

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of AVIVA FRANZ and
ERIC FRANZ as Parents and Natural Guardians of
MAXWELL FRANZ,

Petitioners,

PETITION

Index No.:

to Compromise and Settle a Claim on behalf of
MAXWELL FRANZ against PETER MARAN, M.D. and
MEDICAL LIABILITY MUTUAL INSURANCE COMPANY,

Respondent.
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STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

AVIVA FRANZ and ERIC FRANZ, being duly sworn, depose and say:

1. We are the parents and natural guardians of the infant MAXWELL FRANZ, hereinafter at times referred to as "MAX", who is currently eight years of age, having been born on December 17, 2004.
2. MAX resides with us and his sister at 235 Laurel Lane, Syosset, NY 11791. This Application arises from a medical malpractice claim brought against Peter Maran, M.D., for injuries sustained by our son, MAX, as a result of negligent care rendered to him at birth.
3. MAX was born with at Lenox Hill Hospital on December 17, 2004 via cesarean section. During the cesarean section Max received a laceration of the left temporal area leaving a permanent scar on his forehead. Annexed hereto and incorporated by reference as **Exhibit "A"** are photographs showing the scar, one which was taken in June 2011 and the other taken in September 2013. Annexed

hereto and incorporated by reference as **Exhibit "B"** is a letter from William Mesibov, M.D., Max's Pediatrician stated that Max is in good health.

4. On or about June 14, 2011, your deponent, AVIVA FRANZ retained the Law Firm of Queller, Fisher, Washor, Fuchs & Kool, LLP. ("Queller, Fisher"). Annexed hereto and incorporated by reference as **Exhibit "C"** is a copy of the Retainer Agreement. The terms of the retainer provide for the reimbursement of disbursements expended and the payment of attorneys' fees on a sliding scale basis pursuant to §474-a of the Judiciary Law, subject to Court approval.
5. After reviewing the pertinent medical and hospital records, Queller, Fisher concluded there was legal merit to our son's claim and put DR. MARAN and his insurance carrier, Medical Liability Mutual Insurance Company, on Notice. This case was not put into suit.
6. On August 29, 2013, a settlement offer was made for \$62,500.00, with Medical Liability Mutual Insurance Company on behalf of PETER MARAN, M.D. Annexed hereto and incorporated by reference as **Exhibit "D"** is a letter from Medical Liability Mutual Insurance confirming the settlement.
7. After discussing the advantages of the settlement with our attorney, we have agreed to accept the settlement offer believing it to be fair and reasonable inasmuch as the prominence of MAX's scar has faded considerably. Accordingly, it is respectfully requested that the Court approve the proposed settlement in the sum of \$62,500.00.
8. Our attorneys have agreed to accept a fee of 25% of the settlement inclusive of expenses. As such, your deponents respectfully request that the Court fix and

allow attorneys fees in this case in the sum of \$15,625.00 inclusive of costs and reimbursements of disbursements leaving a net recovery of \$46,875.00 for MAX.

9. Neither your deponents nor any member of MAX's family has made a claim for damages alleged to have been suffered as a result of the same occurrence which has given rise to MAX's claim except as mentioned herein. No other action or proceeding has been commenced on behalf of our son or your deponents as a result of the defendants' negligence.
10. No prior application has been made for the relief requested herein.

WHEREFORE, your deponents respectfully request that this Court make and enter an Order granting the following relief:

- a. Approving the settlement of the above-entitled claim for \$62,500.00 with Medical Liability Mutual Insurance Company on behalf of PETER MARAN, M.D.;
- b. Authorizing payment out of the settlement to QUELLER, FISHER, WASHOR, FUCHS, & KOOL, LLP, in the sum of \$15,625.00 in full payment to them for all legal fees incurred in connection with this claim inclusive of costs and disbursements;
- c. Authorizing the sum of \$46,875.00 to be deposited into a bank to be designated by this Court to be held for the benefit of MAXWELL FRANZ, subject to further Court Order;
- d. Authorizing your deponents to execute and deliver General Releases and such other papers as may be necessary to effectuate the settlement under the terms and conditions herein;
- e. For such other and further relief as to this Court may seem just and proper.

Aviva Franz

AVIVA FRANZ

Eric Franz

ERIC FRANZ

Sworn to before me this
17th day of October, 2013

Tara R. Kelly

Notary Public

TARA R. KELLY
Notary Public, State of New York
No. 4851085
Qualified in Suffolk County
Commission Expires January 27, 20 14