the City or of any of its current and former employees and representatives.

7. Claimants acknowledge that the consideration received under this Agreement is intended to and does release and forever discharge the City of and from any claims for, or consequences arising from, the injuries and death of T. Wyatt Balman, and Claimants waive any right to assert in the future any claims not now known or suspected even though, if such claims were known, such knowledge would materially affect the terms of this Agreement.

8. Claimants represent that T. Wyatt Balman was not a Medicare or Social Security beneficiary and that no liens for medical treatment of T. Wyatt Balman have been filed for treatment of injuries sustained in the subject incident.

9. This Settlement Agreement and Release is executed without reliance upon any statement or representation by or on behalf of any of the parties, with the exception of the representation of Claimants that, to their knowledge: they are the sole heirs at law of T. Wyatt Balman; T. Wyatt Balman was not a Medicare or Social Security beneficiary; and, no medical liens exist for treatment of injuries of T. Wyatt Balman.

10. This Agreement has been negotiated by the respective Parties through counsel.

11. The Parties to this Agreement contemplate and intend that all payments constitute damages received on account of personal injuries, death or sickness, arising from the Incident, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended. Claimants acknowledge that the City will file an IRS form 1099 or other tax reporting form. Claimants are not relying on the advice of the City or anyone associated with them, including their attorneys, as to the taxability of any funds received pursuant to this Agreement.

12. The Parties signing this Agreement warrant and represent that no promise, inducement or agreement not expressed herein has been made to them; that this Agreement constitutes the entire agreement between the Parties; and that the terms of this Agreement are contractual and not mere recitals.

13. Claimants acknowledge responsibility for any liens which may be attributable to the settlement payment herein and agree to hold the City harmless from any such liens.

14. This Agreement shall be construed and interpreted in accordance with the laws of the State of Kansas.

15. The Parties agree that, in the event that any provision contained in this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, that provision shall be severed from the remainder of this Agreement and shall not invalidate any of the Agreement's other provisions.

16. Claimants acknowledge that each party will be responsible for his or her own attorney's fees, costs and expenses to date.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release on the dates indicated below.

CITY OF WAMEGO

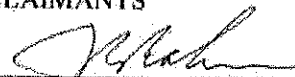
Date: 10-5-21



By: _____


CLAIMANTS

Date: Sep 30, 2021



John Balman, individually

Date: Sep 30, 2021



Seana Balman, individually

Updated Policies and Regulations for Wamego Aquatic Center Indoor Pool

- 1. Wamego Aquatic Center will have multiple Red Cross Certified Lifeguard Instructors on staff or contracted that will provide monthly training to all lifeguards.**

Prior to 2020 the WAC had only one instructor/trainer. Multiple trainers being utilized ensures certified personnel are always available for training as well as providing additional training emphasis, perspective, and quality assurance.

- 2. Monthly lifeguard training will be mandatory for all lifeguards.**

Monthly training and/or videos with comprehension questioning will be mandatory for all lifeguards. Staff will be required to track training completion and the training records will be maintained in personnel files.

- 3. Training records will be turned in and maintained by the Safety Officer.**

Safety Officer involvement will provide an additional layer of supervision to guarantee the training is being conducted. All records will be signed off by the trainer and the employee. A description of the training and/or a link to videos used in the training are to be included in the report to the Safety Officer.

- 4. Monthly safety training will be required by all staff at the WAC.**

All WAC staff, regardless of certification will be required to attend monthly safety training to include videos, comprehension question and attendance paperwork. Monthly videos.

- 5. All WAC staff are to follow the Emergency Action Plan.**

This was in place prior to the 2020 and required by staff prior to 2020. Additional training will be provided regarding the EAP. All staff will be required to sign off that they have received the EAP. All staff will be required to acknowledge in writing that they have received the EAP annually.

- 6. A lifeguard must be on the stand if there is anyone in the water. One the stand is defined as sitting on the stand on the east wall or standing/walking on the east side while using eyes to scan the water.**

This policy was in place prior to 2020 and will continue to be required. Training will take place showing scenarios as to why it is important to be on the stand on the East Wall.

7. Phones are prohibited to be used while on the lifeguard stand.

This was in place prior to 2020. Enforcement of this policy will be emphasized in supervisor training. Lifeguards will have to watch a video annually explaining why cell phones are not allowed on the stand with comprehension questions required. Required attendance will be documented.

8. Lifeguards are to keep their eyes scanning the water at all times.

This was in place prior to 2020 and will continue to be required. Training will take place to show the importance of scanning the water at all times.

9. Lifeguards should respond to any incident that they feel is abnormal or prohibited.

The lifeguards are to obtain a direct response from the person in the situation, not a bystander.

FOR IMMEDIATE RELEASE

Contact Information

For the Balman Family:

Tim J. Riemann, Attorney
Riemann Injury Litigation LLC
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For the City of Wamego:

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Fisher, Patterson, Saylor & Smith
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JOINT STATEMENT BY THE CITY OF WAMEGO AND THE FAMILY OF T. WYATT BALMAN, DECEASED

Wamego, Kansas, October 12, 2021 – Thomas Wyatt Balman (Wyatt) was an exceptional young man who was loved by many, many people. He was a graduate of Manhattan High School and an Academic All-American collegiate swimmer at Soka University in southern California.

On October 13, 2020, Wyatt, along with his sister and friends, visited the City of Wamego's Indoor Aquatic Center to swim laps. While swimming, Wyatt suffered a medical emergency and fatally drowned. After Wyatt's death, the City of Wamego made significant changes to its program for training and supervising its lifeguards and the standards that will be applied to its lifeguards in the future. A full accounting of these changes can be found on Wamego's website: <https://www.wamego.org/recreation/aquatic-center>.

It is important to both the City of Wamego and the Balman Family that the community know that neither Wyatt, nor any of the other swimmers at the pool that evening, were misbehaving or impaired in any way whatsoever.

To further support aquatic safety instruction, the Balman Family has established the Thomas Wyatt Balman Memorial Aquatics Fund. The public is invited to learn more about the fund by visiting: <https://mhkaquatics.com/in-memoriam>.

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