

# Law & Major Contracts Meeting Agenda



800 Michaelian Office Bldg.  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601  
[www.westchesterlegislators.com](http://www.westchesterlegislators.com)

Committee Chair: David Imamura

---

**Monday, March 25, 2024**

**10:00 AM**

**Committee Room**

---

## CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Joint with Budget & Appropriations committee.

Legislator David Imamura will be appearing remotely from 1 Richmond Hill, Irvington, NY 10533.

## MINUTES APPROVAL

### I. ITEMS FOR DISCUSSION

1. [2024-150](#) ACT - Retainer Agreement with Sheppard Mullin for DPW Contract 17-534

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hamilton LLP, for the provision of outside counsel legal services in connection with a dispute concerning Department of Public Works & Transportation Contract No. 17-534.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS**

Guest: Law Dept.: Deputy County Attorney Jane Hogan-Felix

2. [2024-149](#) ACT - Lawsuit Settlement Fentresse/Malloy v Szilva, WCPD and County of Westchester

AN ACT authorizing the County Attorney to settle the lawsuit of Baase Fentresse and Marian Malloy v. Justin Szilva, Westchester County Police Department and County of Westchester, in the amount of FOUR HUNDRED FIFTY THOUSAND (\$450,000) DOLLARS, inclusive of attorney's fees.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS**

Guest: Law Dept.: County Attorney John Nonna

**II. OTHER BUSINESS**

**III. RECEIVE & FILE**

**ADJOURNMENT**

# Westchester County

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

March 7, 2024

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

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved by your Honorable Board, would authorize the County of Westchester (the "County") to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin" or the "Firm") to provide outside counsel legal services to the County in connection with a dispute the County is having with Nuco Painting Corporation ("Nuco), and Nuco's subcontractor, Unique Scaffolding Systems ("USS"), under Department of Public Works & Transportation (the "Department") Contract No. 17-534 (the "Contract").

By way of background, pursuant to an Administrative Order issued by the EPA on April 11, 2023 (the "Order"), the County was directed to "rehabilitate" one of its water storage towers located in the Town of Mount Pleasant (the "Tower"). The Order contained a deadline of September 11, 2024. In an effort to comply with the Order, the County, through the Department, entered into the Contract with Nuco, pursuant to which Nuco agreed to paint both the exterior and interior of the Tower. In order to complete the work, Nuco subcontracted with USS to erect scaffolding around the Tower. USS alleges that Nuco has failed to pay it for the scaffolding, and, on January 10, 2024, filed a Public Improvement Lien with the County against Nuco for \$282,177.09. Moreover, USS is now seeking to remove the scaffolding from the Tower. These actions are disrupting the County's ability to complete the project by the deadline. The County now requires the services of the Firm to provide it with legal guidance on this matter.

Due to the complex and specialty nature of construction law litigation, and the evaluation and analysis of damages related to such claims, it is in the best interests of the County to retain counsel qualified to handle such litigation. Sheppard Mullin is a firm that specializes in this type of litigation. Moreover, its lead attorney, Ira M. Schulman, Esq. is a nationally-recognized construction law attorney with over 38 years of experience in the field and has successfully represented the County in the past on similar matters. The Firm will be retained

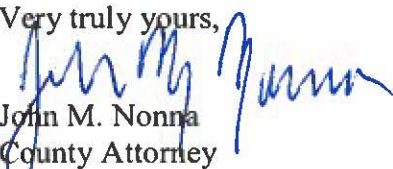
to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County's behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the "Services").

For the Services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00). In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements. The term of the Agreement will commence retroactive to March 6, 2024 and will continue until the matter has been resolved.

The Planning Department has advised that the proposed retainer agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 12, 2023, which is on file with the Clerk of the Board of Legislators.

Accordingly, your Honorable Board's approval of the attached Act is most respectfully requested.

Very truly yours,

  
John M. Nonna  
County Attorney

JMN/MG/jpg/nn

**HONORABLE BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER**

Your Committee is in receipt of a proposed Act transmitted by the County Attorney which, if adopted, would authorize the County of Westchester (the “County”) to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin” or the “Firm”) to provide outside counsel legal services to the County in connection with a dispute the County is having with Nuco Painting Corporation (“Nuco), and Nuco’s subcontractor, Unique Scaffolding Systems (“USS”), under Department of Public Works & Transportation (the Department”) Contract No. 17-534 (the “Contract”).

The County Attorney has advised your Committee that pursuant to an Administrative Order issued by the EPA on April 11, 2023 (the “Order”), the County was directed to “rehabilitate” one of its water storage towers located in the Town of Mount Pleasant (the “Tower”). The Order contained a deadline of September 11, 2024. In an effort to comply with the Order, the County, through the Department, entered into the Contract with Nuco, pursuant to which Nuco agreed to paint both the exterior and interior of the Tower. In order to complete the work, Nuco subcontracted with USS to erect scaffolding around the Tower. USS alleges that Nuco has failed to pay it for the scaffolding, and, on January 10, 2024, filed a Public Improvement Lien with the County against Nuco for \$282,177.09. Moreover, USS is now seeking to remove the scaffolding from the Tower. These actions are disrupting the County’s ability to complete the project by the deadline. The County now requires the services of the Firm to provide it with legal guidance on this matter.

