

Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Wednesday, October 11, 2023

10:00 AM

Committee Room

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website:

<https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

Guests: Law Dept.: County Attorney John Nonna, Assistant County Attorney Jane Hogan-Felix, and Assistant County Attorney Chris Inzero

1. [2023-423](#) ACT - Lawsuit Settlement Bryant v County of Westchester

AN ACT authorizing the County Attorney to settle the lawsuit of James Bryant v. County of Westchester in the amount of ONE HUNDRED NINETY-FIVE THOUSAND (\$195,000) DOLLARS, inclusive of attorney's fees.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

2. [2023-434](#) ACT - Lawsuit Settlement - "C.I." v. Hudson View Associates, LLC.

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 personal-injury action.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

September 19, 2023

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 James Bryant v. County of Westchester et al. in Supreme Court Westchester County, Index No. 55478/2020, in the amount of \$195,000.00 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 James Bryant v County of Westchester et al., in the amount of \$195,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court before the Honorable Nancy Quinn Koba. The lawsuit tentatively settled after a verdict on liability, pending this Board's approval of a settlement in the amount of \$195,000.00, inclusive of attorney's fees.

Worby Vecchio Edelman, LLP., 81 Main Street, Suite 306, White Plains, New York 10601, is representing the plaintiff, James Bryant.

This lawsuit arises out of an inmate on inmate assault at the Westchester County Jail on January 28, 2019 at approximately 9:40 am. The plaintiff was in the shower when he was attacked by another inmate who was out of his cell having just completed his shower time. At trial plaintiff claimed that the County was negligent for failing to rehouse him or his assailant. Plaintiff claimed that he repeatedly complained to correctional staff that he was fearful of his assailant and that, being co-defendants in the same criminal case, they shouldn't be housed together. The County argued that it had no actual notice that the plaintiff was fearful of his co-defendant because he never told anyone at Correction. The County further argued that they had no constructive notice because the two co-defendants had been housed together for over five months prior to the assault without any apparent difficulty.

At the conclusion of the liability phase of a bifurcated trial, the jury returned a verdict finding the County and the non-party assailant responsible for the accident. The County was



found to be 35% percent responsible and the non-party assailant was found to be 65% responsible. The Plaintiff was found to have no responsibility for the assault.

The matter settled before the damages phase of the trial where the plaintiff would have presented evidence that, as a result of the assault, he suffered a right nasal bone fracture, a right medial orbital wall fracture and a laceration to his right eyelid and tear duct requiring surgery and the implantation of a drainage tube. He claims he continues to suffer from blurry vision, dizziness and headaches.

The settlement takes into consideration the liability findings of the jury, 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 of James Bryant v County of Westchester et al, in the amount of \$195,000.00, , 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 James Bryant v County of Westchester et al., in the amount of \$195,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court before the Honorable Nancy Quinn Koba. The lawsuit tentatively settled after a verdict on liability, pending this Board's approval of a settlement in the amount of \$195,000.00, inclusive of attorney's fees.

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The County was found to be 35% percent responsible and the non-party assailant was found to be 65% responsible. The Plaintiff was found to have no responsibility for the assault.

The matter settled before the damages phase of the trial where the plaintiff would have presented evidence that, as a result of the assault, he suffered a right nasal bone fracture, a right medial orbital wall fracture and a laceration to his right eyelid and tear duct requiring surgery and the implantation of a drainage tube. He claims he continues to suffer from blurry vision, dizziness and headaches.

The settlement takes into consideration the liability findings of the jury, 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 of James Bryant v County of Westchester et al, in the amount of \$195,000.00, Westchester County Supreme Court Index No. 55478/2020, 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 James Bryant v County of Westchester et al., in the amount of \$195,000.00, Westchester County Supreme Court Index No. 55478/2020, 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

, 2023

ACT NO. -2023

AN ACT authorizing the County Attorney to settle the lawsuit of James Bryant v County of Westchester, et al, Westchester County Supreme Court Index No. 55478/2020, in the amount of \$195,000.00, 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 James Bryant v. County of Westchester, et al, Westchester County Supreme Court Index No. 55478/2020, in the amount of \$195,000.00, 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: James Bryant 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 \$ 195,000

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 0699/4350 4280/04

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Settlement of Public Officials Liability Claim G190019 Bryant, James

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: September 19, 2023

 Reviewed By:

Budget Director

Date: 9/19/23



George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

September 21, 2023

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

Re: An Act authorizing 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 his personal-injury action.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize 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 "C.I.," from the settlement of his personal-injury action. 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.

Please note: This legislation concerns two actions in which the County is a party: the New York State litigation *C.I. v Hudson View Associates, LLC*, Index No. 54468/2020 (Sup Ct, Westchester County) and the federal litigation *Federal Insurance Co. v. County of Westchester*, 23-cv-6261 (NSR) (S.D.N.Y.). The compromise of the County's lien proposed in the instant legislation—which constitutes a complete waiver of the County's existing Workers' Comp lien—will enable the parties to resolve both matters.

