

Lang v City of New York
2020 NY Slip Op 33323(U)
October 7, 2020
Supreme Court, New York County
Docket Number: 160974/2014
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN

PART IAS MOTION 33EFM

Justice

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INDEX NO. 160974/2014

ROBERT LANG,

MOTION DATE 05/18/2020

Plaintiff,

MOTION SEQ. NO. 004

- v -

CITY OF NEW YORK, NYCDEP, HAKS ENGINEERS,
ARCHITECTS, HALMAR CONSTRUCTION CORP.,
HALMAR INTERNATIONAL CONSTRUCTION, LLC, JA
UNDERGROUND PROFESSIONAL CORPORATION D/B/A
JACOBS ASSOCIATES,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

CITY OF NEW YORK, NYCDEP

Third-Party
Index No. 595094/2015

Plaintiff,

-against-

HALMAR INTERNATIONAL, LLC, HALMAR CONSTRUCTION
CORP., HALMAR INTERNATIONAL CONSTRUCTION, LLC,
PRECISION CONCRETE PUMPING, INC.

Defendant.

-----X

HAKS ENGINEERS, ARCHITECTS

Second Third-Party
Index No. 595528/2015

Plaintiff,

-against-

JA UNDERGROUND PROFESSIONAL CORPORATION D/B/A
JACOBS ASSOCIATES

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 210, 211, 212, 213,
214, 215, 216, 217, 218, 219

were read on this motion to/for COMPROMISE

In this Labor Law and wrongful death matter, plaintiff Robert Lang, as
administrator of the estate of Timothy Lang, moves for this court to approve a

compromise settlement as agreed to by all parties pursuant to Estates, Powers, and Trust Law (EPTL) § 5-4.6. The motion is unopposed. After review of plaintiff's affidavit, plaintiff's counsel affirmation, the Letters of Administration, the Retainer Agreement, plaintiff's counsel's disbursements, and a hearing in this court on September 3, 2020, the motion is granted and the settlement approved (NYSCEF ## 211, 213-215, 217).

Pursuant to EPTL § 5-4.6, this court is statutorily required to evaluate the fairness of the proposed settlement. EPTL § 5-4.6(a) reads as follows:

Within sixty days of the application of an administrator appointed under 5-4.1 or a personal representative to the court in which an action for wrongful act, neglect or default causing the death of a decedent is pending, the court shall, after inquiry into the merits of the action and the amount of damages proposed as a compromise either disapprove the application or approve in writing a compromise for such amount as it shall determine to be adequate including approval of attorneys fees and other payable expenses as set forth below, and shall order the defendant to pay all sums payable under the order of compromise, within the time frames set forth in section five thousand three-a of the civil practice law and rules, to the attorney for the administrator or personal representative for placement in an interest bearing escrow account for the benefit of the distributees. (EPTL § 5-4.6[a]).

This court, therefore, must look at the merits of the action and the amount of damages proposed.

The accident leading to Timothy Lang's death occurred on December 3, 2013. Lang was performing construction work on an aqueduct mockup at an elevated height upon scaffolding. It is alleged that the aqueduct was not properly braced, secured, or tied together so as to maintain its shape. As such, the aqueduct's concrete forms were unstable and failed. As a result, the aqueduct and the scaffold Lang was standing upon collapsed, causing him to fall from an elevated height. Falling concrete struck him, causing serious injury and his eventual death.

The proposed settlement is a global settlement that extinguishes all claims in this matter. The proposed settlement is in the amount of \$375,000.00:

On the date of the incident, the defendants City of New York, New York City Department of Environmental Protection, Haks Engineers, Architects, Halmar Construction Corp., Halmar International Construction, LLC, and JA Underground Professional Corporation d/b/a Jacobs Associates were insured by CAN Insurance Company, Zurich American Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, and AIG Claims, Inc.

Plaintiff's counsel avers that he conducted an extensive amount of legal work in this case. Plaintiff's counsel avers that he performed an extensive investigation into the facts of this case, obtained medical records and the death certificate, retained experts, prepared numerous documents, conducted wide-ranging discovery, and attended approximately fifteen (15) depositions throughout the New York City metro area. Plaintiff's counsel further avers that he enlisted focus groups and presented this case to them. Plaintiff's counsel further avers that he filed a Note of Issue and prepared a thorough mediation brief and attended an all-day mediation to resolve this matter. Plaintiff's counsel claims that he has over seven redwell files for this case. Finally, plaintiff's counsel made a lengthy motion for summary judgment and negotiated the proposed settlement.

Plaintiff's counsel incurred disbursements in this matter in the amount of \$30,259.17 (NYSCEF # 215). Per plaintiff's counsel's calculations, after deducting disbursements, attorney's fees in this matter total \$114,913.61 as per the Retainer Agreement (NYSCEF ## 214, 217).

Zurich American Insurance Company has a lien in the sum of \$36,772.36 for worker's compensation benefits paid on Lang's behalf.

Taken in total, the net proceeds for plaintiff administrator Robert Lang totals \$193,054.86. Plaintiff requests that this amount be distributed pursuant to a future order to be issued by the Ulster County Surrogate's Court.

After review of the merits of this matter and the proposed settlement amount, this court finds the proposed settlement fair. As such, the motion is granted and the settlement approved pursuant to EPTL § 5-4.6.

Accordingly, it is ORDERED that plaintiff Robert Lang's motion to approve the compromise settlement is granted; it is further

ORDERED, that the above action is settled for the total sum of \$375,000.00: it is further

ORDERED, that the Administrator, Robert Lang, is authorized to execute a Settlement Statement and General Release to the insurance carriers: CNA Insurance Company; Zurich American Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; and AIG Claims, Inc.; and to the defendants: The City of New York; New York City Department of Environmental Protection; Haks Engineers, Architects and Land Surveyors, P.C.; Halmar Construction Corp.; Halmar International Construction, LLC; Halmar International, LLC; and JA Underground Professional Corporation d/b/a Jacobs Associates; it is further

ORDERED, that attorney's fees in the sum of \$114,913.61, and disbursements in the sum of \$30,259.17, are approved; it is further

ORDERED, that Zurich American Insurance Company be paid \$36,772.36 which is the amount due and owing to repay the workers' compensation lien; it is further

ORDERED, that upon receipt of the mutually agreed to Settlement Statement, Release and Stipulation of Discontinuance, the defendants will pay all sums due within the timeframe set forth in Section 5003(a) of the Civil Practice Law and Rules; it is further

ORDERED, that all sums will be placed in an interest-bearing account for the benefit of the Decedent's Distributees pursuant to EPTL § 5-4.6. Upon collection of the settlement funds and creation of the interest-bearing account, the attorneys for the Administrator shall pay from the account all due and payable expenses, including attorney's fees approved by the Court; it is further

ORDERED, that all attorney's fees approved by the Court for the prosecution of this action, inclusive of all disbursements, shall be immediately payable from the escrow account upon submission to the trial court proof of the filing of a Petition for the allocation and distribution in the Surrogate's Court on behalf of the Decedent's Estate; and it is further

ORDERED, that the attorney for the Estate shall continue to serve until the entry of a Final Decree in the Surrogate's Court.

This constitutes the Decision and Order of the court.

10/7/2020
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: