

**SETTLEMENT AGREEMENT BETWEEN THE AMERICAN INSTITUTE
OF PHYSICS AND JEFF SCHMIDT**

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of February 20, 2006, by and between the American Institute of Physics (“AIP”) and Jeff Schmidt (“Schmidt”).

WHEREAS AIP employed Schmidt at *Physics Today* magazine from March 17, 1981, through May 31, 2000;

WHEREAS AIP and Schmidt disagree as to why AIP terminated Schmidt’s employment;

WHEREAS Schmidt has criticized AIP on his website,
<http://disciplinedminds.com>;

WHEREAS Schmidt has instituted legal proceedings against AIP in Case No. 04-CV-3774 in the United States District Court for the District of Maryland (“Legal Action”);

WHEREAS AIP has denied and continues to deny each and every allegation raised in the Legal Action, and in any other administrative proceeding commenced by or on behalf of Schmidt and in any other document or statement whatsoever;

WHEREAS AIP and Schmidt (collectively, “the parties”) wish to resolve this matter in accord with their negotiations held in Washington, D.C., on July 19-20, 2005, and February 2, 2006; and

WHEREAS AIP and Schmidt have now agreed to settle fully and finally all differences between them, including, but not limited to, all those claims that Schmidt has asserted in the Legal Action;

NOW, THEREFORE, in consideration of the mutual promises, covenants,

agreements, and other undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties mutually agree as follows:

I. DEFINITIONS

1. “Effective Date” means the date set forth on the first page of this Agreement.
2. “AIP” shall be defined to include the American Institute of Physics, Inc., (“AIP, Inc.”) and all currently or formerly affiliated persons or entities including, but not limited to, any present or former parent corporations, subsidiaries, divisions, affiliated entities or employee benefit plans, their executors, officers, partners, directors assigns or agents.
3. “Schmidt” shall be defined as Jeff Schmidt.

II. AIP’S AND SCHMIDT’S OBLIGATIONS

1. AIP, Inc. shall pay to Schmidt within fifteen (15) business days after the Effective Date of this Agreement, in full satisfaction of all of Schmidt’s causes of action and claims for damages, including his costs and attorneys’ fees, if any, the sum of [REDACTED] (“the Payment”), by means of certified check payable to Howrey LLP, for which the appropriate 1099 form(s) will be issued; provided however that upon timely notice to AIP, Inc. prior to such payment, payment may be made to such other entities as Schmidt or his counsel may direct.
2. The Payment represents partial consideration for a complete settlement, release and waiver of all claims of each and any kind, including, but not limited to, claims of or for alleged lost wages, benefits or other compensation, mental, physical or other personal injuries, pain and suffering, attorney’s fees, costs and any other relief that Schmidt may have in the Legal Action or any other proceeding against AIP, Inc.; and,
3. In the event that any federal, state and local taxing authority or court determines that taxes, interest and/or penalties are due and owing as a result of the Payment, said

taxes, interest and/or penalties shall be the sole obligation and liability of Schmidt, who agrees to hold harmless and to indemnify AIP, Inc. from any tax-related liability. Schmidt shall be responsible for the calculation, reporting and payment of any and all taxes that might arise in connection with this payment and AIP, Inc. shall not be liable for any taxes that might accrue or arise in connection with this payment. Schmidt shall not seek additional monies from AIP, Inc. for any taxes or other monies that may be due or for any other reason whatsoever; and,

4. Nothing in this Agreement or the furnishing of the consideration provided for herein shall be deemed or construed at any time or for any purpose as an admission by AIP, Inc. of any liability or unlawful conduct of any kind.

5. AIP, Inc. agrees that within fifteen (15) business days of the Effective Date of this Agreement, AIP, Inc. shall provide to Schmidt, through his counsel, a letter reinstating Schmidt to his position as a Senior Associate Editor at *Physics Today* magazine, in the form of Exhibit A.

