

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 16, 2016

Consent       Regular  
 Public Hearing

Department  
Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

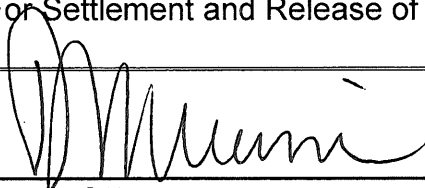
**Motion and Title:** Staff recommends motion to approve: a settlement proposal in the lawsuit styled Palm Beach County Board of County Commissioners, Plaintiff, v. Safety National Casualty Corporation, Defendant, In The United States District Court, Southern District Of Florida, case number 15-CIV-80262, wherein the Defendant, Safety National Casualty Corporation, has conditionally agreed to pay Palm Beach County \$660,000.00, inclusive of attorney's fees and costs, to resolve a breach of contract lawsuit.

**Summary:** From 1986 through 1988 Palm Beach County ("County") purchased excess workers compensation insurance from Defendant, Safety National Casualty Corporation ("Safety National"). For the 1988 policy period, the County had a \$350,000.00 SIR ("Self Insured Retention"), meaning that the County was responsible for paying out the first \$350,000.00 in workers' compensation benefits, such as indemnity (wages) and medical. As of May 2016, the County has paid out in excess of the SIR approximately \$600,726.00 in worker's compensation benefits to a former County Fire Rescue employee, Larry Aversano, who was injured on the job while working for the County in 1988. The County requested reimbursement from Safety National. In October 2013, Safety National denied the County's reimbursement request, and the County filed suit in February 2015. In May 2016, the parties attended Court ordered mediation. Subsequently, the parties reached a tentative settlement agreement with the following terms and conditions: 1) The settlement proposal is subject to County approval; 2) Safety National shall pay the County \$660,000.00, inclusive of attorney's fees and costs; 3) the County shall execute a release in favor of Safety National and dismiss its lawsuit with prejudice. Countywide (AP)

(continued on page 3)

**Attachments:**

- 1. Safety National Proposal For Settlement and Release of Claims

Recommended by:  Date 8/5/16  
County Attorney

Approved by: N/A Date \_\_\_\_\_

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(660,000)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b><u>(660,000)</u></b>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget?                      Yes    No   x  

Budget Account No.:    Fund 0001 Department 760 Unit 7601 RSource 6999

Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

*[Handwritten Signature]*  
 \_\_\_\_\_  
 OFMB  
 8/8/16

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Contract Development and Control  
 8/9/16

**B. Legal Sufficiency:**  
*[Handwritten Signature]*  
 \_\_\_\_\_  
 Senior Assistant County Attorney

**C. Other Department Review:**  
 \_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

**Background and Justification:** (continued from page 1) The County purchased excess workers' compensation insurance from Safety National for the policy period January 1, 1988 through January 1, 1989. The policy contained a \$350,000.00 SIR. The policy provides that if the County paid a loss in excess of the SIR for a claim which originated or occurred during the policy period, that Safety National shall reimburse the County for the amount paid in excess of the SIR.

A former County Fire Rescue employee, Larry Aversano, injured his lower back while in the course and scope of his employment with the County. The County paid him workers' compensation benefits for these work related injuries. Subsequently, Mr. Aversano, through his attorney, requested additional workers' compensation benefits, ultimately filing, in 1999, a petition for Permanent Total Disability ("PTD") workers' compensation benefits. After investigating this claim, the County accepted Mr. Aversano as PTD. As of May 2016, the County has paid Mr. Aversano approximately \$600,726.00 in medical and indemnity workers' compensation benefits in excess of the \$350,000.00 SIR. Mr. Aversano is 67 years old and continues to receive medical and indemnity workers' compensation benefits paid for by the County. Based upon his life expectancy, Mr. Aversano could potentially receive future indemnity and medical benefits in excess of \$600,000.00.

The County requested reimbursement from Safety National for the amount of workers' compensation benefits paid to Mr. Aversano. Safety National denied coverage in October 2013, citing numerous alleged violations of the insurance policy by the County. After the lawsuit was filed in February 2015, the parties engaged in extensive deposition and document discovery. After Court ordered mediation in May 2016, Safety National served the County with a Proposal For Settlement ("PFS") asserting that Safety National will pay the County \$660,000.00 to fully and finally resolve the lawsuit.

The PFS subjects the County to additional risk in this lawsuit. The County would be required to pay Safety National the reasonable attorney's fees and costs it incurred from the date the offer was served, which could potentially exceed \$100,000.00.

