



George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

September 21, 2023

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

Re: An Act 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 personal-injury action.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize 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 "C.I.," from the settlement of his personal-injury action. 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.

Please note: This legislation concerns two actions in which the County is a party: the New York State litigation *C.I. v Hudson View Associates, LLC*, Index No. 54468/2020 (Sup Ct, Westchester County) and the federal litigation *Federal Insurance Co. v. County of Westchester*, 23-cv-6261 (NSR) (S.D.N.Y.). The compromise of the County's lien proposed in the instant legislation—which constitutes a complete waiver of the County's existing Workers' Comp lien—will enable the parties to resolve both matters.

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

Michaelian Office Building  
148 Martine Avenue, 6<sup>th</sup> Floor  
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914-995-3132\*

\*Please be advised that service by facsimile  
is not accepted.



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:

### The Subject Injury

In the morning of January 5, 2018, C.I.—then a Senior Social Caseworker working in the Westchester County Department of Social Services (the “Department”)—arrived at work, located at 131 Warburton Avenue, Yonkers, New York (the “Subject Premises”). Notably, the County leased the Subject Premises from I.Park Westchester, LLC (“I.Park”) pursuant to a twenty-year lease executed with I.Park’s predecessor-in-interest, Hudson View Associates, LLC (“Hudson View”), which began on February 1, 2006 (the “Lease”). After he parked his car, C.I. slipped and fell in the Subject Premises’ parking garage. As a result of the slip and fall, C.I. sustained injuries to his neck and back. C.I. further alleges that he sustained a traumatic brain injury. After the injury, Plaintiff worked on and off for approximate three years. He retired from County service effective January 25, 2021.

As a result of the injury, C.I. filed a workers’ compensation claim that ultimately resulted in an award.

### The Twin Lawsuits

On a parallel track to his workers’ compensation claim, C.I. commenced two separate personal injury actions in the Supreme Court of the State of New York State: one against Hudson View on March 20, 2020, and one against I.Park on September 29, 2020. On January 14, 2021, the court consolidated both actions under the caption *C.I. v Hudson View Associates, LLC*, Index No. 54468/2020 (Sup Ct, Westchester County). In that action, C.I. is represented by SARACINO MORRIS LAW GROUP PLLC, 600 Mamaroneck Avenue, Suite 400, Harrison, NY 10528. Both Hudson View and I.Park (collectively, the “Property Owner Defendants”) are represented by COZEN O’CONNOR, 3 WTC, 175 Greenwich Street, 55th Floor, New York, NY 10007.

On June 8, 2021, the Property Owner Defendants impleaded the County of Westchester into the action as a third-party defendant, alleging that the County is liable to the Property Owners pursuant to two provisions of the Lease: one dealing with defense and indemnity, the other dealing with an obligation to provide additional insurance. Despite moving to dismiss and moving for summary judgment, the County was unable to resolve the issues as a matter of law.

On July 20, 2023—shortly after the New York State court denied both parties’ motions for summary judgment—the parent company of I.Park’s insurance company, Federal Insurance Company (“FIC”), commenced a federal diversity action against the County. In that action, FIC seeks a declaration that the County is obligated under the Lease to insure I.Park and to provide indemnity and defense costs related to same. In that federal action, FIC is represented by TRESSLER LLP, 163 Madison Avenue, Suite 404, Madison, NJ 07960. As of the date of this legislation, the County has adjourned its obligation to answer or otherwise reply.

### The Proposed Settlement

On or about September 19, 2023, C.I. agreed in principle to settle the New York State action for a global settlement of four hundred sixty thousand and 00/100 dollars (\$460,000.00), subject to the Westchester County Board of Legislators consenting to waiving the County's right to recover C.I.'s existing worker's compensation lien. The lion's share of the proposed settlement will be contributed by I.Park's insurance company, who has agreed to contribute four hundred fifty thousand and 00/100 dollars (\$450,000.00). The County—acting through the authority vested in the Westchester County Attorney—has agreed to contribute the remaining ten thousand and 00/100 dollars (\$10,000.00). Additionally, if this settlement is approved, FIC has agreed to withdraw the federal diversity action.