6. Schmidt agrees that immediately following receipt by his counsel of the letter of reinstatement referred to in paragraph II (5) of this Agreement and no later than the end of the business day on which said letter is received, he, through his counsel, shall provide to counsel for AIP, Inc. a letter of voluntary resignation signed by Schmidt, in the form of Exhibit B. AIP shall thereafter treat Schmidt as it treats other employees who have voluntarily resigned from employment. However, Schmidt agrees not to seek future employment by AIP, Inc. The parties agree that Schmidt's reinstatement shall not entitle him to any employment or benefit rights incident to reinstatement or to employment by AIP, Inc. beyond the moment of its receipt. For purposes of benefit calculations, Schmidt's last day of employment by AIP, Inc. shall be considered to be May 31, 2000.

7. AIP states as follows: Jeff Schmidt worked as a staff editor at *Physics Today* magazine for 19 years. The American Institute of Physics, Inc., which publishes the

magazine, fired Schmidt on May 31, 2000. Throughout his 19 years of employment at *Physics Today*, Schmidt received annual performance ratings that were, without exception, either “Meets job requirements” or “Exceeds job requirements,” and his discharge was not related to these ratings. Schmidt’s employment was terminated because he claimed to have written a book on time stolen from AIP. Schmidt received much praise for his work from physicists and from his supervisors. AIP, Inc. agrees to provide an employment reference for Schmidt consistent with these facts, in the form attached hereto as Exhibit C.

8. [REDACTED]

9. Schmidt agrees that, within fifteen (15) business days of the Effective Date of this Agreement, he will remove from his website, <http://disciplinedminds.com>, documents concerning the underlying litigation and Schmidt’s allegations of AIP, Inc.’s purported wrongdoing. A complete list of all documents to be removed from <http://disciplinedminds.com> is contained in Exhibit D. Schmidt agrees that he will not post these documents in the future on his or any other website or in any other forum. Schmidt further agrees that he will not cause or direct any other individual, group or entity to post the documents listed in Exhibit D on any individual’s, group’s or organization’s website or other forum.

10. The parties agree that, to the extent that they cannot agree to a final version of Exhibit D as of the Effective Date of the Agreement, they will submit all unresolved issues relating thereto to binding arbitration by Mr. Harold Himmelman. The parties agree that counsel for AIP shall submit a position paper relating to the outstanding issues to Mr. Himmelman within seven (7) days. Counsel for Schmidt shall submit a position paper within seven (7) days of AIP’s submission.

III. DISCLOSURE AND RELATED PROVISIONS

1. AIP’s governing board members, executives, officers, directors, managers and human resources department personnel, and Schmidt agree to keep the terms of this

Agreement confidential, except as expressly permitted in this paragraph and elsewhere in this Agreement. In no event shall any party disclose the fact that there has been a settlement or any of the terms of the Agreement until seventeen (17) business days after the Effective Date of this Agreement. Each party may disclose the terms of this Agreement to their immediate family members. The parties may disclose the terms of this Agreement to their legal and/or financial advisors, or when otherwise required by law; provided, however, that in the event that any such information is disclosed, the parties agree that they will direct such person to hold such information strictly confidential.

2. AIP and Schmidt understand and agree that violation of this covenant of confidentiality will constitute a material breach of this Agreement.

3. The parties agree that a public version of this Agreement, in the form attached as Exhibit E, is not subject to the confidentiality provision set forth in the Agreement.

4. Schmidt confirms that prior to execution of this Agreement he did not discuss with or disclose to any third party (with the exception of his attorneys, financial advisors or family members) any terms of this Agreement.

IV. NON-DISPARAGEMENT

1. AIP's governing board members, executives, officers, directors, managers and human resources department personnel, and Schmidt agree to refrain from disparaging this Agreement or the other party on account of any event or circumstance relating to the Legal Action occurring prior to the Effective Date of this Agreement. However, nothing in this Agreement is meant to prevent Schmidt from quoting publicly from his book *Disciplined Minds*. In addition, nothing in this Agreement is meant to prevent AIP from criticizing Schmidt's book *Disciplined Minds*.

