

George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

May 23, 2023

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

Re: Legislation authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester and pay a reduced lump sum to a former County employee in lieu of future payments

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester (the "County") to pay Workers' Compensation benefits to a former, part-time County employee, identified herein as "A.P." Consistent with prior practice in similar cases, we 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 upon request.

Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers' Compensation benefits. Once the Workers' Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

In the past, the Department of Finance, in its role as administrator of the County's Workers' Compensation Program, has negotiated, with the cooperation of the County Attorney's Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers' Compensation Board.

This settlement is based upon the following criteria:

1. The anticipated future litigation expenses;
2. The anticipated future loss-of-use award; and
3. The settlement amount proposed by the claimant's attorney.



This matter involves two separate injuries to a former, part-time employee of the Westchester County Department of Parks, Recreation and Conservation (the “Department”).

A.P.’s first injury occurred on August 24, 2016, at George’s Island in Montrose, N.Y. On that date, A.P.—then a 28-year-old hourly Recreation Attendant who had been working for the Department seasonally for approximately 10 years—was trimming weeds with a motorized weedwacker. The weedwacker’s head became entangled in an old fishnet. In this process of disentangling it, the weedwacker started back up. The cord wrapped around A.P.’s gloved hand and injured her left elbow and wrist.

As a result of the injury, A.P.’s missed two weeks of work. A.P. also filed a workers’ compensation claim regarding the injury. To date, the County has paid on that claim indemnity (lost wage) expenses totaling seven thousand two hundred fifty-three and 17/100 dollars (\$7,253.17), medical expenses totaling one thousand twenty-nine and 89/100 dollars (\$1,029.89), and other expenses totaling six thousand one hundred sixty-one and 00/100 dollars (\$6,161.00). The County’s total expenses on this claim to date are fourteen thousand four hundred forty-four and 06/100 dollars (\$14,444.06).

For the reader’s conveniences, a table setting forth the values is included below:

	Indemnity	Medical	Other	Total
WC #190265	\$7,253.17	\$1,029.89	\$6,161.00	\$14,444.06

A.P.’s second injury occurred on October 21, 2019, at the Kensico Dam Plaza in Valhalla, NY. On that date, A.P.—then a 31-and-a-half-year-old hourly Maintenance Laborer who had been working for the Department seasonally for approximately 13 years—was on a ladder hanging lights in a tree in preparation for the Winter Wonderland. The ladder came out from under her and A.P. fell to the ground, injuring her right shoulder and right arm. After the injury, A.P. never returned to work and she is no longer employed by the County.

A.P. filed a workers’ compensation claim regarding the second injury. As a seasonal employee, the County paid her directly for the time she missed between October 22, 2019, through January 23, 2023—*i.e.*, the point at which the Workers’ Compensation Board (the “WCB”) determined that A.P. had reached her Maximum Medical Improvement (“MMI”). To date, the County has paid on the second claim indemnity (lost wage) expenses totaling forty-four thousand five hundred forty-five and 86/100 dollars (\$44,545.86), medical expenses totaling thirty-four thousand six hundred thirty-five and 57/100 dollars (\$34,635.57), and other expenses totaling twelve thousand five hundred seventy-nine and 00/100 dollars (\$12,579.00). The County’s total expenses on this claim to date are ninety-one thousand seven hundred sixty and 43/100 dollars (\$91,760.43).

For the reader’s conveniences, a table setting forth the values is included below:

	Indemnity	Medical	Other	Total
WC #160204	\$44,545.86	\$34,635.57	\$12,579.00	\$91,760.43

At present, in the second matter, the parties are disputing the degree to which A.P. lost the use of her right arm. A.P.’s expert has already opined that she lost 80%, a figure that would result in an award of ninety-two thousand thirty-five and 01/100 dollars (\$92,035.01). The County’s

expert has determined that the loss of use is 35%, a figure that would result in an award of forty thousand two hundred sixty-five and 32/100 dollars (\$40,265.32). The County's third-party administrator for its Workers' Compensation program, Triad Group, LLC, anticipates that the WCB judge will "split the baby," resulting in a 57.5% loss of use and an award of sixty-six thousand one hundred fifty and 16/100 dollars (\$66,150.16). Also of note: because the parties cannot agree on a percentage loss of use, each party's expert will need to be deposed. The anticipated cost to the County to conduct and defend these depositions is ten thousand and 00/100 dollars (\$10,000.00).

