

George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

May 11, 2023

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

Re: Legislation authorizing 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 his 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 "M.B.," from the settlement of his 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 October 18, 2021, M.B.—a Captain in the Westchester County Department of Public Safety ("DPS")—was traveling south on the Taconic State Parkway in the vicinity of State Route 301 when a construction vehicle veered into his lane. M.B. jammed on his breaks and was rear-ended by the driver behind him. As a result of the collision, M.B. sustained injuries to his right knee, back, neck, and head.



M.B. filed a claim for his injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to his Workers' Compensation claim, M.B. retained Gary Cusano, Esq. of CUSANO SMITH PLLC, 483 Cherry Street, Bedford Hills, NY 10507.

On or about June 20, 2022, M.B. agreed in principle to settle his personal injury claim pre-suit for the driver's full policy amount: twenty-five thousand and 00/100 dollars (\$25,000.00). In connection with the proposed settlement, M.B.'s counsel notified this Office that his costs, disbursements, and legal fee total eight thousand three hundred thirty-three and 33/100 dollars (\$8,333.33).

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 M.B.'s behalf in the amount of seventy-four thousand six hundred twenty-six and 11/100 dollars (\$74,626.11), paid indemnity (lost wage) benefits in the amount of sixty-one thousand nine hundred fifty-eight and 89/100 dollars (\$61,958.89)—bringing the County's total expenditures in this matter to one hundred thirty-six thousand five hundred eighty-five and 00/100 dollars (\$136,585.00). However, because M.B. was injured in an automobile accident, the County's lien must be reduced by fifty thousand and 00/100 dollars (\$50,000.00) in lieu of first party no-fault benefits. Accordingly, the County's net lien for compensation and medical benefits to or on behalf of M.B. in this matter is eighty-six thousand five hundred eighty-five and 00/100 dollars (\$86,585.00).

Because M.B. has settled his third-party claim for less than the County's lien, this is a "deficiency matter" (*see, e.g., Lodestro v Upstate Milk Coops., Inc.*, 37 AD3d 1075, 1076 [4th Dept 2007]; *Burkhardt v Amtrust N. Am., Inc.*, 2016 NY Slip Op 31764[U], at *5 [Sup Ct, Queens County 2016]). In a deficiency matter, "the carrier assumes the entire cost of obtaining the recover and is entitled to recover the net remaining amount after taking such deduction" (*Burkhardt*, 2016 NY Slip Op 31764[U], at *5). The amount to which the carrier is entitled can and sometimes will subsume the remaining proceeds (*see, e.g., Lodestro*, 37 AD3d at 1076; *Burkhardt*, 2016 NY Slip Op 31764[U], at *5).

Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to assume the entire cost of litigation in this matter and recover the remainder of the proceeds. If such authority is granted, the County will accept in satisfaction of its present lien a total of sixteen thousand six hundred sixty-six and 67/100 dollars (\$16,666.67).

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For the convenience of the reader, a chart of the aforementioned figures appears below:

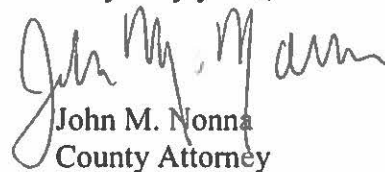
Worker's Comp Award	
Medical Expenses	\$ 74,626.11
Indemnity (Lost Wage) Payments	\$ 61,958.89
Worker's Comp, SUB-TOTAL	\$ 136,585.00
MVA ("Basic Economic Loss") Reduction	(\$ 50,000.00)
Worker's Comp, TOTAL	\$ 86,585.00

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 25,000.00
Disbursements	\$ -
Attorney's Fees	\$ 8,333.33
Cost of Litigation (COL)	\$ 8,333.33
Net Proceeds of Third-Party Settlement	\$ 16,666.67
Percentage COL	N/A (Deficiency Case)

Settlement Details	
Carrier's COL	\$ 8,333.33
Carrier's Net Lien	\$ 16,666.67
Claimant's Net Recovery	\$ -

I respectfully request authority from this Board 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 M.B. from his recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying Act.

Very truly yours,


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 “M.B.” 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.

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Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to assume the entire cost of litigation in this matter and recover the remainder of the proceeds. If such authority is granted, the County will accept in satisfaction of its present lien a total of sixteen thousand six hundred sixty-six and 67/100 dollars (\$16,666.67).

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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 M.B. from the settlement of his 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
May ____, 2023

ACT NO. 2023

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 his 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 "M.B.", from a settlement of his legal action against a third party. The County's reimbursement is \$16,666.67, representing all of the settlement proceeds less the cost of litigation.
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 (M.B.)

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 \$ 16,666.67

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0021-4280

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: *[Signature]*

Budget Department

5/16/23

If you need more space, please attach additional sheets.