

Law & Major Contracts

BOL Meeting Minutes - Published Draft



Committee Chair: Nancy Barr

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

Monday, November 8, 2021

10:00 AM

Committee Room

CALL TO ORDER

*The County Board met pursuant to Chapter 417 of New York State Laws of 2021, allowing public bodies to meet and take action without permitting in-person public access to meetings and authorizes such meetings and public hearings to be held remotely by conference call or similar service, provided the public has the ability to view or listen and that such meetings are recorded and later transcribed. To access the meeting, please visit:
<https://westchestercountyny.legistar.com>.*

With a quorum present, Legislator Covill called the meeting to order at 10:38 a.m.

Others in attendance: BOL: Legislators: Catherine Borgia, Damon Maher, and Ruth Walter; Legislators (Remote): Margaret Cunzio, Alfreda Williams, and Tyrae Woodson-Samuels; Carolyn Stevens, Lisa Hochman, Melanie Montalto; Committee Coordinators: Jill Axelrod, Alie Restiano, Beth Lobello, Yolanda Valencia, and James Silverberg (Remote) LAW: John Nonna and Sean Carey

Present: Legislator Boykin, Legislator Covill, Legislator Gashi and Legislator Smith

Absent: Legislator Alvarado

Remote: Committee Vice-Chair Barr and Committee Vice-Chair Shimsky

MINUTES APPROVAL

October 4, 2021 at 10:00 a.m.

On motion of Legislator Gashi, seconded by Legislator Covill, the minutes were approved. The motion carried by the following vote:

Aye: Committee Vice-Chair Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Committee Vice-Chair Shimsky and Legislator Smith

Absent: Legislator Alvarado

I. ITEMS FOR DISCUSSION

1. [ACT-2021-194](#) **ACT - Lawsuit Settlement of Rodriguez v. Liberty Lines**

Joint with Budget & Appropriations committee.

Guests: County Attorney John Nonna and Senior Assistant County Attorney Sean Carey
Mr. Nonna said that the plaintiff claimed she was injured after being hit by the rear door while exiting a Liberty Lines bus. The County paid \$50,000 for no fault, and since this is an older case, the remainder of our self-insured retention of \$250,000 is just under \$200,000. RLI, the County's excess carrier, determined that it would pay an additional \$200,000. Mr. Nonna said

he is unsure if RLI made the right call, but is following their lead in agreeing to settle because if we turn down RLI's settlement and go to trial, and the verdict is in excess of our self-insured retention amount, we are responsible. He noted that the plaintiff had surgery, which ran up the cost of potential damages. There is a question whether the surgery had to do with a prior condition, but there was conflicting expert testimony on that.

Mr. Nonna said he had asked for documentation of what happened to the driver. He learned that the driver was brought up on a complaint of negligence, an internal hearing was held with the union and Liberty Lines, and the driver was found to not be at fault. Mr. Nonna does not think that anyone from the County was there, and is not sure if we were entitled to be there. He will follow up with risk management on how the hearing was conducted. No action was taken against driver except for additional training on how to open and close the rear doors.

Legislator Barr asked if there is any scenario where we could pay less. Mr. Nonna said the plaintiff's original demand was \$3 million, so she probably wouldn't settle for \$200,000. He reiterated the risk of a liability if there is a judgment exceeding our self-retention amount, and since this is an older case, the County could also have to pay legal fees.

Legislator Maher asked if there was a video. Mr. Nonna said there was, and the union said it was viewed by all parties to the hearing, and the union determined after viewing it that it was unlikely the passenger was injured by the rear doors.

Mr. Nonna noted that the Law Department is enhancing its oversight of Liberty Lines cases, particularly the older cases, by making sure they get earlier reports and more frequent updates. Legislator Shimsky asked that we also get details of what remedial action is taken in these cases. Mr. Nonna noted that the union objected to us getting the hearing report in this case.

