

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

November 4, 2022

Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request for Authorization to Settle the Lawsuit of *County of Westchester v. Unity Mechanical Corp., et al.*, pending in the Supreme Court of the State of New York, Westchester County Index No. 59897/2016

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the settlement of the lawsuit entitled *County of Westchester v. Unity Mechanical Corp., The Netherlands Insurance Company, and Excelsior Insurance Company*, for \$2,100,000.00, in addition to monies already received and recovered, as set forth below.

Your Honorable Board authorized the County Attorney's Office to commence this action by Act 140-2016, and sought reimbursement from the defendants for defense and indemnification costs in a related action involving an injury to Joseph Gragnaniello, an employee of Unity Mechanical Corp. ("Unity"). Gragnaniello suffered extensive personal injuries after a ladder fall on County property, and sued the County under N.Y. Labor Law § 240. The County demanded defense and indemnification from both Unity and their insurance carrier, Liberty Mutual.¹ Neither Unity nor Liberty provided defense or indemnification, leaving the County to litigate the Gragnaniello action on its own. The County was ultimately found to be strictly liable under Labor Law § 240, leaving a question for trial regarding damages. In the interim, the County commenced this action seeking coverage from Unity and Liberty. After commencement of this action, the County settled the

¹ The insurance policies were underwritten by Netherlands and Excelsior, as the primary and excess carriers, both of whom are under the Liberty Mutual umbrella.

Gragnaniello action for \$2,875,000.00, which was approved by your Honorable Board by Act 40-2017.

The County has vigorously litigated this action utilizing both in-house counsel and outside counsel from the firm of Bleakley Platt & Schmidt, LLP. During the course of the litigation, Excelsior was granted summary judgment, with the trial court finding that the County was not covered as an additional insured under the excess policy. However, the County won summary judgment on liability against both Unity and Netherlands. The trial court found that both Unity and Netherlands had a duty to defend and indemnify the County, and rejected counter-arguments from Unity regarding unsubstantiated negligence by the County. The only issues remaining for trial were the reasonableness of the County's settlement, and the amount of attorneys' fees the County was entitled to recover.

Subsequent thereto, the County settled with Netherlands. This settlement was for the full amount the County could legally obtain against Netherlands—the policy limit, statutory interest, and defense costs, in the amount of \$1,415,000.00.² Unity appealed from the partial grant of summary judgment in favor of the County, which is still pending. Further, the case had multiple settlement conferences before two judges of the Supreme Court, and the parties continued to have settlement discussions while the matter was set for trial. Ultimately, the parties have reached a settlement in the amount of \$2,100,000.00, subject to this Honorable Board's approval.

If the County were to proceed to trial in this matter, a jury will be presented with the question of whether the County's payment of \$2,875,000 to Gragnaniello was reasonable. A jury would have the opportunity to decide that this amount, or some lesser amount, was reasonable—Unity, which is being covered by its insurance through Liberty Mutual, would then be required to pay the County what the jury found to be reasonable (except for a credit of \$1,000,000 that Netherlands already paid), plus statutory interest and attorneys' fees in this action. Unity, in challenging the reasonableness of the settlement, has presented an expert who claims that a reasonable settlement would have been between \$1,250,000 and \$1,500,000. While the County believes there are significant flaws in Unity's expert's analysis, there is a risk at trial that a jury would believe that the settlement amount of \$2,875,000 was excessive and could find a reasonable settlement much lower. Additionally, there is a risk that some portion of Unity's appeal is granted and the matter is remanded for a second trial with liability questions yet to be decided.


By accepting this settlement, the County will have ultimately recovered a total of \$3,515,000.00. This amount more than makes the County whole—it covers the original \$2,875,000 paid, the County's defense costs and attorneys' fees in both the Gragnaniello action and this action, as well as approximately \$200,000 in interest. Additionally, waiting for a resolution of an appeal (particularly if there was a new appeal post-trial) could mean waiting years given the current pace at the Appellate Division.

Therefore, I am requesting that this Board approve the accompanying Act authorizing the settlement of all remaining claims in the action *County of Westchester v. Unity Mechanical Corp., The*

² This settlement was not presented to this Honorable Board, as Section 158.11(5) of the Laws of Westchester County allows the County Attorney to accept a settlement in favor of the County for the full amount claimed by the County.

Netherlands Insurance Company, and Excelsior Insurance Company through the payment of \$2,100,000.00 to the County.

Very truly yours,


JOHN M. NONNA
Westchester County Attorney

JMN/jra
Enclosure

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the lawsuit of *County of Westchester v. Unity Mechanical Corp., The Netherlands Insurance Company, and Excelsior Insurance Company*, through the payment of \$2,100,000.00 to the County.

This Honorable Board authorized the County Attorney's Office to commence this action by Act __-2016, and sought reimbursement from the defendants for defense and indemnification costs in a related action involving an injury to Joseph Gragnaniello, an employee of Unity Mechanical Corp. ("Unity"). The County settled the Gragnaniello action for \$2,875,000.00, which was approved by Act 40-2017.

Your Committee is informed that the County won summary judgment on liability against both Unity and its primary insurance carrier Netherlands. The trial court found that both Unity and Netherlands had a duty to defend and indemnify the County, and rejected counter-arguments from Unity regarding unsubstantiated negligence by the County. Your Committee is further informed that the only issues remaining for trial were the reasonableness of the County's settlement, and the amount of attorneys' fees the County was entitled to recover.

Your Committee notes that subsequent thereto, the County settled with Netherlands for the full amount the County could legally obtain against Netherlands—the policy limit, statutory interest, and defense costs—and therefore the approval by this Board was not required.

Your Committee is informed that Unity has appealed from the partial grant of summary judgment in favor of the County, which is still pending and the matter has been set for trial.

Your Committee is told that the parties have reached a settlement in the amount of \$2,100,000.00. When combined with the settlement with Netherlands, this more than makes the County whole—it covers the original \$2,875,000 paid, the County's defense costs and attorneys' fees in both the Gragnaniello action and this action, as well as approximately \$200,000 in interest. Alternatively, if the County proceeds to trial, it could risk a finding by the jury that results in a significantly lower recovery by the County.

The County Attorney has recommended that the County accept this settlement as a fair and equitable resolution of this action. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

Dated: White Plains, New York
, 2022

COMMITTEE ON

ACT NO.

2022

AN ACT authorizing the County Attorney to settle the lawsuit of *County of Westchester v. Unity Mechanical Corp., et al.*, pending in the Supreme Court of the State of New York, Westchester County Index No. 59897/2016

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to settle the lawsuit of *County of Westchester v. Unity Mechanical Corp., et al.*, by acceptance of a payment to the County in an amount of \$2,100,000.00

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement: Unity Mechanical NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense N/A

Total Current Year Revenue \$ 2,100,000

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 6N: 615-59-0693-3710-4280/04

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount \$2,100,000

Describe: An Act authorizing the County Attorney to settle the lawsuit with Unity

Mechanical Corp.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Debra Ogden

Title: Sr. Budget Analyst

Department: Budget

Date: November 4, 2022

Reviewed By: _____

Budget Director

Date: 11/4/22