The County is now presented with a proposed settlement of both claims for eleven thousand five hundred and 00/100 dollars (\$11,500.00). This will resolve both claims and relieve the County from any objection to reimburse future treatment on either injury. Additionally, because of both the claimant's age and the amount of the proposed settlement, there is no need to set up a Medicare Set Aside Account ("MSA").

If the County accepts the proposed settlement, the potential savings to the County will total sixty-four thousand six hundred fifty and 16/100 dollars (\$64,650.16).

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

Indemnity Exposure Calculation	
Anticipated Loss of Use Award	\$ 66,150.16
Anticipated Litigation Expenses (Expert Depositions)	\$ 10,000.00
Exposure Reserve	\$ 76,150.16

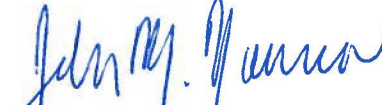
Projected Savings	
Exposure Reserve	\$ 76,150.16
Proposed Settlement	\$ 11,500.00
Projected Savings	\$ 64,650.16

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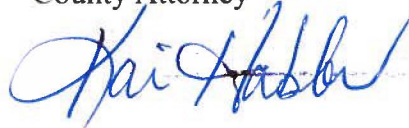
Based upon the foregoing, the County Attorney and the Commissioner of Finance request authority to compromise the liability of the County by contributing eleven thousand five hundred and 00/100 dollars (\$11,500.00) toward a lump-sum settlement in full satisfaction of the County's indemnity and medical obligation in this matter.

We therefore recommend the accompanying Act.

Very truly yours,



John M. Nonna
County Attorney



Karin E. Hablow
Commissioner of Finance

JMN/KEH/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 Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester (the “County”) to pay Workers’ Compensation benefits to a former County employee, identified herein as “A.P.” Consistent with prior practice in similar cases, we 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 upon request.

Pursuant to Section 32 of the New York State Workers’ Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers’ Compensation benefits. Once the Workers’ Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers’ Compensation Law, the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

The Department of Finance, in its role as administrator of the County’s Workers’ Compensation Program, has negotiated, with the cooperation of the County Attorney’s Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers’ Compensation Board.

Employee:	A.P.
Department:	Parks
Dates of Injury:	August 24, 2016 & October 21, 2019
Injuries:	left elbow, wrist & right arm
Lump-Sum Settlement (Medical & Indemnity):	\$ 11,500.00

Your Committee has carefully considered the matter and recommends authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County to pay Workers' Compensation benefits to the above-named former County employee, thereby reducing the liability for ongoing benefits pay paying a lump sum to and/or for the benefit of A.P. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
June ____, 2023

ACT NO. 2023

AN ACT authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester and pay a reduced lump sum to a former County employee in lieu of future payments.

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

1. The County Attorney and the Commissioner of Finance are hereby authorized to compromise the County's right to pay Workers' Compensation benefits to A.P., a former employee, by contributing \$ 11,500.00 towards a lump-sum settlement, thereby reducing the County's liability for ongoing benefits to and/or for the benefit of the employee.

2. The County Attorney or his designee and the Commissioner of Finance or her designee are hereby authorized to execute and deliver all documents and take such actions as the County Attorney and/or the Commissioner of Finance deem necessary or desirable to accomplish the purposes hereof.

3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Workers Comp Benefits (A.P.)

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 \$ 11500

Total Current Year Revenue \$ _____

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0019-4280

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

If you need more space, please attach additional sheets.