### The County's Workers' Compensation Lien

In connection with the proposed settlement, C.I.'s counsel notified this Office that his costs and disbursements in this matter total ten thousand and 00/100 dollars (\$10,000.00) and his legal fee totals one hundred fifty thousand and 00/100 dollars (\$150,000.00).

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 C.I.'s behalf in the amount of twenty thousand three hundred nineteen and 39/100 (\$20,319.39), and indemnity (lost wage) payments in the amount of eighty-nine thousand six hundred thirty-eight and 37/100 dollars (\$89,638.37). The County's total lien in this matter—before accounting for the required reduction of its fees pursuant to statutory and decisional law—totals one hundred nine thousand nine hundred fifty-seven and 76/100 dollars (\$109,957.76).

Were resolution of this matter not contingent upon the County writing off its lien, the County would be obligated to compromise its claim for reimbursement by reducing its lien by 34.79%, equaling a dollar reduction of thirty-eight thousand two hundred fifty-four and 30/100 dollars (\$38,254.30). Thereafter, the County's present lien would total seventy-one thousand seven hundred three and 46/100 dollars (\$71,703.46).

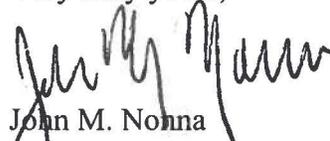
As set forth above, settlement of this matter will require the County to forego its existing lien. Note, however, that the County will be free to offset future expenses against Plaintiff's recovery pursuant to applicable law.

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

<b>Worker's Compensation Amounts</b>	
Medical Expenses	\$20,319.39
Indemnity (Lost Wage) Payments	\$89,638.37
<b>Worker's Comp, SUB-TOTAL</b>	<b>\$ 109,957.76</b>
MVA ("Basic Economic Loss") Reduction	\$ -
<b>Worker's Comp, TOTAL</b>	<b>\$ 109,957.76</b>
<b>Litigation Amounts</b>	
Third-Party Settlement (Gross Amt)	\$ 460,000.00
Disbursements	\$10,000.00
Attorney's Fees	\$150,000.00
Cost of Litigation (COL)	\$160,000.00
Net Proceeds of Third-Party Settlement	\$ 300,000.00
Percentage COL	34.79%
Carrier's COL	\$ 38,254.30
Carrier's Net Lien (Without Writedown)	\$ 71,703.46
Claimant's Net Recovery (Without Writedown)	\$ 228,296.54
<b>Litigation Amounts (with Writedown)</b>	
Carrier's Net Lien (with Writedown)	\$ -
Claimant's Net Recovery (with Writedown)	\$ 300,000.00

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 C.I. from his recovery in a personal-injury action. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/cji

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 “C.I.” 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.

In the morning of January 5, 2018, C.I.—then a Senior Social Caseworker working in the Westchester County Department of Social Services (the “Department”)—arrived at work, located at 131 Warburton Avenue, Yonkers, New York (the “Subject Premises”). Notably, the County leased the Subject Premises from I.Park Westchester, LLC (“I.Park”) pursuant to a twenty-year lease executed with I.Park’s predecessor-in-interest, Hudson View Associates, LLC (“Hudson View”), which began on February 1, 2006 (the “Lease”). After he parked his car, C.I. slipped and fell in the Subject Premises’ parking garage. As a result of the slip and fall, C.I. sustained injuries to his neck and back. C.I. further alleges that he sustained a traumatic brain injury. After the injury, Plaintiff worked on and off for approximate three years. He retired from County service effective January 25, 2021.

As a result of the injury, C.I. filed a workers’ compensation claim that ultimately resulted in an award.

On a parallel track to his workers’ compensation claim, C.I. commenced two separate personal injury actions in the Supreme Court of the State of New York State: one against Hudson View on March 20, 2020, and one against I.Park on September 29, 2020. On January 14, 2021, the court consolidated both actions under the caption *C.I. v Hudson View Associates, LLC*, Index

No. 54468/2020 (Sup Ct, Westchester County). In that action, C.I. is represented by SARACINO MORRIS LAW GROUP PLLC, 600 Mamaroneck Avenue, Suite 400, Harrison, NY 10528. Both Hudson View and I.Park (collectively, the “Property Owner Defendants”) are represented by COZEN O’CONNOR, 3 WTC, 175 Greenwich Street, 55th Floor, New York, NY 10007.

