

George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

June 2, 2021

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

Re: An Act authorizing the County of Westchester (the "County") to compromise its claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of a County employee from a settlement of her legal action against a third-party tortfeasor.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County of Westchester (the "County") to compromise its claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of a County employee, identified as "J.V.," from the settlement of her legal action against a third-party tortfeasor. Consistent with prior practice in similar cases, I have deleted the name of the employee to protect the individual's privacy. The name, of course, will be disclosed to the Board of Legislators if that is desired.

When an individual is injured in the course of his or her employment, the County's self-insured Workers' Compensation program, administered by Triad Group, LLC, provides medical and lost wage benefits in accordance with NYS Workers' Compensation Law. If the individual is injured as a result of some alleged tortious act or omission of a third party, the County pays for the immediate health care for the insured, subject to the right to be reimbursed if the insured recovers in a settlement with or legal action against a third party. The employee is entitled to compensation and medical benefits under the NYS Workers' Compensation Law. Section 29 of the NYS Workers' Compensation Law entitles the County to a lien against the proceeds of any recovery from the third party liable for the injury, after the deduction of the reasonable and necessary expenditures—including attorney's fees incurred in effecting such recovery—to the extent of the amount of compensation and medical benefits awarded or provided under NYS Workers' Compensation Law.

Accordingly, I seek authorization to compromise the following claim:

On February 17, 2017, J.V., a police officer in the Westchester County Department of Public Safety (the "Department"), slipped on ice in the driveway of 21 New Castle Drive, Mount Kisco, NY (the "Subject Property"). As a result of the fall, he injured his back, neck, and left wrist in the fall. J.V. never returned to work following his injury, and he retired from service on February 9, 2021.

J.V. filed a claim for her injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to his Workers' Compensation claim, J.V. retained counsel of commence a personal injury action against those responsible for maintaining the Subject Property, including Wells Fargo Bank, N.A. ("Wells Fargo"), Select Portfolio Servicing, Inc. ("SPS"), and Home Loan Services, Inc. d/b/a First Franklin Mortgage Loan Trust ("HLS"). J.V.'s counsel is James V. Galvin, Esq., of BONACIC AND MCMAHON, LLP. Wells Fargo and SPS are both represented by Lawrence Jay Buchman, Esq. of PILLINGER, MILLER & TARALLO, LLP. HLS is represented by Jason Robert Lipkin, Esq. of WINSTON & STRAWN LLP.

On or about May 1, 2021, J.V. agreed in principal to settle his personal injury claim with *HLS* only for five thousand and 00/100 dollars (\$5,000.00), pending the consent of the County. In connection with the proposed settlement, J.V.'s counsel notified this Office that if the settlement is approved, he will place the settlement funds in escrow pending full resolution of this matter; until this matter is fully resolved, there will be no disbursements or accounting of attorney's fees, costs, and disbursements.

Between the date of the accident and the date of the proposed settlement, the County expended medical benefits pursuant to the NYS Workers' Compensation Law ("WCL") to or on J.V.'s behalf in the amount of sixty-six thousand six hundred seventy-five and 49/100 dollars (\$66,675.49), paid indemnity (lost wage) benefits in the amount of thirty-three thousand eight hundred eighty-one and 34/100 dollars (\$33,881.34)—brining the County's total expenditures in this matter to one hundred thousand five hundred fifty-six and 83/100 (\$100,556.83).

For the reader's convenience, a chart of these figures appears below:

Worker's Compensation Amounts	
Medical Expenses	\$66,675.49
Indemnity (Lost Wage) Payments	\$33,881.34
Worker's Comp, TOTAL	\$100,556.83

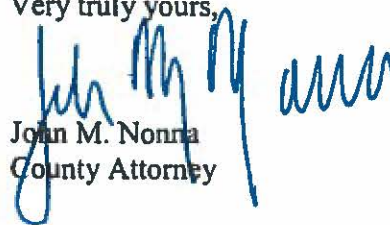
Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to accept the proposed settlement while deferring collection of this lien. A deferral is warranted because:

- (i) if the County were to recover immediately on the proposed settlement, such recovery would absorb the entire settlement; and
- (ii) if the County's full lien were imposed, the County would be forced to incur the full cost of litigation—a possibility that could be avoided depending on the recovery, if any, against the remaining defendants.

