

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

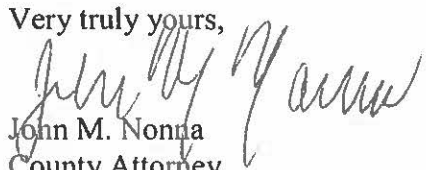


neck, back and right knee pain. She underwent a right knee arthroscopy on June 2, 2021 and a cervical discectomy and fusion from C-4 through C-7 on June 30, 2021. She engaged in physical therapy for several months after the surgeries. She continues to complain of limited range of motion in her neck and 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