V. RELEASE AND DISMISSAL OF LAWSUIT AND ALL CLAIMS OF ANY KIND

1. Schmidt hereby irrevocably and unconditionally releases, acquits and

forever discharges AIP, together with all of its current and former officers, directors, employees, agents, successors and assigns, from any and all complaints, demands, liabilities, claims, damages, actions, causes of action, lawsuits and expenses, including costs and attorneys' fees, whether presently known or unknown, suspected or unsuspected, specifically including, but not limited to, any alleged violations of 42 U.S.C. (United States Code) Sections 1981, 1983, and 2000e *et seq.*, as well as any and all claims that were asserted or could have been asserted in the Legal Action, any and all breaches of contract or of the implied covenant of good faith and fair dealing, any detrimental reliance, as well as any and all other claims of any nature arising out of Schmidt's employment by AIP or the termination of his employment by AIP, that Schmidt now has, owns or holds, or that Schmidt at any time heretofore had, owned or held against AIP. Schmidt specifically confirms and covenants that any claim under the Age Discrimination in Employment Act would be time barred.

2. Within fifteen (15) business days of the Effective Date of this Agreement, Schmidt shall cause to be filed with the United States District Court for the District of Maryland a stipulation dismissing the Legal Action with prejudice.

3. AIP, Inc. hereby irrevocably and unconditionally releases, acquits and forever discharges Schmidt from any and all complaints, demands, liabilities, claims, damages, actions, causes of action, lawsuits and expenses, including costs and attorneys' fees, whether presently known or unknown, suspected or unsuspected, that AIP, Inc. now has, owns or holds, or that AIP, Inc. at any time heretofore had, owned or held against Schmidt.

VI. DISPUTE RESOLUTION

1. The parties shall use their best efforts to resolve by mutual agreement any disputes, controversies or differences that may arise from, under, out of or in connection with the Agreement. If any such disputes, controversies or differences cannot be settled between the parties, they shall be settled by final and binding arbitration to be conducted by JAMS arbitration

pursuant to the rules of the American Arbitration Association. The parties agree that, if he is available, Harold Himmelman, Esq. shall be selected to arbitrate any dispute. Upon a finding that a party breached this Agreement, the arbitrator may award actual damages plus reasonable attorneys' fees (up to \$20,000 in damages and fees upon proof acceptable to the arbitrator) to the prevailing party and no other relief, provided, however, that there shall be no limit on damages that can be awarded for violation of Section II ¶1. The decision or award of the arbitration shall be final, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by the rules of the American Arbitration Association, the procedural law of the state of Maryland shall govern.

VII. MISCELLANEOUS MATTERS

1. The parties acknowledge that this Agreement has been negotiated by the parties and their counsel, and that in executing the Agreement, they have not relied upon any representation or statement not contained herein, with regard to the subject matter, basis or effect of the Agreement. This Agreement sets forth the entire agreement between the parties, and fully supersedes all prior agreements or understandings between the parties.

2. Schmidt has been given a reasonable period of time to review this Agreement prior to the execution of this Agreement.

3. At the time of considering and executing this Agreement, Schmidt is competent to effect a knowing and voluntary general and unlimited release of all claims, and to enter into this Agreement. Schmidt is not a party to any bankruptcy, lien, creditor-debtor or other proceeding that would impair the right to settle all claims against AIP or to waive all claims that Schmidt may have against AIP.

4. The provisions of this Agreement are severable, and if any provision of it

is found unenforceable, the other provisions shall remain fully valid and enforceable.

5. This Agreement shall be interpreted in accordance with the laws of the State of Maryland to create binding and unlimited mutual general releases of all claims.

_____, this _____ day of March, 2006.

Marc H. Brodsky
American Institute of Physics

_____, this _____ day of March, 2006.

Jeff Schmidt

Acknowledging that this Agreement resolves all claims for costs and attorneys' fees on behalf of Schmidt, and attesting to the authenticity of Schmidt's signature:

_____, this ____ day of March, 2006.

Patricia G. Butler
Erik T. Koons
Chad R. Murchison
Howrey, LLP

_____, this ____ day of March, 2006.

Warren Kaplan
Robert M. Bruskin
The Washington Lawyers' Committee for Civil Rights and Urban Affairs

Attesting to the authenticity of Brodsky's signature:

_____, this ____ day of March, 2006.

Wendy Mellk
Jackson Lewis