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

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132*

*Please be advised that service by facsimile
is not accepted.



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:

The Subject Injury

In the morning of January 5, 2018, C.I.—then a Senior Social Caseworker working in the Westchester County Department of Social Services (the “Department”)—arrived at work, located at 131 Warburton Avenue, Yonkers, New York (the “Subject Premises”). Notably, the County leased the Subject Premises from I.Park Westchester, LLC (“I.Park”) pursuant to a twenty-year lease executed with I.Park’s predecessor-in-interest, Hudson View Associates, LLC (“Hudson View”), which began on February 1, 2006 (the “Lease”). After he parked his car, C.I. slipped and fell in the Subject Premises’ parking garage. As a result of the slip and fall, C.I. sustained injuries to his neck and back. C.I. further alleges that he sustained a traumatic brain injury. After the injury, Plaintiff worked on and off for approximate three years. He retired from County service effective January 25, 2021.

As a result of the injury, C.I. filed a workers’ compensation claim that ultimately resulted in an award.

The Twin Lawsuits

On a parallel track to his workers’ compensation claim, C.I. commenced two separate personal injury actions in the Supreme Court of the State of New York State: one against Hudson View on March 20, 2020, and one against I.Park on September 29, 2020. On January 14, 2021, the court consolidated both actions under the caption *C.I. v Hudson View Associates, LLC*, Index No. 54468/2020 (Sup Ct, Westchester County). In that action, C.I. is represented by SARACINO MORRIS LAW GROUP PLLC, 600 Mamaroneck Avenue, Suite 400, Harrison, NY 10528. Both Hudson View and I.Park (collectively, the “Property Owner Defendants”) are represented by COZEN O’CONNOR, 3 WTC, 175 Greenwich Street, 55th Floor, New York, NY 10007.

On June 8, 2021, the Property Owner Defendants impleaded the County of Westchester into the action as a third-party defendant, alleging that the County is liable to the Property Owners pursuant to two provisions of the Lease: one dealing with defense and indemnity, the other dealing with an obligation to provide additional insurance. Despite moving to dismiss and moving for summary judgment, the County was unable to resolve the issues as a matter of law.

On July 20, 2023—shortly after the New York State court denied both parties’ motions for summary judgment—the parent company of I.Park’s insurance company, Federal Insurance Company (“FIC”), commenced a federal diversity action against the County. In that action, FIC seeks a declaration that the County is obligated under the Lease to insure I.Park and to provide indemnity and defense costs related to same. In that federal action, FIC is represented by TRESSLER LLP, 163 Madison Avenue, Suite 404, Madison, NJ 07960. As of the date of this legislation, the County has adjourned its obligation to answer or otherwise reply.

The Proposed Settlement

On or about September 19, 2023, C.I. agreed in principle to settle the New York State action for a global settlement of four hundred sixty thousand and 00/100 dollars (\$460,000.00), subject to the Westchester County Board of Legislators consenting to waiving the County's right to recover C.I.'s existing worker's compensation lien. The lion's share of the proposed settlement will be contributed by I.Park's insurance company, who has agreed to contribute four hundred fifty thousand and 00/100 dollars (\$450,000.00). The County—acting through the authority vested in the Westchester County Attorney—has agreed to contribute the remaining ten thousand and 00/100 dollars (\$10,000.00). Additionally, if this settlement is approved, FIC has agreed to withdraw the federal diversity action.

The County's Workers' Compensation Lien

In connection with the proposed settlement, C.I.'s counsel notified this Office that his costs and disbursements in this matter total ten thousand and 00/100 dollars (\$10,000.00) and his legal fee totals one hundred fifty thousand and 00/100 dollars (\$150,000.00).

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 C.I.'s behalf in the amount of twenty thousand three hundred nineteen and 39/100 (\$20,319.39), and indemnity (lost wage) payments in the amount of eighty-nine thousand six hundred thirty-eight and 37/100 dollars (\$89,638.37). The County's total lien in this matter—before accounting for the required reduction of its fees pursuant to statutory and decisional law—totals one hundred nine thousand nine hundred fifty-seven and 76/100 dollars (\$109,957.76).

Were resolution of this matter not contingent upon the County writing off its lien, the County would be obligated to compromise its claim for reimbursement by reducing its lien by 34.79%, equaling a dollar reduction of thirty-eight thousand two hundred fifty-four and 30/100 dollars (\$38,254.30). Thereafter, the County's present lien would total seventy-one thousand seven hundred three and 46/100 dollars (\$71,703.46).

As set forth above, settlement of this matter will require the County to forego its existing lien. Note, however, that the County will be free to offset future expenses against Plaintiff's recovery pursuant to applicable law.

