

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

February 24, 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 settle the lawsuit of Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00 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 Marcelino Cruz v. County of Westchester, in the amount of \$400,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court. Mark Stumer, Esq., of Budin, Reisman, Kupferberg, & Bernstein, LLP, 112 Madison Avenue, New York, New York 10016 is representing the plaintiff. Patrick Butler, Esq., of Maroney O'Connor LLP, 11 Broadway, New York, New York 10004 is representing the County. The matter tentatively settled on February 4, 2022 pending this Board's approval of a settlement in the amount of \$400,000.00, inclusive of attorney's fees.

This matter arises out of a passenger accident which occurred on October 31, 2018. The then 42-year-old plaintiff alleges that at 4:39 p.m. on Grassland Road, near the east gate entrance to Westchester Community College in Valhalla., Bee Line Bus #572 turned left in front of the pick-up truck plaintiff was driving down the hill. The driver of the bus made a left turn in front of plaintiff's truck while the traffic light was green.

Plaintiff was brought to Westchester County Medical Center by ambulance. Plaintiff complained of pain in his entire left leg, right knee, lower back, and neck.

In the weeks after the accident, plaintiff received acupuncture and electrical stimulation. In the months that followed, plaintiff underwent two epidural steroid injections to his lower back. From February 2019 until 2020, plaintiff regularly received physical therapy. For approximately one year following the accident, Plaintiff states he was confined to his home, only leaving for medical treatment.



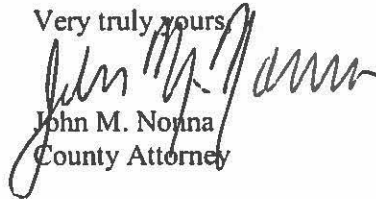
In 2019 and 2020, plaintiff underwent three arthroscopic surgeries to his knees. Plaintiff has also received prescription pain medication and medicated patches for his neck and back. Plaintiff claims that he now must wear eye glasses to read; whereas before the accident, he did not.

The New York State Insurance Fund has filed a lien of \$142,377.66 against plaintiff's recovery.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County's insurance policy will cover \$300,000 of the \$400,000 settlement, and the County will only pay its \$100,000. deductible.

The accompanying Act will authorize settlement of the lawsuit entitled, Marcelino Cruz v. County of Westchester, in the amount of \$400,000.00, Westchester County Supreme Court Index No. 62239/2019, inclusive of attorney's fees.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Nonna". The signature is written in a cursive style with a large initial "J".

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 the settlement of the lawsuit of Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00.

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The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County's insurance policy will cover \$300,000 of the \$400,000 settlement, and the County will only pay its \$100,000. deductible.

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 Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00, 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 settle the lawsuit of Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00, 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 Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00 inclusive of attorney's fees. The County will pay \$100,000.00 of this settlement as required by the self-insured retention applicable to 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.

FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement: M. Cruz 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: 6N Fund: 615 59 0698/4270 4280/05

Potential Related Operating Budget Expenses: Annual Amount n/a

Describe: _____

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: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: February 23, 2022

Reviewed By: 

DV 2/23/22 Budget Director

Date: 2/23/22