Your Committee is advised that due to the complex and specialty nature of construction law litigation, and the evaluation and analysis of damages related to such claims, it is in the best interests of the County to retain counsel qualified to handle such litigation. Sheppard Mullin is a firm that specializes in this type of litigation. Moreover, its lead attorney, Ira M. Schulman, Esq. is a nationally-recognized construction law attorney with over 38 years of experience in the field and has successfully represented the County in the past on similar matters. The Firm will be retained to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any

legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County's behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the "Services").

For the services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00). In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements. The term of the Agreement will commence retroactive to March 6, 2024 and will continue until the matter has been resolved.

The Planning Department has advised that the proposed retainer agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators.

An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Your Committee recommends approval of the attached Act.

Dated: \_\_\_\_\_, 2024  
White Plains, New York

**COMMITTEE ON**

c.JPG 03.06.24

# FISCAL IMPACT STATEMENT

SUBJECT: Sheppard, Mullen CT#17-534  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      \$ 100,000

Total Current Year Revenue      \$ -

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

Additional Appropriations       Other (explain)

Identify Accounts: 243\_60\_5310\_4923. The term of the agreement will commence retroactive to  
March 6, 2024 and will continue until the matter has been resolved.

Potential Related Operating Budget Expenses:      Annual Amount \$100,000

Describe: An Act authorizing the the County to retain, at County expense, the law firm  
of Sheppard, Mullin, Richter & Hampton LLP in connection with a dispute the County is having  
with Nuco Painting Corp and its subcontractor, Unique Scaffolding Systems under CT#17-534

Potential Related Operating Budget Revenues:      Annual Amount \_\_\_\_\_

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

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

Current Year: \_\_\_\_\_

Next Four Years: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared by: Mark Medwid

Title: Associate Budget Director

Department: Budget

Date: March 7, 2024

Reviewed By:   
Budget Director

Date: 3/8/24

ACT NO. 2024 - \_\_\_\_\_

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP, for the provision of outside counsel legal services in connection with a dispute concerning Department of Public Works & Transportation Contract No. 17-534

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

**Section 1.** The County of Westchester (the “County”) is hereby authorized to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP (the “Firm”) for the provision of outside counsel legal services in connection with a dispute the County is having with Nuco Painting Corporation (“Nuco), and Nuco’s subcontractor, Unique Scaffolding Systems (“USS”), under Department of Public Works & Transportation (the “Department”) Contract No. 17-534 (the “Contract”).

**§2.** The Firm shall be retained to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County’s behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the “Services”).

**§3.** For the aforesaid Services rendered to the County by Sheppard Mullin, the County is authorized to pay the Firm at the following rates: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable by the County to the Firm exceed the sum of One Hundred Thousand



Dollars (\$100,000.00). In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements. The term of the Agreement will commence retroactive to March 6, 2024 and will continue until the matter has been resolved.

§4. This Act shall take effect immediately.

100-1-2024

George Latimer  
County Executive

March 5, 2024

Office of the County Attorney

John M. Nonna  
County Attorney

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 settle the lawsuit of Baase Fentresse and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester, in Supreme Court Westchester County, Index No. 64226/2021, in the amount of \$450,000.00 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 settlement of the lawsuit of Baase Fentresse and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester, in the amount of \$450,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court before the Honorable Joan B. Lefkowitz. The lawsuit tentatively settled at a settlement conference, pending this Board's approval, in the amount of \$450,000.00, inclusive of attorney's fees with \$400,000.00 being allocated to plaintiff Marian Malloy and \$50,000.00 to plaintiff Baase Fentresse.

Mark Kochanowicz, Esq. of Cellino Law, LLP, 420 Lexington Avenue., Ste. 830, New York New York 10170, is representing the plaintiffs, Baase Fentresse and Marian Malloy.

This lawsuit arises out of a motor vehicle accident that occurred on January 26, 2021 on the Sprain Brook Parkway north at approximately 12:46 pm. This is a motor vehicle accident involving a police officer in an undercover narcotics vehicle. The accident happened in a snow storm. The officer testified that he recalls changing lanes from the far left lane to the middle lane because the vehicle in front of him began to stop. He recalls hitting the vehicle in front of him in the center lane while traveling on the Sprain Brook Parkway. He lost control of his vehicle and then spun out. When he regained control of his vehicle, he pulled over to the shoulder and the plaintiff's vehicle was on the side of the road. The evidence established that the plaintiff's vehicle was hit by the officer's vehicle. Both plaintiffs were taken by ambulance to Westchester Medical Center where Marian Molloy, the 74 year- old passenger in the vehicle, complained of

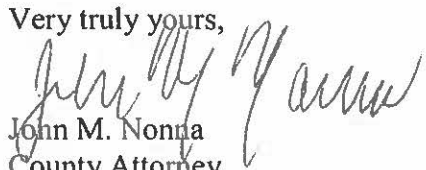


neck, back and right knee pain. She underwent a right knee arthroscopy on June 2, 2021 and a cervical discectomy and fusion from C-4 through C-7 on June 30, 2021. She engaged in physical therapy for several months after the surgeries. She continues to complain of limited range of motion in her neck and right knee pain. Baase Fentress, the 48 year- old driver of the vehicle, complained of neck, lower back, both knees and left shoulder pain. He has treated with physical therapy and has had injections, for pain management, in his lower back and left shoulder. He continues to complain of pain in the neck, back, both knees and left shoulder. We conducted independent medical examinations of each of the plaintiff which confirmed their injuries.

