

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

September 12, 2022

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

Re: **Request for authorization to remit payment for the County's obligation in the lawsuit entitled Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court, Index No. 54392/2019, in the amount of \$250,000.00, inclusive of attorney's fees.**

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the remittance of payment for the County's obligation in the lawsuit entitled Jamar McCalla v. County of Westchester, et al, in the amount of \$250,000.00, inclusive of attorney's fees.

This matter is pending in Westchester County Supreme Court. The Paris Law Group, P.C., 60 42nd Street, Suite 4000, New York, New York 10165 is representing the plaintiff. Jason Bernheimer, Esq., of Keane & Bernheimer, PLLC, 480 Bedford Road, Suite 3201, Chappaqua, New York 10514 is representing the County.

The case concluded in a jury verdict rendered on July 26, 2022 that requires the Board's approval of payment of the County's self-insured retention in its insurance policy in the amount of \$250,000.00, inclusive of attorney's fees. The jury verdict was for \$1.465 million - - \$450,000 for past pain and suffering; \$650,000 for future pain and suffering; and \$365,000 for future medical expenses.

This matter arises out of a Liberty Lines Bus accident which occurred on June 26, 2015. A Liberty Lines bus collided with plaintiff's vehicle in the Bronx. Plaintiff was transported to Montefiore Hospital via ambulance and then discharged. The plaintiff alleged neck, back, and bilateral shoulder injuries.

The bus video shows the bus went through a red light. Plaintiff's summary judgment motion on the issue of liability was granted on October 22, 2020. Consequently, the County is entirely liable for the accident. Pre-judgment interest is accruing from that date on the jury's verdict at an annual rate of 9%. Plaintiff presented at his doctor complaining of left bilateral shoulder pain. MRIs were conducted that

revealed tears in both shoulders. Plaintiff underwent physical therapy and epidural injections and, when conservative treatments failed, plaintiff underwent a left shoulder arthroscopy.

Liberty Lines investigated the accident and the bus operator was issued a five day suspension, retraining, and a final warning.

This payment takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings, and an appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County will pay the \$250,000. self-insured retention in its insurance policy.

The accompanying Act will authorize payment for the County's obligation in the lawsuit entitled, Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court Index No. 54392/2019, in the amount of \$250,000.00, inclusive of attorney's fees.

Very truly yours,

John M. Nonna
County Attorney

JMN/mg

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize payment for the County's obligation in the lawsuit entitled Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court Index No. 54392/2019, in the amount of \$250,000.00, inclusive of attorney's fees.

The case concluded in a jury verdict rendered on July 26, 2022 that requires the Board's approval of payment of the County's self-insured retention in its insurance policy in the amount of \$250,000.00, inclusive of attorney's fees. The jury verdict was for \$1.465 million - - \$450,000 for past pain and suffering; \$650,000 for future pain and suffering; and \$365,000 for future medical expenses.

This matter arises out of a Liberty Lines Bus accident which occurred on June 26, 2015. A Liberty Lines bus collided with plaintiff's vehicle in the Bronx. Plaintiff was transported to Montefiore Hospital via ambulance and then discharged. The plaintiff alleged neck, back, and bilateral shoulder injuries.

The bus video shows the bus went through a red light. Plaintiff's summary judgment motion on the issue of liability was granted on October 22, 2020. Consequently, the County is entirely liable for the accident. Pre-judgment interest is now accruing from that date on the jury verdict at an annual rate of 9%.

Plaintiff presented at his doctor complaining of left bilateral shoulder pain. MRIs were conducted that revealed tears in both shoulders. Plaintiff underwent physical therapy and epidural injections and, when conservative treatments failed, plaintiff underwent a left shoulder arthroscopy.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings, and an appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County will pay the \$250,000. self-insured retention in its insurance policy.

Your Committee has carefully considered the subject matter and the attached Act and recommends authorizing the County Attorney or his designee to remit payment for the lawsuit entitled Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court Index No. 54392/2019, in the amount of \$250,000.00, inclusive of attorney's fees.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York

, 2022

COMMITTEE ON:

ACT NO. -2022

AN ACT authorizing the County Attorney to remit payment for the lawsuit of Jamar McCalla v. Westchester County, et al, Westchester County Supreme Court Index No. 54392/2019

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

Section 1. The County Attorney is authorized to remit payment for the self-insured retention in the County's insurance policy to conclude the lawsuit entitled Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court Index No. 54392/2019, in the amount of \$250,000, inclusive of attorney's fees. This payment will fulfill the County's obligation to pay the \$250,000. self-insured retention in its insurance policy.

Section 2. The County Attorney or his designee is hereby authorized and empowered to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

PRIVILEGED AND CONFIDENTIAL

September 12, 2022

To: Kenneth W. Jenkins
Deputy County Executive

From: John M. Nonna
County Attorney

Re: Legislation to Authorize Remittance of Payment for the Lawsuit of Jamar McCalla v. County of Westchester, et al, in Westchester County Supreme Court, Index No. 54392/2019, in the amount of \$250,000.00 inclusive of attorney's fees.

Attached for your information is a copy of legislation concerning the above-referenced matter, which was submitted on today's date to the Board of Legislators for its consideration.

If you have any questions, please contact me.

JMN/mg

Attachment

cc: Joan McDonald, Director of Operations
Catherine Cioffi, Director of Communications

PRIVILEGED & CONFIDENTIAL

September 12, 2022

To: John M. Nonna
County Attorney

From: Mark Gardner
Senior Assistant County Attorney

Re: Request for authorization to remit payment for the County's obligation in the lawsuit entitled Jamar McCalla v. County of Westchester, et al, Westchester County Supreme Court - Index No. 54392/2019, in the amount of \$250,000.00, inclusive of attorney's fees

Attached for your review is proposed legislation, which if enacted, would authorize the payment of \$250,000.00 to fulfill the County's obligations in the case entitled Jamar McCalla v. County of Westchester.

This matter is pending in the Westchester County Supreme Court. The Paris Law Group, P.C., 60 42nd Street, Suite 4000, New York, New York 10165 is representing the plaintiff. Jason Bernheimer, Esq., of Keane & Bernheimer, PLLC, 480 Bedford Road, Suite 3201, Chappaqua, New York 10514 is representing the County.

The case concluded in a jury verdict rendered on July 26, 2022 that requires the Board's approval of payment of the County's self-insured retention in its insurance policy in the amount of \$250,000.00, inclusive of attorney's fees. The jury verdict was for \$1.465 million - - \$450,000 for past pain and suffering; \$650,000 for future pain and suffering; and \$365,000 for future medical expenses.

This matter arises out of a Liberty Lines Bus accident which occurred on June 26, 2015. A Liberty Lines bus collided with plaintiff's vehicle in the Bronx. Plaintiff was transported to Montefiore Hospital via ambulance and then discharged. The plaintiff alleged neck, back, and bilateral shoulder injuries.

The bus video shows the bus went through a red light. Plaintiff's summary judgment motion on the issue of liability was granted on October 22, 2020. Consequently, the County is entirely liable for the accident. Pre-judgment interest is now accruing from that date on the jury verdict at an annual rate of 9%. Plaintiff presented at his doctor complaining of left bilateral shoulder pain. MRIs were conducted that revealed tears in both shoulders. Plaintiff underwent physical therapy and epidural injections and, when conservative treatments failed, plaintiff underwent a left shoulder arthroscopy.

Liberty Lines investigated the accident and the bus operator was issued a five day suspension, retraining, and a final warning.

This payment takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings, and an appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County will pay the \$250,000. self-insured retention in it insurance policy.