



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 23, 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 remit payment in the amount of \$400,000.00 for the County's obligation in the appellate lawsuit entitled Jamar McCalla v. Westchester Department of Transportation, et al, Appellate Division, Second Department, Case No. 2023-00275,**

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the remittance of payment in the amount of \$400,000.00 for the County's potential obligation in the appellate lawsuit entitled, Jamar McCalla v. County of Westchester, et al.

This matter arises out of a Liberty Lines Bus accident which occurred on June 26, 2015. A Liberty Lines bus collided with plaintiff's vehicle in the Bronx. Plaintiff Jamar McCalla filed a lawsuit against Liberty Lines Transit, Inc., ("Liberty Lines"), the Westchester County Department of Transportation, and bus driver Oriol Brice. Accordingly, the County was a defendant in this civil action.

The original, lower court case concluded in a jury verdict rendered against the County and Liberty Lines on July 26, 2022. The jury verdict was for \$1.465 million - - \$450,000 for past pain and suffering; \$650,000 for future pain and suffering; and \$365,000 for future medical expenses. In conjunction with contractual obligations set forth in the contract between the County and Liberty Lines, the verdict required the County to pay the self-insured retention in a primary insurance policy in the amount of \$250,000.00.



Michaelian Office Building, Room 600

148 Martine Avenue

White Plains, New York 10601

Telephone: (914)995-2690

Website: westchestergov.com

Subsequently, the County and Liberty Lines filed an appeal of the jury's verdict with the Appellate Division, Second Department. The Paris Law Group, P.C., 60 42nd Street, Suite 4000, New York, New York is representing the plaintiff. Jason Bernheimer, Esq., of Keane & Bernheimer, PLLC, 480 Bedford Road, Suite 3201, Chappaqua, New York is representing the County. This appeal has now been settled in the Appellate Division, Second Department.

On May 18th, in a court-ordered mediation of the appeal of the McCalla verdict, the plaintiff's counsel verbally accepted an offer of \$400,000 to settle the appeal of the case. In conjunction with the contractual obligations set forth in the contract between the County and Liberty Lines, the County is now seeking to effectively advance this \$400,000 settlement on behalf of Liberty Lines.

The insurance protection in place at the time of the verdict consisted of a primary insurance policy and excess insurance policies. These insurance policies had all been purchased in the name of Liberty Lines Bus Transit, Inc. The County indirectly benefits from these insurance coverages because it has been named as an additional insured on the policies. However, Liberty Lines - - not the County - - is the Named Insured in the policies. To oversee and manage the administration of claims filed against Liberty Lines, Liberty Lines retained a third party administrator, Golden Eye Claims, Inc., ("Golden Eye").

As a result of the verdict, Liberty Lines' primary insurance policy had been exhausted, yet a balance of approximately \$700,000. remained to be paid to the plaintiff. Liberty Lines sought an insurance payment for this loss from its excess insurer, New Hampshire Insurance Company, ("New Hampshire"), which is excess of the primary insurance policy issued to Liberty Lines.

However, New Hampshire denied Liberty's claim on the grounds that notice of the claim was not timely served on New Hampshire. The responsibility of serving notice on the insurer was either that of Liberty Lines or of Golden Eye, not the County. Consequently, at the direction of the County, Liberty Lines initiated an arbitration proceeding against New Hampshire to obtain the balance due to the plaintiff.

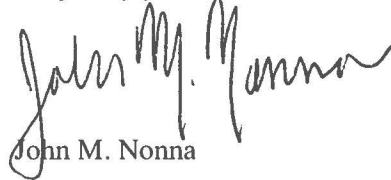
If the arbitration proceeding against New Hampshire is unsuccessful, then the County will seek reimbursement of the \$400,000. from Liberty Lines and the third party administrator for Liberty Lines, Golden Eye. In Liberty Lines' ongoing arbitration proceeding against New Hampshire, an arbitration hearing has been scheduled to be held on September 11, 2023.

In settling this case, it is important to note that the plaintiff's pre-trial summary judgment motion on the issue of liability was granted on October 22, 2020. Consequently, pre-judgment interest began accruing from that date forward on any future jury verdict at an annual rate of 9%. Interest on the jury's verdict in this case was accruing at a rate of \$140.69 per day.

The proposed payment takes into consideration both the uncertainty of the outcome of the appeal and the accruing interest liability to the County. Outside counsel recommends this settlement.

The accompanying Act will authorize payment in the amount of \$400,000.00 for the County's potential obligation in the lawsuit entitled, Jamar McCalla v. Westchester Department of Transportation, et al, Appellate Division, Second Department, Case No. 2023-00275.

Very truly yours,

A handwritten signature in black ink that reads "John M. Nonna". The signature is written in a cursive style with a large, stylized initial "J".

John M. Nonna

County Attorney

JMN/mg

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize payment for the County's obligation in the appellate lawsuit entitled, Jamar McCalla v. County of Westchester, et al, Appellate Division, Second Department Case No. 2023-00275, in the amount of \$400,000.00.

The original lower court case concluded in a jury verdict rendered against the County on July 26, 2022. The jury verdict was for \$1.465 million - - \$450,000 for past pain and suffering; \$650,000 for future pain and suffering; and \$365,000 for future medical expenses. This case arose out of a Liberty Lines Bus accident which occurred on June 26, 2015.

The proposed payment takes into consideration both the uncertainty of the outcome of the appeal and the accruing interest liability to the County.

Your Committee has carefully considered the subject matter and the attached Act and recommends authorizing the County Attorney or his designee to remit payment for the appellate lawsuit entitled, Jamar McCalla v. County of Westchester, et al, Appellate Division, Second Department, Case No. 2023-00275, in the amount of \$400,000.00.

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 remit payment for the appellate lawsuit entitled, Jamar McCalla v. Westchester County, et al, Appellate Division, Second Department, Case No. 2023-00275

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

Section 1. The County Attorney is authorized to remit payment for the settlement of the appellate lawsuit entitled, Jamar McCalla v. County of Westchester, et al, Appellate Division, Second Department, Case No. 2023-00275, in the amount of \$400,000.

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: Payment for Jamar McCalla Case 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 \$ 400,000

Total Current Year Revenue _____

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

Additional Appropriations Other (explain)

Identify Accounts: 6N Fund- 615/59/0695/3910/4280/05

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: Jamar McCalla(Liberty Lines Accident of 6/15/2015 -# 15T00652)

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: Mark Gardner

Title: Senior Assistant County Attorney

Department: Law

Date: May 25, 2023

2/10
Reviewed By: 
Budget Director

Date: _____