Note that deferral of recovery is in no way a waiver of recovery, and J.V. will be required to apply to the BOL for both disbursement of the proposed settlement and approval/disbursement of any future settlement (with such approval presumably provided in a single piece of legislation).

I respectfully request authority from this Board pursuant to Section 158.11(5) of the Westchester County Charter to compromise the County's right to be reimbursed for health care and wage benefits paid to or on behalf of J.V. from his recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying Act.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John M. Nonna", written over the typed name.

John M. Nonna
County Attorney

JMN/stc

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the County of Westchester (the "County") to compromise its claim to be reimbursed for healthcare and wage benefits paid to or on behalf of a County employee, identified as "J.V." Consistent with prior practice in similar cases, the County Attorney has deleted the name of the employee to protect the individual's privacy. The name, of course, will be disclosed to the Board of Legislators if that is desired.

On February 17, 2017, J.V., a police officer in the Westchester County Department of Public Safety (the "Department"), slipped on ice in the driveway of 21 New Castle Drive, Mount Kisco, NY (the "Subject Property"). As a result of the fall, he injured his back, neck, and left wrist in the fall. J.V. never returned to work following his injury, and he retired from service on February 9, 2021.

J.V. filed a claim for her injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to his Workers' Compensation claim, J.V. retained counsel of commence a personal injury action against those responsible for maintaining the Subject Property, including Wells Fargo Bank, N.A. ("Wells Fargo"), Select Portfolio Servicing, Inc. ("SPS"), and Home Loan Services, Inc. d/b/a First Franklin Mortgage Loan Trust ("HLS").

On or about May 1, 2021, J.V. agreed in principal to settle his personal injury claim with *HLS only* for five thousand and 00/100 dollars (\$5,000.00), pending the consent of the County. In connection with the proposed settlement, J.V.'s counsel notified this Office that if the settlement is approved, he will place the settlement funds in escrow pending full resolution of this matter; until this matter is fully resolved, there will be no disbursements or accounting of attorney's fees, costs, and disbursements.

Between the date of the accident and the date of the proposed settlement, the County expended medical benefits pursuant to the NYS Workers' Compensation Law ("WCL") to or on J.V.'s behalf in the amount of sixty-six thousand six hundred seventy-five and 49/100 dollars (\$66,675.49), paid indemnity (lost wage) benefits in the amount of thirty-three thousand eight hundred eighty-one and 34/100 dollars (\$33,881.34)—bringing the County's total expenditures in this matter to one hundred thousand five hundred fifty-six and 83/100 (\$100,556.83).

Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to accept the proposed settlement while deferring collection of this lien. A deferral is warranted because (i) if the County were to recover immediately on the proposed settlement, such recovery would absorb the entire settlement; and (ii) if the County's full lien were imposed, the County would be forced to incur the full cost of litigation—a possibility that could be avoided depending on the recovery, if any, against the remaining defendants.

[Remainder of Page Intentionally Left Blank]

Your Committee has carefully considered the matter and recommends authorizing the County Attorney, pursuant to Section 158.11 of the Westchester County Charter, to compromise the County's right to be reimbursed for health care and wage benefits paid to or on behalf of J.V. from the settlement of her legal action against a third-party tortfeasor. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
June __, 2021

ACT NO. 2021

AN ACT authorizing the County of Westchester to compromise its right to be reimbursed for health care and wage benefits paid to or on behalf of a County employee from a settlement of her legal action against a third-party tortfeasor.

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

1. The County of Westchester is hereby authorized to compromise its right to be reimbursed for health care and wage benefits paid or owing to or on behalf of a County employee, identified as "J.V.", from a settlement of her legal action against a third party. The County's reimbursement is deferred pending resolution of the third party action as against the remaining defendants, with full reservation of the County's right to set off J.V.'s net recovery against any future compensation in accordance with the provisions of New York State Workers' Compensation Law.
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 purpose hereof.
3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Workers Comp Lien (J.V.)

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 0

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 613-57-0017-4280

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

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

Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Sr. Assistant County Attorney

Department: Law

Reviewed By: 

Budget Department

4/3/21

If you need more space, please attach additional sheets.