

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
INTERDEPARTMENTAL CORRESPONDENCE**

CONSENT AGENDA
ITEM NO. 17

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

THROUGH: Terry M. Brechtel, City Manager

COPIES TO: Martha Sepeda, Acting Chief, Litigation; Milo Nitschke, Director, Finance; Daniel Cardenas, Director, Environmental Services; Michael Rich, Risk Manager; Don Lambert, Cambridge ISG; file

SUBJECT: Settlement of the lawsuit styled *Dynamic Conversions, Inc., and Dynamic National Industries, L.L.C. v. City of San Antonio*.

DATE: September 9, 2004

SUMMARY AND RECOMMENDATION

This ordinance authorizes payment of \$100,000.00 as full and final settlement in the lawsuit styled *Dynamic Conversions, Inc., and Dynamic National Industries, L.L.C., v. City of San Antonio*.

Staff recommends approval of this ordinance.

BACKGROUND

On May 27, 2003, a City employee lost control of a City-owned garbage truck on a curve at Nacoma and Jones-Maltsberger near the airport. The garbage truck jumped the curb, crossed a sidewalk, a parking lot, and stopped when it went through a metal and brick office building. The vehicle struck a utility pole causing a power outage for several hours to the surrounding area. The truck hit three cars owned by Plaintiffs' employees. The collision also caused substantial damage to Plaintiff's office and contents. The Plaintiffs' business was shut down for an extended period of time for repairs.

Internal investigations and the police report conclusively attributed the accident to the driver's inattention and excessive speed. The issue of liability has not been in question. The Plaintiff contested the Texas Tort Claims Act limits of \$100,000 for property damage and filed a lawsuit. The court upheld the maximum or cap. The only remaining issue now is the division of the \$100,000.00 property damage funds available to all parties. The Court ordered the City to pay the maximum amount, \$100,000.00, into the registry of the court by September 30, 2004. The plaintiffs are to divide the proceeds.

Staff recommends settling this case for the amount of \$100,000.00.

POLICY ANALYSIS

Staff believes settlement is reasonable for the following reasons:

1. The City's liability is not in question.
2. The total amount of property damage to the building and the vehicles exceeds \$250,000.00; well over the City's statutory limit of \$100,000.00.
3. There has been a judicial determination of the contested funds and the City is under a court-ordered deadline to comply.

FISCAL ANALYSIS

If this settlement is approved, funding for the settlement is available from the City's self insured fund in the amount of \$100,000.00 payable to the Bexar County District Clerk's Office.

COORDINATION

This case has been reviewed with Andrew Martin, City Attorney; Martha Sepeda, First Assistant City Attorney and Acting Chief of Litigation; Daniel Cardenas, Director, Environmental Services; and Michael Rich, Risk Manager.



ANDREW MARTIN
City Attorney

APPROVED:



TERRY M. BRECHTEL
City Manager