At trial plaintiffs will claim that the County officer was negligent for traveling at an unsafe speed for the conditions then and there prevailing and for failing to maintain control of his vehicle. The plaintiffs will further argue that the County's negligence was the proximate cause of their injuries.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. The accompanying Act will authorize settlement of the lawsuit entitled Baase Fentresse and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester, in the amount of \$450,000.00 inclusive of attorney's fees.

Very truly yours,

  
John M. Nonna  
County Attorney

JMN/jhf

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the settlement of the lawsuit of Baase Fentresse and Marian Malloy v. Justin Szilva, Westchester County Police Department and County of Westchester, in the amount of \$450,000.00 inclusive of attorney's fees with \$400,000.00 being allocated to plaintiff Marian Malloy and \$50,000.00 to plaintiff Baase Fentresse.

This matter is pending in the Westchester County Supreme Court before the Honorable Joan B. Lefkowitz. The lawsuit tentatively settled at a settlement conference, pending this Board's approval, in the amount of \$450,000.00, inclusive of attorney's fees.

Mark Kochanowicz, Esq. of Cellino Law, LLP, 420 Lexington Avenue., Ste. 830, New York New York 10170, is representing the plaintiffs, Baase Fentresse and Marian Malloy.

This lawsuit arises out of a motor vehicle accident that occurred on January 26, 2021 on the Sprain Brook Parkway north at approximately 12:46 pm. This is a motor vehicle accident involving a police officer in an undercover narcotics vehicle. The accident happened in a snow storm. The officer testified that he recalls changing lanes from the far left lane to the middle lane because the vehicle in front of him began to stop. He recalls hitting the vehicle in front of him in the center lane while traveling on the Sprain Brook Parkway. He lost control of his vehicle and then spun out. When he regained control of his vehicle, he pulled over to the shoulder and the plaintiff's vehicle was on the side of the road. The evidence established that the plaintiff's

vehicle was hit by the officer's vehicle. Both plaintiffs were taken by ambulance to Westchester Medical Center where Marian Molloy, the 74 year- old passenger in the vehicle, complained of neck, back and right knee pain. She underwent a right knee arthroscopy on June 2, 2021 and a cervical discectomy and fusion from C-4 through C-7 on June 30, 2021. She engaged in physical therapy for several months after the surgeries. She continues to complain of limited range of motion in her neck and right knee pain. Baase Fentress, the 48 year- old driver of the vehicle, complained of neck, lower back, both knees and left shoulder pain. He has treated with physical therapy and has had injections, for pain management, in his lower back and left shoulder. He continues to complain of pain in the neck, back, both knees and left shoulder. We conducted independent medical examinations of each of the plaintiff which confirmed their injuries.

At trial plaintiffs will claim that the County officer was negligent for traveling at an unsafe speed for the conditions then and there prevailing and for failing to maintain control of his vehicle. The plaintiffs will further argue that the County's negligence was the proximate cause of their injuries.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. The accompanying Act will authorize settlement of the lawsuit entitled Baase Fentresse and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester, in the amount of \$450,000.00 inclusive of attorney's fees.

Your Committee has carefully considered the subject matter, the settlement proposal, the attached Act and recommends authorizing the County Attorney or his designee to settle the

lawsuit entitled Baase Fentresse and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester et al., in the amount of \$450,000.00, Westchester County Supreme Court Index No. 64226/2021, 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

, 2024

COMMITTEE ON

ACT NO. -2024

AN ACT authorizing the County Attorney to settle the lawsuit of Baase Fentress and Marian Malloy v Justin Szilva, Westchester County Police Department and County of Westchester, Westchester County Supreme Court Index No. 64226/2021, in the amount of \$450,000.00, inclusive of attorney's fees

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

Section 1. The County Attorney is authorized to settle the lawsuit of Baase Fentress and Marian Malloy v. Justin Szilva, County of Westchester Police Department and County of Westchester, Westchester County Supreme Court Index No. 64226/2021, in the amount of \$450,000.00, inclusive of attorney's fees.

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.

# FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement: Baase Fentress &  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      \$ 450,000

Total Current Year Revenue      \$ -

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

Additional Appropriations       Other (explain)

Identify Accounts:    6N Fund: 615 59 0701 4520 4280 05

Potential Related Operating Budget Expenses:      Annual Amount    N/A

Describe:    Settlement of Auto Liability Claim A210005 Fentress Baase & Malloy Marian

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:    Jane Hogan-Felix

Title:    Deputy County Attorney

Department:    Law

Date:    March 5, 2024

Reviewed By:   
Budget Director

Date:    3/11/24