

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 “B.J.” 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.

On October 22, 2018, B.J.—a Senior Maintenance Mechanic II (Electrician) in the Westchester County Department of Environmental Facilities (the “Department”)—tripped and fell on construction materials that were left out in the North Yonkers Pump Station’s maintenance room by County vendor E.C.C.O. III Enterprises, Inc. (“ECCO”). When B.J. fell, he was carrying an auxiliary-generator battery, an item which weighed more than one hundred pounds. The battery fell on B.J.’s shin. As a result of the fall, B.J. injured his right ankle, right shin, and right arm. He eventually underwent surgery related to the fall, and missed a grand total of forty-one (41) weeks of work.

After the injury B.J. filed a NYS Workers’ Compensation claim, which the County did not controvert. On a parallel track to his Workers’ Compensation claim, B.J. retained counsel and commenced a personal-injury action against ECCO. B.J. is represented therein by SCARCELLA LAW OFFICE, located at 44 Church Street, Suite 150, White Plains, NY 10601. ECCO is represented by Fabiani Cohen & Hall, LLP, located at 570 Lexington Avenue, 4th Floor, New York, NY 10022.

On or about October 5, 2023, B.J. agreed in principle to settle his personal-injury action for two hundred fifteen thousand and 00/100 dollars (\$215,000.00), pending the County’s consent.

In connection with the proposed settlement, B.J.'s counsel notified the County Attorney's Office that its costs and disbursements total five thousand five hundred eighty-two and 70/100 dollars (\$5,582.70) and that its attorney's fee totals seventy-one thousand six hundred sixty-six and 67/100 dollars (\$71,666.67)—for a total litigation cost of seventy-seven thousand two hundred forty-nine and 37/100 dollars (\$77,249.37).

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 B.J.'s behalf in the amount of fourteen thousand one hundred eleven and 59/100 dollars (\$14,111.59) and indemnity (lost wage) benefits in the amount of thirty-six thousand eight hundred three and 65/100 dollars (\$36,803.65)—bringing the County's total expenditures in this matter to fifty thousand nine hundred fifteen and 24/100 dollars (\$50,915.24).

Based upon a review of the facts and circumstances of this matter, the County Attorney seeks the authority to compromise the County's claim for reimbursement by reducing its lien by 35.93%, equaling a dollar reduction of eighteen thousand two hundred ninety-three and 85/100 dollars (\$18,293.85). The County would thereafter accept in satisfaction of its present lien a total of thirty-two thousand six hundred twenty-one and 39/100 dollars (\$32,621.39). After the County is reimbursed and counsel fees are paid, B.J. would receive one hundred five thousand one hundred twenty-nine and 24/100 dollars (\$105,129.24).

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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 B.J. from the settlement of his 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
November 27th, 2023

Joseph Zille John
Alan N. Marks
David Ann
Cathy Palko
Jill
Nancy Barr
Suzanne Brandon

Alan N. Marks
Joseph Zille John
David Ann
Cathy Palko
Nancy Barr

COMMITTEES ON
Budget & Appropriations Law & Major Contracts

Dated: November 27, 2023
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.



Colin J. Smith



Colin J. Smith

COMMITTEES ON

Budget & Appropriations

Law & Major Contracts

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 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 "B.J.", from a settlement of his legal action against a third party. The County's reimbursement is \$32,621.39, representing a 35.93% reduction of its lien, with full reservation of the County's right to set off B.J.'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 (B.J.)

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 \$ 32,621.39

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 613-57-0018-4280

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

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

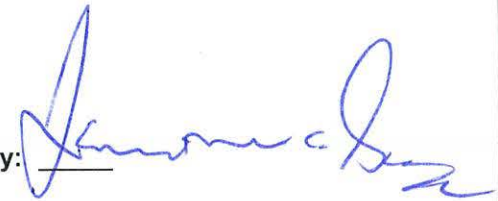
Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Associate County Attorney

Department: Law

do Reviewed By: 

Budget Department

10/23/23

If you need more space, please attach additional sheets.