Settlement of this lawsuit is in the County's best interests based upon a consideration of the facts and legal issues raised in discovery and the pleadings; substantial expert witness fees and litigation costs; attorney's fees and costs; as well as personnel time. It is therefore recommended that the Board approve the PFS and execute the Release Of Claims in favor of Safety National.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PALM BEACH COUNTY BOARD OF  
COUNTY COMMISSIONERS, a political  
subdivision of the State of Florida,

Plaintiff,

CASE NO.: 15-CV-80262

vs.

SAFETY NATIONAL CASUALTY  
CORPORATION, a foreign for-profit  
Corporation,

Defendant. /

**DEFENDANT, SAFETY NATIONAL CASUALTY CORPORATION'S,  
PROPOSAL FOR SETTLEMENT TO PLAINTIFF,  
PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

Defendant, SAFETY NATIONAL CASUALTY CORPORATION ("SNCC"), pursuant to Rule 1.442 of the Florida Rules of Civil Procedure and Florida Statute § 768.79, hereby serves this Proposal of Settlement to Plaintiff, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS ("PBCBOCC"), and offers to pay it an amount of SIX HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$660,000.00), as a full and final settlement of those claims asserted in Plaintiff's Complaint. This amount shall be inclusive of any and all damages, costs, taxable costs, interest and attorneys' fees that the PBCBOCC has claimed or may claim in connection with the allegations set forth in its Complaint. SNCC further states as follows:

1. THE PARTY MAKING THE PROPOSAL: The party making this proposal is Defendant, SAFETY NATIONAL CASUALTY CORPORATION.

2. THE PARTY TO WHOM THE PROPOSAL IS BEING MADE: The party to whom the proposal is being made is Plaintiff, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS.

3. A PROPOSAL TO RESOLVE ALL DAMAGES: This proposal is being made as an offer to resolve all damages that would otherwise be awarded in a final judgment in this action, subject to subdivision (F) of Rule 1.442(c)(2) of the Florida Rules of Civil Procedure.

4. RELEVANT CONDITIONS: This Proposal for Settlement is conditioned upon the PBCBOCC dismissing the above-styled action, with prejudice, and executing the Release attached hereto as Exhibit "A" in favor of SNCC and its officers, directors, administrators, managers, employees, agents, representatives, attorneys, affiliates, privies, assigns, predecessors and successors for any and all claims, actions, causes of action, damages, costs, losses or expenses that PBCBOCC raised or could have raised, relating to or arising out of the allegation set forth in its Complaint.

5. As set forth in the *ad damnum* clause in its Complaint, the PBCBOCC is asserting a demand for attorneys' fees in the above-styled action. This Proposal for Settlement is intended to include any and all elements of damages the PBCBOCC may be entitled to recover in connection with the claims set forth in its Complaint, including its pending claim for attorneys' fees.

6. The PBCBOCC has not stated a claim for punitive damages in its Complaint, nor has it sought leave to pursue such a claim for punitive damages. Nevertheless, this Proposal for Settlement is intended to include any and all elements of damages the PBCBOCC may be entitled to recover in connection with its claims against SNCC and fully and finally resolve any alleged damages that it may be entitled to recover or otherwise pursue in connection with the

claims set forth in its Complaint, including any possible claim for punitive damages, whether asserted or unasserted in its Complaint.

7. This proposal is to be considered as a separate and distinct offer which is extended in the alternative, and not in addition to, any other Proposal of Settlement which may be made or which has been made to the PBCBOCC by SNCC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail delivery this 7<sup>th</sup> day of July, 2016, to: **ANDREW PELINO, ESQUIRE**, Assistant County Attorney, Litigation Section, 300 North Dixie Highway, Third Floor, West Palm Beach, Florida 33401 at e-service: **apelino@pbcgov.org**; **ldennis@pbcgov.org** (counsel for Plaintiff).

Respectfully submitted,

HILL, RUGH, KELLER & MAIN, P.L.

/s/ Steven R. Main  
STEVEN R. MAIN  
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390 N. Orange Avenue, Suite 1610  
Post Office Box 2311  
Orlando, Florida 32802-2311  
(407) 926-7460  
(407) 926-7461 facsimile  
smain@hrkmlaw.com  
filings@hrkmlaw.com  
Attorney for Defendant

## RELEASE OF CLAIMS

THIS INSTRUMENT ("Release"), is executed by a duly authorized representative of the **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS** ("the County"), in favor of **SAFETY NATIONAL CASUALTY CORPORATION**, as well as its officers, directors, administrators, managers, employees, agents, representatives, attorneys, affiliates, privies, assigns, predecessors and successors ("SNCC").

### RECITALS:

A. WHEREAS, SNCC and the County entered into a "Specific Excess Workers' Compensation and Employers' Liability Insurance Agreement", under which SNCC agreed to provide excess coverage to the County regarding certain workers' compensation claims submitted by the County's employees that exceeded the County's stated Self-Insured Retention ("the Excess Policy");

B. WHEREAS, the County likewise agreed to comply with certain obligations and conditions in accordance with the express terms of the Excess Policy;

C. WHEREAS, a former County employee named Larry Aversano filed claims for workers' compensation benefits arising out of incidents that occurred on or about February 11, 1986 and September 16, 1998, during the scope and course of his employment as a County firefighter ("the Aversano claim").

