

June 7, 2023

George Latimer
County Executive

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 L.S., an infant by his mother and natural guardian, Meredith Shur and Meredith Shur, individually against Westchester County and Westchester County Department of Parks, Recreation and Conservation in the amount of \$410,000.00

Dear Honorable Members of the Board:

Attached for your review is a draft of proposed legislation in connection with the above-referenced matter.

In or about June 2021, Meredith Shur commenced an action against the County of Westchester ("County") on behalf of her infant child, L.S., and herself for personal injury when the infant child suffered a partial amputation of his right index finger on June 7, 2020, while the family was visiting Cranberry Lake Preserve ("Park"), a County owned and operated park in West Harrison.

On the date of the accident, the Shur family was hiking along trails within the Park with other friends when they stopped at a quarry stone carrying cart exhibit adjacent to one of the trails. The exhibit is comprised of a pair of metal tracks approximately two (2) feet long upon which a pair of metal train-like wheels connected by an axle rests. The axle was tethered to the ground below by a chain which permitted the heavy metal wheels to roll back and forth along the tracks. There was no fencing, barrier or other signage advising or intending to prevent park patrons from interacting with the exhibit. Park personnel also had prior knowledge that park patrons would interact with the exhibit.

The infant plaintiff, eleven (11) years old at the time of his accident, and his brother were interacting with the exhibit. According to testimony by the infant plaintiff, he and his brother were trying to move and possibly lift the metal wheels along the track when his right index finger was crushed by one of the train-like wheels. The accident caused a traumatic fracture of right index finger causing partial amputation. The family immediately transported plaintiff to

Westchester Medical Center (“WMC”). Plaintiff Meredith Shur, the mother, is a physician and contacted colleagues to advise of the injury while on the way to WMC to obtain appropriate and qualified medical assistance in light of the serious nature of the injury.

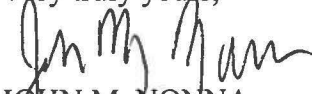
The child plaintiff had gone through several medical procedures and therapies to save as much of the finger as possible including treatment in a hyperbaric chamber as well as the use of medical leeches to cleanse and enhance blood circulation to the damaged fingertip. There is a distinct and noticeable permanent deformity of the right index finger. The infant plaintiff is right-hand dominant and the injury has resulted in his having to adapt to write as well as play various sports. According to the medical records and testimony, there is still tingling, pain and feelings of cold and numbness at the injured finger. If these symptoms do not resolve over time or get worse, there is a possibility that additional vascular surgery may be necessary to alleviate the symptoms

The doctrine of attractive nuisance due to the age of the injured plaintiff, the lack of any signage or other barrier/fencing warning against personal interaction with the exhibit and/or restricting or warning about possible risk of injury in rolling the wheels, the fact that the exhibit was constructed to allow the metal wheels to move over the track, and the prior knowledge by Park personnel that visitors would interact and move the wheels over the track establishes a high likelihood of liability on the County for the accident and injury. Since this accident the metal wheels were spot-welded onto the tracks to prevent any movement or rolling of same.

At the conclusion of discovery, the parties negotiated over several months commencing December 2022 with an effort to settle. Plaintiff’s initial demand was \$800,000. Ultimately, the parties settled for \$410,000.00. Inasmuch as the injured party is an infant under the law, the proposed settlement will require a judge’s order before the settlement amount is approved. However, Judge Nancy Quinn-Koba participated and assisted in the parties’ settlement discussions and indicated that she was satisfied with the settlement amount and would approve same. It is undisputed that the infant plaintiff suffered a permanent physical injury to his right index finger on his dominant hand and that he is likely to have permanent deficiencies as a result of the defect to his finger. As review of settlement and verdicts for similar injuries places the value of this injury anywhere from \$500,000 to \$1,500,000. This matter has an established reserve of \$750,000.00 with the County’s 6N Fund. Also, Commissioner Kathleen O’Connor has been consulted with regarding this matter and concurs with this settlement

Please advise if further information is needed.

Very truly yours,



JOHN M. NONNA
Westchester County Attorney

JMN/jf
Enclosure

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 L.S., an infant by his mother and natural guardian, Meredith Shur and Meredith Shur, individually against Westchester County and Westchester County Department of Parks, Recreation and Conservation in the amount of \$410,000.00.

Infant plaintiff L.S. suffered a partial amputation of his right index finger of his dominant hand while interacting with the metal wheels and track of a quarry stone carrying cart exhibit at the Cranberry Lake Preserve, Harrison, New York; a County-owned and maintained public park.

The exhibit is comprised of two heavy metal wheels connected by an axle that roll back and forth on metal train tracks approximately two (2) feet long. The axle was tethered to the ground by a chain to limit its roll. However, the wheels rolled and moved enough to catch the infant plaintiff's right index finger and caused it to be wedged between the metal wheels and track.

As a result of the accident, the infant plaintiff's right index finger is visibly deformed, continues to suffer pain and numbness, and is considered to be permanent.

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

ACT NO.

2023

AN ACT authorizing the County Attorney to settle the lawsuit of L.S., an infant by his mother and natural guardian, Meredith Shur and Meredith Shur, individually against Westchester County and Westchester County Department of Parks, Recreation and Conservation in the amount of \$410,000.00, Supreme Court of the State of New York, Westchester County, Index No. 58261/2021

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

Section 1. The County Attorney is hereby authorized to settle the lawsuit of L.S., an infant by his mother and natural guardian, Meredith Shur and Meredith Shur, individually against Westchester County and Westchester County Department of Parks, Recreation and Conservation in the amount of \$410,000 to plaintiff, inclusive of counsel fees.

Section 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 purposes hereof.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Settlement for G200053(Shur) 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 \$ 410,000

Total Current Year Revenue _____

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

Additional Appropriations Other (explain)

Identify Accounts: 6N Fund- 615/59/0700/4410/4280/04

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: BI Settlement of G200053 L.S., an infant by his m/n/g Shur, Meredith

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: John Fico

Title: Associate County Attorney

Department: Law

Date: June 7, 2023

Reviewed By: 
pH

Budget Director

Date: 6/8/23