

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9074

DATE 10-8-20

TITLE

RESOLUTION TO APPROVE A SETTLEMENT AND RELEASE AGREEMENT

BE IT HEREBY RESOLVED by the City Council of the City of Williamsport that the appropriate City Officials are authorized to execute the attached Settlement and Release Agreement between the City of Williamsport and National Fire Insurance Company of Hartford.

Approved

James M. Frank
City Clerk

Darrell Allison^{MR}
President

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between The City of Williamsport (“The City”) and National Fire Insurance Company of Hartford (“NFICH”) (the “Parties”).

WHEREAS, NFICH issued to the City a Law Enforcement Policy bearing no. LEO-4019711301 for the policy period January 1, 2014 to January 1, 2015 (the “Law Enforcement Policy”), and an Automobile Policy bearing no. MNA-4019708561 for the policy period January 1, 2014 to January 1, 2015 (the “Auto Policy”) (the “Law Enforcement Policy and the Auto Policy will be referred to collectively as the “NFICH Policies”);

WHEREAS, in May 2014, Nancy Robinson Westbrook as Administrator of the Estate of James David Robinson, deceased, filed a complaint in the Court of Common Pleas of Lycoming County, Pennsylvania against, *inter alia*, the City, docket number 14 00573, which was subsequently removed to the United States District Court for the Middle District of Pennsylvania (“M.D.P.A.”), docket number 14-1114 (the “Underlying Action”); and

WHEREAS, the Underlying Action contained tort claims and 42 U.S.C. § 1983 claims against the City and a former City employee, former police officer Jonathan Deprenda (“Deprenda”); and

WHEREAS, the City sought defense and indemnification coverage from NFICH under the Law Enforcement Policy and the Automobile Policy for the Underlying Action; and

WHEREAS, NFICH denied coverage to the City under the Law Enforcement Policy but provided defense and indemnification coverage to the City under the Auto Policy; and

WHEREAS, the Underlying Action settled on or around November 16, 2015 for \$1,000,000.00, with NFICH paying \$500,000.00 under the Auto Policy to settle the tort claims against the City and Deprenda, and the City paying \$500,000.00 to settle the 42 U.S.C. § 1983 claims against the City and Deprenda; and

WHEREAS, in December 2016, the City initiated a civil action against NFICH and CNA Insurance Companies in the Court of Common Pleas of Lycoming County, docket number 16-0520, which was subsequently removed to the M.D.P.A., docket number 4:19-cv-00170 (the “Coverage Action”); and

WHEREAS, in the Coverage Action, the City claimed that it was entitled to coverage under the Law Enforcement Policy and/or the Auto Policy for the \$500,000.00 it paid to settle the Underlying Action, and the City also pleaded a claim for bad faith under 42 Pa.C.S. § 8371 and sought pre-judgment interest, attorneys’ fees and costs, and punitive damages; and

WHEREAS, by Order dated May 16, 2019, The Honorable Matthew W. Brann issued an Order, *inter alia*, dismissing with prejudice the City’s claims under the Law Enforcement Policy; and

WHEREAS, the City and NFICH continued to dispute the City's Auto Policy claim and bad faith claim;

WHEREAS, the Parties now desire to fully and finally resolve, amicably and without litigation and subject to the terms set forth in this Agreement, the Coverage Action; and

NOW, WHEREFORE, in consideration of the mutual promises and consideration contained herein, the Parties hereby agree as follows:

1. **GENERAL RELEASE:** In consideration of NFICH's payment of \$200,000.00, the City hereby releases and forever discharges NFICH and CNA Insurance Companies, and all predecessors, successors, affiliates, subsidiaries, divisions, past, present, and future officers, directors, managing agents, agents, representatives, shareholders, partners, employees, attorneys, joint venturers, subrogees, indemnitees, members, managers, claims administrator, retrocessionaires, reinsurers and assigns, from and against any and all claims that were raised or could have been raised in the Coverage Action and any other claims that the City ever possessed or may in the future possess against NFICH and/or CNA Insurance Companies, and any predecessors, successors, affiliates, subsidiaries, divisions, past, present, and future officers, directors, managing agents, agents, representatives, shareholders, partners, employees, attorneys, joint venturers, subrogees, indemnitees, members, managers, claims administrator, retrocessionaires, reinsurers or assigns, relating to the Underlying Action under the Law Enforcement Policy, the Auto Policy, 42 Pa.C.S.A. § 8371, and any common law, insurance regulation or any other cause of action.

Provided, however, that nothing within this Agreement shall be deemed to release or discharge, or serve as a waiver or admission, as to any claim the City may have against Henry Dunn Incorporated and/or Ruth Moraski, or Zigmund CO. Ltd, as may be asserted in a separate suit against those entities, docketed at Lycoming County Civil Action No 16-0521.