D. WHEREAS, Larry Aversano was ultimately accepted by the County as Permanently and Totally Disabled;

E. WHEREAS, the County has asked SNCC for reimbursement of all amounts the County has paid in connection with the Aversano claim, in excess of its Self-Insured Retention under the Excess Policy, and has alleged that SNCC is obligated to reimburse the County for all future benefits paid in connection with the Aversano claim;

F. WHEREAS, litigation is currently pending between SNCC and the County in the matter styled *Palm Beach County Board of County Commissioners v. Safety National Casualty Corporation*, Case No. 15-CV-80262, filed in the United States District Court for the Southern District of Florida, regarding the interpretation, scope and application of the Excess Policy, as it specifically relates to the Aversano claim and the parties' respective obligations thereunder ("the Civil Action").

NOW, THEREFORE in consideration of **SIX HUNDRED SIXTY THOUSAND DOLLARS AND 00/100 (\$660,000.00)** paid to the County by or on behalf of SNCC, and other consideration set forth below, the County agrees as follows:

**1. Waiver and Release of Claims.** The County agrees to forever waive and release SNCC from any and all claims, counterclaims, causes of action, demands, payments, attorneys' fees, benefits, rights, damages, claims for bad faith, claims for punitive damages, costs, interest, liens, losses, compensation and expenses of any nature whatsoever that the County had, has or may have against SNCC arising from

or relating to the Aversano claim and/or whether or not the Excess Policy provides coverage for the Aversano claim. The intended purpose of the settlement of the Civil Action and the execution of this Release is to ensure that all past, pending and possible future disputes between SNCC and the County solely relating to the Aversano claim and requests for reimbursement in connection with the Aversano claim will be fully and finally resolved by the payment and other terms stated herein.

2. **No Admission of Liability.** It is understood and agreed by the County that the payment referenced above constitutes the full settlement and compromise of contested and disputed claims. SNCC expressly denies any wrongdoing of any nature whatsoever in connection with the Aversano claim and/or the pending Civil Action, and the payment it has agreed to make does not in any way constitute any admission, evidence, or suggestion of wrongdoing related to the determination of coverage under the Excess Policy in connection with the Aversano claim. Additionally, nothing stated herein shall constitute any admission, evidence, or suggestion regarding the interpretation, scope or application of the subject Excess Policy. The parties have agreed to resolve their dispute at this time solely as a means to terminate the pending Civil Action and avoid further litigation-related expenses.

3. **Injunctive Relief & Attorneys' Fees.** This Release may be pled as the full and complete defense to, and may be used as a basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the parties' understanding. Further, in the event that litigation becomes necessary to enforce or interpret this Release, the prevailing party shall be entitled to the payment of its attorney's fees, costs and expenses incurred pre-suit, during the course of litigation, on appeal and post-judgment.

4. **Parties' Acknowledgement.** The County acknowledges that SNCC has made no representation, promise or inducement, other than as set forth in this instrument, and that the County executes this Release without reliance upon any other representation, promise or inducement not set forth herein.

5. **Governing Law.** This Release shall be construed and governed by the laws of the State of Florida. If any dispute or litigation arises at any point in the future regarding the interpretation, scope or enforcement of this Release, the County agrees that the exclusive venue for any such dispute or litigation shall be in District Court for the Southern District of Florida, West Palm Beach Division.

6. **Severability.** If any provision of this Release is rendered invalid for any reason, or has been rendered unenforceable in any jurisdiction, all other provisions of this Release shall nevertheless remain in full force and effect in such jurisdiction, and all provisions of this Release shall remain in full force and effect in all other jurisdictions. Upon determination that a provision is invalid or unenforceable, this Release shall be amended to achieve the original intentions as closely as possible.

7. **Costs and Expenses.** Except for the aforementioned settlement payment made to the County by or on behalf of SNCC referenced above, the County shall bear all of its own costs and expenses, including without limitation, attorneys' fees and expenses incurred in connection with the Civil Action and the underlying Aversano claim.



**IN WITNESS WHEREOF**, the undersigned, as a duly authorized representative for the Palm Beach County Board of County Commissioners, represents and warrants that the County understands the consequences of this Release and freely, voluntarily and with knowledge enters into same herewith and hereby signs same on this \_\_\_\_\_ day of August, 2016.

**ATTEST:**  
Sharon R. Bock, Clerk

**PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mary Lou Berger, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By:  \_\_\_\_\_  
Assistant County Attorney