

Office of School Board Attorney
Johnny Brown, Board Attorney

SUBJECT: PROPOSED SETTLEMENT AGREEMENT - CRISAL CONSTRUCTION CO., INC. v. THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, Case No. 03-12504 CA 13 (PHILLIS WHEATLEY ELEMENTARY SCHOOL, PROJECT A0654)

Crisal Construction Company, Inc. ("Crisal") was the general contractor for Phillis Wheatley Elementary School construction project. The Board terminated Crisal and made demand upon the Performance Bond surety, International Fidelity Insurance Company ("IFIC"), to complete the construction project. Crisal sued the School Board for breach of the construction contract, and assigned its claim to the proceeds of the lawsuit to IFIC. Crisal also sued for breach of the contract for construction of Citrus Grove Middle School, another project on which the Board terminated Crisal. In total, Crisal's claims exceeded \$2,400,000, of which \$1,864,206.80 were claimed as damages from the Phillis Wheatley Project. IFIC separately filed suit against the School Board several months ago for breach of the School Board's obligations under the Performance Bond seeking over \$2,000,000 in damages. IFIC did not serve the lawsuit but it remains pending.

Crisal and the School Board agreed to separate the two projects for the purpose of a pre-trial mediation. On June 28, 2005, at mediation, Crisal, IFIC and the School Board, with their counsel, reached a tentative settlement of the claims related to Phillis Wheatley Elementary School, conditioned upon Board approval.

Approval of the settlement will result in (1) the release of \$184,138 to IFIC pursuant to Change Order No. 5 previously approved by the Board, and (2) the release of \$245,000 of the remaining \$404,252 disputed contract balance to IFIC, retaining \$159,252 for incomplete punch list work, credits and liquidated damages due to the untimely completion of the project. Crisal and the School Board agreed to dismiss with prejudice all claims against each other related to the Phillis Wheatley Elementary School Project. Additionally, IFIC agreed to dismiss with prejudice all claims against the School Board in its separate lawsuit.

The settlement is recommended as being in the best interest of the Board given the consideration of the full range of information which was developed throughout this litigation. The Board's outside counsel and administrative staff agree with this recommendation. A copy of the Mediation Agreement will be provided to the Board under separate cover.

The claims related to Citrus Grove Middle School remain pending and are not implicated in this settlement. They will be addressed separately.

JB/sh

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, approve the settlement reached at mediation with Crisal Construction Co., Inc. And International Fidelity Insurance Company in the case of Crisal Construction Co., Inc. v. The School Board of Miami-Dade County, Florida, Case No. 03-12504 CA 13.