2. **PAYMENT TERMS:** Within thirty (30) days after NFICH receives the fully executed Agreement, NFICH will issue a check in the amount of \$200,000.00 made payable to the City of Williamsport and its attorneys, McCormick Law Firm. The check will be mailed to the City's coverage counsel, Austin White, Esquire of the McCormick Law Firm.

3. **DISMISSAL WITH PREJUDICE:** The Parties recognize that an Order dismissing the Coverage Action has already been entered by the Court, as a result of the Mediator having filed a report with the Court that the mediation was successful. No further action is required by the City relative to the Coverage Action.

4. **NO ADMISSION OF LIABILITY:** The Parties agree and acknowledge that neither execution of this Agreement nor payment of the settlement funds constitute an admission that coverage was owed under the Law Enforcement Policy or the Auto Policy for the 42 U.S.C. § 1983 claims in the Underlying Action or that NFICH or CNA Insurance Companies violated 42 Pa.C.S.A. § 8371 or otherwise engaged in bad faith, as defined under 42 Pa.C.S.A. § 8371 or,

to the extent applicable, common law. NFICH's payment of \$200,000.00 is made simply to fully and finally resolve a disputed claim and to avoid protracted litigation.

5. **CONFIDENTIALITY**: The Parties recognize that the City is a local agency subject to public access requests under the Pennsylvania Right-To-Know law ("RTK") and thus this Agreement may be subject to a open records request. To the extent that any third party other than the City's accountants, attorneys, and professional advisors (collectively, the "Professionals") requests comments regarding the Coverage Action or this Agreement, the City agrees that the sole statement to be made shall be that "all issues were amicably resolved." In the event that the City receives a RTK Request, Subpoena, or other legal process seeking any information concerning this Agreement, the City shall give prompt written notice to NFICH's coverage counsel, Emmett E. McGowan, III, Esquire, and NFICH shall have the right to move to quash or seek a protective order, or to object to release under the RTK, and in no event may the City respond to the Subpoena or RTK request sooner than seven (7) days after providing notice to NFICH. If NFICH wishes to challenge public access to this Agreement under the RTK, it may do so at its sole expense, to include handling an appeal before the Open Records Office, and/or any subsequent appeal.

6. **WARRANTY OF EXCLUSIVE RIGHTS**. The City represents and warrants that no other person or entity has or had an interest in the claims, liens, demands, obligations, or causes of action referred to in this Agreement. The City further represents and warrants that it has the sole right and exclusive authority to execute the Agreement and to receive the consideration specified in it, and that it has not sold, assigned, transferred, conveyed, or otherwise dispose of any of the claims, liens, demands, obligations, or causes of action released in this Agreement.

7. **WARRANTY OF VOLUNTARY AGREEMENT**. The City warrants that it has entered this Agreement voluntarily and of its own accord without reliance on any inducement, promise, or representation by any other party, except those which are expressly set forth in this Agreement, and with the assistance and advice of counsel. This Agreement contains and constitutes the entire understanding and agreement between the Parties respecting the subject matter hereof and may not be changed or altered in any way except by a writing signed by all Parties.

8. **WARRANTY OF UNDERSTANDING AND ACKNOWLEDGMENT**. The City warrants that it has carefully read this Agreement with the advice and assistance of counsel, knows its contents, and freely and voluntarily agrees to all of its terms and conditions. The City warrants that it has obtained and utilized the advice of counsel with regard to this Agreement.

9. **SEVERABILITY**. If any paragraph or clause hereof shall be held invalid or unenforceable in any jurisdiction, then the meaning of such paragraph or clause shall be construed so as to render it enforceable to the extent permissible. If no permissible interpretation would save such paragraph or clause, it shall be severed from these terms and condition and the remainder shall remain in full force and effect.

10. **GOVERNING LAW.** It is hereby agreed that this Agreement shall be governed by the laws of Pennsylvania.

11. **ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST.** The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the Parties and constitute the entire agreement between them concerning the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by both Parties. Further, this Agreement shall be binding upon the executors, administrators, personal representatives, heirs, successors, and assigns of each.

12. **COOPERATION.** All Parties agree to cooperate fully, to execute any and all supplementary documents, and to take all additional steps or actions which may be necessary or appropriate to enforce this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the City's Council President, Mr. Randy Allison, on behalf of the City, and the Mayor of the City, Derek Slaughter, as shown below:

Date: _____

Mr. Randy Allison
City Council President

Date: _____

Mr. Derek Slaughter
Mayor

ATTEST:

Janice Frank, City Clerk

Date