On June 8, 2021, the Property Owner Defendants impleaded the County of Westchester into the action as a third-party defendant, alleging that the County is liable to the Property Owners pursuant to two provisions of the Lease: one dealing with defense and indemnity, the other dealing with an obligation to provide additional insurance. Despite moving to dismiss and moving for summary judgment, the County was unable to resolve the issues as a matter of law.

On July 20, 2023—shortly after the New York State court denied both parties’ motions for summary judgment—the parent company of I.Park’s insurance company, Federal Insurance Company (“FIC”), commenced a federal diversity action against the County. In that action, FIC seeks a declaration that the County is obligated under the Lease to insure I.Park and to provide indemnity and defense costs related to same. In that federal action, FIC is represented by TRESSLER LLP, 163 Madison Avenue, Suite 404, Madison, NJ 07960. As of the date of this legislation, the County has adjourned its obligation to answer or otherwise reply.

On or about September 19, 2023, C.I. agreed in principle to settle the New York State action for a global settlement of four hundred sixty thousand and 00/100 dollars (\$460,000.00), subject to the Westchester County Board of Legislators consenting to waiving the County’s right to recover C.I.’s existing worker’s compensation lien. The lion’s share of the proposed settlement will be contributed by I.Park’s insurance company, who has agreed to contribute four hundred fifty thousand and 00/100 dollars (\$450,000.00). The County—acting through the authority vested in the Westchester County Attorney—has agreed to contribute the remaining ten thousand and

00/100 dollars (\$10,000.00). Additionally, if this settlement is approved, FIC has agreed to withdraw the federal diversity action.

In connection with the proposed settlement, C.I.'s counsel notified the County Attorney's Office that his costs and disbursements in this matter total ten thousand and 00/100 dollars (\$10,000.00), and his legal fee totals one hundred fifty thousand and 00/100 dollars (\$150,000.00).

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 C.I.'s behalf in the amount of twenty thousand three hundred nineteen and 39/100 (\$20,319.39), and indemnity (lost wage) payments in the amount of eighty-nine thousand six hundred thirty-eight and 37/100 dollars (\$89,638.37). The County's total lien in this matter—before accounting for the required reduction of its fees pursuant to statutory and decisional law—totals one hundred nine thousand nine hundred fifty-seven and 76/100 dollars (\$109,957.76).

Were resolution of this matter not contingent upon the County writing off its lien, the County would be obligated to compromise its claim for reimbursement by reducing its lien by 34.79%, equaling a dollar reduction of thirty-eight thousand two hundred fifty-four and 30/100 dollars (\$38,254.30). Thereafter, the County's present lien would total seventy-one thousand seven hundred three and 46/100 dollars (\$71,703.46).

As set forth above, settlement of this matter will require the County to forego its existing lien. Note, however, that the County will be free to offset future expenses against Plaintiff's recovery pursuant to applicable law.

*[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 C.I. from the settlement of his personal-injury action. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York  
September \_\_, 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 personal-injury action.

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 "C.I.", from a settlement of his personal-injury action. Because the County is a party to the underlying litigation, the County is waiving its right to recovery as part of the settlement of the claims against it. However, the County fully reserves its right to set off C.I.'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: Legislation to settle: Ikhigbonoaremen  NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense N/A

Total Current Year Revenue \$ -

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: \_\_\_\_\_

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Legislation to settle case (to waive the workers comp lien):

6N Claim G180288 Ikhigbonoaremen, Christopher V Hudson View Assoc., LLC et al.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: \_\_\_\_\_

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

Current Year: N/A

Next Four Years: N/A

Prepared by: Christopher J. Inzero

Title: Associate County Attorney

Department: Law

Date: September 25, 2023

Reviewed By: \_\_\_\_\_

Budget Director

Date: \_\_\_\_\_