



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 18-1195, Version: 1

Dept/ Agency: Law

Action: () Ratifying (X) Authorizing () Amending

Purpose: Settlement of Bankruptcy Litigation

Docket No.: Adversary Proceeding No. 16-01365

Claimant: City of Newark and Hon. Donald M. Payne, Jr.

Claimant's Attorney: Law Office of Alan Dexter Bowman, Esq.

Attorney's Address: 2 Gateway Plaza, Newark, New Jersey 07102

Settlement Amount: \$29,000.00

Funding Source: N/A

Additional Comments:

Resolves litigation in the United States Bankruptcy Court for the District of New Jersey captioned Newark Watershed Conservation and Development Corporation v. RSUI Indemnity Company, et al., Adversary Proceeding No. 16-01365, which seeks a judicial determination that RSUI is obligated to defend and indemnify Hon. Donald M. Payne, Jr., and others in connection with Newark Watershed Conservation & Development Corporation v. Watkins-Brashear, et al., Adversary Proceeding No. 15-02397-VFP. Settlement results in payment of a settlement sum to the City.

Invitation: Corporation Counsel (date to be entered by Clerk's Office)

WHEREAS, RSUI Indemnity Company ("RSUI") issued to the Newark Watershed Conservation and Development Corporation (the "Watershed" or the "NWCDC"), its directors and officers, liability insurance policy no. HP645308, which was effective for the period March 1, 2012 to March 1, 2014 (the "RSUI Policy" as defined herein); and

WHEREAS, former Newark Municipal Council President and present Congressman the Honorable Donald M. Payne, Jr. ("Payne") is a former member of the Watershed's Board of Trustees; and

WHEREAS, since the Municipal Council appointed Payne to the Watershed's Board of Trustees, the City provided Payne with legal representation; and

WHEREAS, the New Jersey State Comptroller's Office conducted an investigation into alleged financial improprieties taking place at the NWCDC (the "Comptroller's Investigation"), which resulted in a February 19, 2014 report; and

WHEREAS, the United States Attorney for the District of New Jersey conducted a criminal investigation into alleged financial improprieties taking place at the NWCDC (the "U.S. Attorney's Investigation"); and

WHEREAS, on or about January 2, 2015, the Watershed filed for federal bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey pursuant to Case No. 15-10019 (the "Bankruptcy Proceedings"); and

WHEREAS, on or about November 6, 2015, the Watershed commenced litigation against Payne and others in the Bankruptcy Proceedings captioned Newark Watershed Conservation & Development Corporation v. Watkins-Brashear, et al., Adversary Proceeding No. 15-02397-VFP (the "Underlying Action"); and

WHEREAS, prior to the Underlying Action, the Watershed reported certain facts and circumstances to RSUI that could give rise to a claim against Payne and others for which coverage could be sought under the RSUI Policy; and

WHEREAS, on or about May 23, 2016, the Watershed commenced litigation in the United States Bankruptcy Court for the District of New Jersey against RSUI, Payne and others captioned Newark Watershed Conservation and Development Corporation v. RSUI Indemnity Company, et al., Adversary Proceeding No. 16-01365, seeking a judicial determination that RSUI is obligated to defend and indemnify Payne and others in connection with the Underlying Action (the "Coverage Action"); and

WHEREAS, on or about August 19, 2016, Payne asserted a cross-claim against RSUI in the Coverage Action, seeking, among other things, a judicial declaration that RSUI must defend and indemnify Payne under the RSUI Policy in connection with the Underlying Action; and

WHEREAS, RSUI disclaims any duty to defend or to indemnify Payne in connection with the Underlying Action; and

WHEREAS, notwithstanding that RSUI disclaims any duty to defend or to indemnify Payne or others in the Underlying Action, RSUI procured a settlement in the Underlying Action pursuant to which the Watershed executed a release in favor of Payne with respect to the claims asserted against him in the Underlying Action (the "Underlying Settlement"); and

WHEREAS, pursuant to the Underlying Settlement, the claims asserted against Payne, by the Watershed, in the Underlying Action, have been dismissed with prejudice; and

WHEREAS, notwithstanding the Underlying Settlement, Payne and/or the City incurred certain fees, costs and expenses in the defense of Payne in the Underlying Action (the "Defense Costs"); and

WHEREAS, the Parties continue to disagree as to whether RSUI has a duty to pay or to reimburse the Defense Costs; and

WHEREAS, the Parties desire to resolve both the claims asserted in the Coverage Action and all of Payne's other claims under the RSUI Policy, including but not limited to, Payne's claim for payment or reimbursement of Defense Costs, in order to avoid the expense, inconvenience and uncertainty of further litigation in the Coverage Action or otherwise; and

WHEREAS, the Parties have determined that it is in their respective best interests to amicably resolve all of Payne's claims under the RUSI Policy and his claims for payment or reimbursement of Defense Costs with the attached Settlement Agreement and Mutual Release ("Settlement Agreement"); and

WHEREAS, as part of the settlement between the Parties, RSUI agrees to pay Payne (who will thereafter pay the City), within thirty (30) days of the execution of the Settlement Agreement by all Parties, the amount of Twenty-Nine Thousand Dollars and Zero Cents (\$29,000.00) ("Settlement Sum") in satisfaction of the settlement terms; and

WHEREAS, in return for the mutual promises of the Parties, RSUI agrees to release and forever discharge Payne and the City from any and all claims, duties, demands of any kind, known or unknown, under the RSUI Policy; and

WHEREAS, within five (5) days after receipt of the Settlement Sum, counsel for Payne shall execute a Notice of Voluntary Dismissal in the Coverage Action, which will dismiss, with prejudice and without costs, Payne's cross-claims asserted against RSUI; and

WHEREAS, the Corporation Counsel, based upon all facts and circumstances presented, deems it is in the best interest of Payne and the City of Newark to resolve this matter without the need for additional litigation in the Coverage Action by payment of the proposed Settlement Sums and execution of the Settlement Agreement and Release.

NOW, THEREFORE, BE IT RESOLVED BY MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Corporation Counsel is hereby authorized on behalf of the City of Newark to execute and accept the terms of the Settlement Agreement and Mutual Release, attached hereto.
2. In accordance with the terms of the Settlement Agreement and Mutual Release, RSUI agrees to pay Payne (who will thereafter pay the City), within thirty (30) days of the execution of the Settlement Agreement by all Parties, the amount of Twenty-Nine Thousand Dollars and Zero Cents (\$29,000.00) in satisfaction of the settlement terms.
3. Within five (5) days after receipt of the Settlement Sum, Counsel shall execute a Notice of Voluntary Dismissal in the Coverage Action, which will dismiss, with prejudice and without costs, Payne's cross-claims asserted against RSUI.
4. The Corporation Counsel shall file a copy of the adopted Resolution and fully executed Settlement Agreement and Mutual Release in the Office of the City Clerk.

STATEMENT

This Resolution authorizes the Corporation Counsel, on behalf of the City of Newark, to enter into a Settlement Agreement and Mutual Release to resolve the matter filed in the United States Bankruptcy Court for the District of New Jersey captioned Newark Watershed Conservation and Development Corporation v. RSUI Indemnity Company, et al., Adversary Proceeding No. 16-01365, by payment to the City of \$29,000.00 in satisfaction of the settlement terms. In exchange counsel shall execute a Notice of Voluntary Dismissal which will dismiss, with prejudice and without costs, former Watershed Board Trustee Donald M. Payne, Jr.'s cross-claims asserted against RSUI.