On motion of Legislator Smith, seconded by Committee Vice-Chair Shimsky, the above item was signed by committee. The motion carried by the following vote:

Aye: Committee Vice-Chair Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Committee Vice-Chair Shimsky and Legislator Smith

Absent: Legislator Alvarado

2. [ACT-2021-203](#) **ACT - Lawsuit Settlement - Phoenix Transportation Services, Inc.**

Joint with Budget & Appropriations committee

Guest: Senior Assistant County Attorney Sean Carey

Mr. Carey explained that the County had a five-year contract starting on September 1, 2017 with Phoenix to provide school bus services, and Platte River was the surety for the contract. In September 2019, due to financial difficulties, Phoenix's owner advised the County that unless it immediately paid Phoenix's outstanding August invoices, Phoenix would be unable to pick up the children it dropped off that morning. To avoid that, the County paid, and Phoenix performed for the remainder of September 2019. At the same time, the County located available vendors to provide county-wide bus service on almost no notice and set up emergency contracts. By October 1, 2019, those contracts were in place, the contract with Phoenix was terminated for cause, and the County reached out to Platte River to demand reimbursement for the additional expenses it would incur, including higher per-route expenses. In November 2020, Phoenix sued the County for improperly terminating the contract. The

County impleaded Platte River and asserted counterclaims against Phoenix, including the full amount of damages it incurred during the 2019-20 school year: \$460,959.48. As asserted against Platte River, that amount was capped at the penal sum of the performance bond: \$441,017.83. As against Phoenix, that amount was limited by Phoenix's complete inability to pay. In a 10-hour mediation on October 18, 2021, Platte River agreed to pay the County \$340,000, representing approximately 77% of the penal sum of the bond, and the County agreed to release Platte River and Phoenix from all liability. While Platte River will retain the ability to pursue Phoenix and several individuals associated with Phoenix who personally guaranteed the bond, acceptance of the settlement will fully release the County from further litigation regarding this matter.

Legislator Barr asked if this would fully resolve all claims against Phoenix, and if we have any other bids from them. Mr. Carey said it would, and he thinks there are no outstanding bids. Legislator Barr suggested he confirm that.

On motion of Legislator Smith, seconded by Legislator Gashi, the above item was signed by committee. The motion carried by the following vote:

Aye: Committee Vice-Chair Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Committee Vice-Chair Shimsky and Legislator Smith

Absent: Legislator Alvarado

3. [ACT-2021-195](#) **ACT - Retainer Amendment - Standard Amusement**

Joint with Budget & Appropriations and Parks & Recreation committees.

Guest: County Attorney John Nonna

Mr. Nonna said that from February through April 2021, Paul, Weiss partner Elizabeth Sacksteder participated with the County Attorney's office in multiple meetings before several Board of Legislators committees to explain and answer questions about the revised Playland Management Agreement. Ms. Sacksteder was also involved in negotiations with Standard Amusements and over revisions to the Management Agreement requested by the legislators. This work amounts, through June, to \$69,446.83 in currently-owed fees. Mr. Nonna noted that since then, all transition work has been handled by him and Tami Altschiller.

Legislator Barr asked Mr. Nonna to discuss the discount we received from Paul Weiss, and Mr. Nonna said it was originally 15% but it went up to 20%.

Legislator Tubiolo asked if we could decrease costs in the future by hiring more attorneys in a new bankruptcy division. Mr. Nonna noted that we don't have enough bankruptcy cases to make it worthwhile to hire lawyers who are experts in bankruptcy. Legislator Maher asked if the County attorneys take CLE classes in bankruptcy, and Mr. Nonna said even if they did, they would not have the expertise to go up against a major New York law firm that specializes in bankruptcy.

With a motion by Legislator Gashi seconded by Chairman Boykin, the committee went into executive session to discuss legal strategy at 11:22 a.m. With a motion by Legislator Shimsky seconded by Legislator Smith, the committee came out of executive session at 11:40 a.m.

On motion of Legislator Smith, seconded by Committee Vice-Chair Barr, the above item was signed by committee. The motion carried by the following vote:

Aye: Committee Vice-Chair Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Committee Vice-Chair Shimsky and Legislator Smith

Absent: Legislator Alvarado

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Smith, seconded by Legislator Gashi, the Committee adjourned at 11:44 a.m. by the following vote:

Aye: Committee Vice-Chair Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Committee Vice-Chair Shimsky and Legislator Smith

Absent: Legislator Alvarado

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