

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

March 5, 2021

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

Re: An Act authorizing the County of Westchester (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 her legal action against a third-party tortfeasor.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County of Westchester (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 "K.O.," from the settlement of her legal action against a third-party tortfeasor. 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.

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 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:

On June 11, 2019, K.O., an employee in the Westchester County Department of Parks, Recreation and Conservation (the "Department") fell down some steps at the Westchester Hills Golf Course located at 401 Ridgeway, White Plains, NY 10605. As a result of the accident, K.O. sustained injuries to her left hip and left leg and missed six weeks of work. She is currently back at work in full capacity.

K.O. filed a claim for her injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to her Workers' Compensation claim, K.O. retained counsel in advance of commencing a personal injury action against Westchester Hills Golf Club, Inc. K.O.'s counsel is Kenneth A. Pryor, Esq. of THE PRYOR LAW FIRM, LLC, 666 Old County Road, Suite 305, Garden City, NY 11530.

On or about February 12, 2021, K.O. agreed in principle to settle her personal injury claim before litigation for one hundred twenty-five thousand and 00/100 dollars (\$125,000.00), pending the consent of the County. In connection with the proposed settlement, K.O.'s counsel notified this Office that he is waiving his costs and disbursements and that his legal fee totals forty-one thousand six hundred sixty-two and 50/100 dollars (\$41,662.50).

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 K.O.'s behalf in the amount of fifteen thousand eight hundred twelve and 02/100 dollars (\$15,812.02) and indemnity (lost wage) benefits in the amount of sixteen thousand six hundred fifty-four and 68/100 dollars (\$16,654.68) for a total expenditure of thirty-two thousand four hundred sixty-six and 70/100 dollars (\$32,466.70).

Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to compromise the County's claim for reimbursement by reducing its lien by 33.33%, equaling a dollar reduction of ten thousand eight hundred twenty-one and 15/100 dollars (\$10,821.15). The County would thereafter accept in satisfaction of its present lien a total of twenty-one thousand six hundred forty-five and 55/100 dollars (\$21,645.55). After the County is reimbursed and counsel fees are paid, K.O. would receive sixty-one thousand six hundred ninety-one and 95/100 (\$61,691.95).

*[Remainder of Page Intentionally Left Blank]*

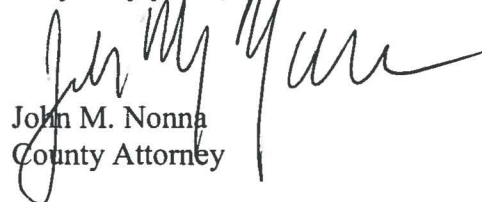
For the convenience of the reader, a chart of the aforementioned figures appears below:

<b>Worker's Compensation Amounts</b>	
Medical Expenses	\$ 15,812.02
Indemnity (Lost Wage) Payments	\$ 16,654.68
<b>Worker's Comp, TOTAL</b>	<b>\$ 32,466.70</b>

<b>Litigation Amounts</b>	
Third-Party Settlement (Gross Amt)	\$ 125,000.00
Disbursements	\$ -
Attorney's Fees	\$ 41,662.50
Cost of Litigation (COL)	\$ 41,662.50
Net Proceeds of Third-Party Settlement	\$ 83,337.50
Percentage COL	33.33%
Carrier's COL	\$ 10,821.15
<b>Carrier's Net Lien</b>	<b>\$ 21,645.55</b>
Claimant's Net Recovery	\$ 61,691.95

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 K.O. from her recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/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 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 "K.O." 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.

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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 K.O. from the settlement of her legal action against a third-party tortfeasor. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York  
March \_\_\_\_, 2021

ACT NO. 2021

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 her legal action against a third-party tortfeasor.

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 "K.O.", from a settlement of her legal action against a third party. The County's reimbursement is \$21,645.55, representing a 33.33% reduction of its lien, with full reservation of the County's right to set off K.O.'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: Settlement of Workers Comp Lien (K.O.)

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      \$ 0

Total Current Year Revenue \$ 21,645.55

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0019-9289

\_\_\_\_\_

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

3/5/21

If you need more space, please attach additional sheets.