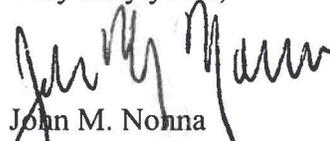
For the reader's convenience, a chart of the aforementioned figures appears below:

Worker's Compensation Amounts	
Medical Expenses	\$20,319.39
Indemnity (Lost Wage) Payments	\$89,638.37
Worker's Comp, SUB-TOTAL	\$ 109,957.76
MVA ("Basic Economic Loss") Reduction	\$ -
Worker's Comp, TOTAL	\$ 109,957.76

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 460,000.00
Disbursements	\$10,000.00
Attorney's Fees	\$150,000.00
Cost of Litigation (COL)	\$160,000.00
Net Proceeds of Third-Party Settlement	\$ 300,000.00
Percentage COL	34.79%
Carrier's COL	\$ 38,254.30
Carrier's Net Lien (Without Writedown)	\$ 71,703.46
Claimant's Net Recovery (Without Writedown)	\$ 228,296.54
Litigation Amounts (with Writedown)	
Carrier's Net Lien (with Writedown)	\$ -
Claimant's Net Recovery (with Writedown)	\$ 300,000.00

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 C.I. from his recovery in a personal-injury action. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna
County Attorney

JMN/cji

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 “C.I.” 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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As a result of the injury, C.I. filed a workers’ compensation claim that ultimately resulted in an award.

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No. 54468/2020 (Sup Ct, Westchester County). In that action, C.I. is represented by SARACINO MORRIS LAW GROUP PLLC, 600 Mamaroneck Avenue, Suite 400, Harrison, NY 10528. Both Hudson View and I.Park (collectively, the “Property Owner Defendants”) are represented by COZEN O’CONNOR, 3 WTC, 175 Greenwich Street, 55th Floor, New York, NY 10007.

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On July 20, 2023—shortly after the New York State court denied both parties’ motions for summary judgment—the parent company of I.Park’s insurance company, Federal Insurance Company (“FIC”), commenced a federal diversity action against the County. In that action, FIC seeks a declaration that the County is obligated under the Lease to insure I.Park and to provide indemnity and defense costs related to same. In that federal action, FIC is represented by TRESSLER LLP, 163 Madison Avenue, Suite 404, Madison, NJ 07960. As of the date of this legislation, the County has adjourned its obligation to answer or otherwise reply.

On or about September 19, 2023, C.I. agreed in principle to settle the New York State action for a global settlement of four hundred sixty thousand and 00/100 dollars (\$460,000.00), subject to the Westchester County Board of Legislators consenting to waiving the County’s right to recover C.I.’s existing worker’s compensation lien. The lion’s share of the proposed settlement will be contributed by I.Park’s insurance company, who has agreed to contribute four hundred fifty thousand and 00/100 dollars (\$450,000.00). The County—acting through the authority vested in the Westchester County Attorney—has agreed to contribute the remaining ten thousand and

00/100 dollars (\$10,000.00). Additionally, if this settlement is approved, FIC has agreed to withdraw the federal diversity action.

In connection with the proposed settlement, C.I.'s counsel notified the County Attorney's Office that his costs and disbursements in this matter total ten thousand and 00/100 dollars (\$10,000.00), and his legal fee totals one hundred fifty thousand and 00/100 dollars (\$150,000.00).

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 C.I.'s behalf in the amount of twenty thousand three hundred nineteen and 39/100 (\$20,319.39), and indemnity (lost wage) payments in the amount of eighty-nine thousand six hundred thirty-eight and 37/100 dollars (\$89,638.37). The County's total lien in this matter—before accounting for the required reduction of its fees pursuant to statutory and decisional law—totals one hundred nine thousand nine hundred fifty-seven and 76/100 dollars (\$109,957.76).

Were resolution of this matter not contingent upon the County writing off its lien, the County would be obligated to compromise its claim for reimbursement by reducing its lien by 34.79%, equaling a dollar reduction of thirty-eight thousand two hundred fifty-four and 30/100 dollars (\$38,254.30). Thereafter, the County's present lien would total seventy-one thousand seven hundred three and 46/100 dollars (\$71,703.46).

As set forth above, settlement of this matter will require the County to forego its existing lien. Note, however, that the County will be free to offset future expenses against Plaintiff's recovery pursuant to applicable law.

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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 C.I. from the settlement of his personal-injury action. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
September __, 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 personal-injury action.

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 “C.I.”, from a settlement of his personal-injury action. Because the County is a party to the underlying litigation, the County is waiving its right to recovery as part of the settlement of the claims against it. However, the County fully reserves its right to set off C.I.’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: Legislation to settle: Ikhigbonoaremen 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 N/A

Total Current Year Revenue \$ -

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

Additional Appropriations Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Legislation to settle case (to waive the workers comp lien):

6N Claim G180288 Ikhigbonoaremen, Christopher V Hudson View Assoc., LLC et al.

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: Christopher J. Inzero

Title: Associate County Attorney

Department: Law

Date: September 25, 2023

Reviewed By: _____

Budget Director

Date: _____