

OnBase ID # 101153

**PRIVILEGED & CONFIDENTIAL**

Date: May 9, 2023

To: Honorable Members of the Board of Acquisition & Contract

From: John M. Nonna  
County Attorney

Re: Request for authorization to settle for fifty thousand dollars (\$50,000.00) the third-party action against the County of Westchester in the federal litigation titled *Natkin v. Fireblast Global, Inc.*, No. 21-cv-3132 (KMK) (PED) (S.D.N.Y.)

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Attached for your consideration is a resolution, which—if approved by Your Honorable Board—would authorize settlement of the third-party action asserted against the County of Westchester in the federal litigation titled *Natkin v. Fireblast Global, Inc.*, No. 21-cv-3132 (KMK) (PED) (S.D.N.Y.).

**Relevant Background**

On October 3, 2019, an explosion within a County-owned fire-training simulator (the “Trainer”) damaged the hearing and injured the back of County Fire Instructor/plaintiff Joshua P. Natkin (“Plaintiff”). The next day, Plaintiff filed a workers’ compensation claim with the County, which the County promptly granted. In March 2021, Plaintiff sued Fireblast Global, Inc. (“Fireblast”), the company that built the Trainer in 2007. Aside from Fireblast, no other defendant was named in the original complaint.

On December 17, 2021, Fireblast impleaded both the County and the Trainer’s original owner, the City of Yonkers (“Yonkers”). The jurisdictional hook for the third-party practice centered on Fireblast’s maintenance visit agreements (the “Maintenance Agreements”), each of which included a defense and indemnification provision. In the County’s Maintenance Agreement (the “County Maintenance Agreement”), that provision obligates the County to “indemnify, defend and hold harmless [Fireblast] . . . from and against any . . . liabilities of any kind . . . related to or arising out of the condition, maintenance, repair, performance or suitability of [the] Trainer” provided that the County uses “an unapproved service provider.”

After fact discovery closed, the record evidence strongly indicated that the County never used an unapproved service provider. Therefore—given the County Maintenance Agreement and the statutory shield against employer liability (*see* N.Y. Workers’ Compensation Law § 11)—it was hoped that the case would ultimately be dismissed as against the County on a summary judgment motion. Unfortunately, the anticipated expert discovery expenses proved substantial and

unavoidable; the County could not risk foregoing Fireblast's proposed destructive testing, and the expense of testing started at thirty thousand and 00/100 dollars (\$30,000.00).

#### Proposed Settlement

On April 6, 2023, the County and Fireblast agreed in principal to settle the matter for fifty thousand and 00/100 dollars (\$50,000.00). The proposed settlement represents a potential savings of litigation expenses and expert expenses—as well as an accounting for the vicissitudes of litigation generally motion practice specifically.

#### Parties' Counsel

Plaintiff is represented by Robert Sheps, Esq. of SHEPS LAW GROUP P.C., 25 High Street, Huntington, NY 11743. Fireblast is represented by Lori F. Graybow, Esq. of KIERNAN TREBACH LLP, 40 Exchange Place, Suite 1600, New York, NY 10005. Yonkers is represented by Joseph Allan Churgin, Esq. of SAVAD CHURGIN, 55 Old Turnpike Road, Suite 209, Nanuet, NY 10954.

#### Summation

In light of the amount of anticipated litigation expenses—and, in particular, expert expenses—a settlement of fifty thousand and 00/100 dollars (\$50,000.00) is proposed. All parties have indicated that such a settlement would release the County from the instant litigation. Additionally, such proposed settlement is inclusive of attorney's fees and exclusive of the County's workers' compensation lien (which will be handled in separate litigation before the Westchester County Board of Legislators).

JMN/stc

## RESOLUTION

Upon the communication of the County Attorney, it is hereby:

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit titled *Natkin v. Fireblast Global, Inc.*, No. 21-cv-3132 (KMK) (PED) (S.D.N.Y.) by payment from the County of Westchester to Fireblast Global, Inc. in an amount not to exceed fifty thousand and 00/100 dollars (\$50,000.00); and it is further

RESOLVED, that the County Attorney or his designee is authorized to execute any documents necessary to implement this resolution.

Original Agreement	\$
First Amendment	\$
<b>This Amendment</b>	<b>\$</b> _____
TOTAL	\$

Account to be  
Charged/Credited

Fund	Dept.	Major Program, Program & Phase Or Unit/Sub Unit	Object/ Sub- Object	Trust Account	Dollars
615	59	0699/4310	4280/04		50,000.00

Budget Funding Year(s) \_\_\_\_\_ 2019 \_\_\_\_\_ Start Date \_\_\_\_\_ 1/1/2019 \_\_\_\_\_ End  
Date \_\_\_\_\_ 12/31/2019 \_\_\_\_\_  
(must match resolution)

Funding Source

Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

**\$ 50,000.00** \_\_\_\_\_

Federal Aid \_\_\_\_\_

(must match resolution) Other \_\_\_\_\_ 6N  
fund \_\_\_\_\_ \$50,000.00 \_\_\_\_\_