

Law & Major Contracts Meeting Agenda



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

Committee Chair: Nancy Barr

Monday, November 8, 2021

10:00 AM

Committee Room

CALL TO ORDER

MINUTES APPROVAL

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

I. ITEMS FOR DISCUSSION

1. [2021-517](#) ACT - Lawsuit Settlement of Rodriguez v. Liberty Lines

AN ACT authorizing the settlement of the lawsuit Laura Rodriguez v. Liberty Lines, Inc., et al., in the amount of FOUR HUNDRED THOUSAND(\$400,000) DOLLARS.

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

Joint with Budget & Appropriations committee.

Guests: County Attorney John Nonna and Senior Assistant County Attorney Sean Carey

2. [2021-588](#) ACT - Lawsuit Settlement - Phoenix Transportation Services, Inc.

AN ACT authorizing the County Attorney to settle an action on behalf of the County of Westchester (the "County"), against Phoenix Transportation Services, Inc. ("Phoenix") and Platte River Insurance Company ("Platte River") for the total amount of THREE HUNDRED FORTY THOUSAND (\$340,000) DOLLARS, regarding breach of an obligation under a payment and performance bond relating to a breach of an agreement by, and termination of an agreement with, Phoenix, dated September 1, 2017 for which Platte River is the Surety.

Joint with Budget & Appropriations committee

Guest: Senior Assistant County Attorney Sean Carey

3. [2021-528](#) ACT - Retainer Amendment - Standard Amusement

AN ACT authorizing the County to amend an agreement with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, pursuant to which the firm was retained, at County expense, to serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the bankruptcy filing by Standard Amusements LLC in the United States Bankruptcy Court for the Southern District of NY, by increasing the authorized not-to-exceed amount of the agreement by NINETY THOUSAND (\$90,000) DOLLARS.

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

Joint with Budget & Appropriations and Parks & Recreation committees.
Guest: County Attorney John Nonna

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

August 24, 2021

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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00, 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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in the amount of \$400,000.00, inclusive of attorney's fees.¹

This matter is pending in the Westchester County Supreme Court before the Honorable Joan B. Lefkowitz. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$400,000.00, inclusive of attorney's fees.

Brian Dratch, Esq., of Franzblau Dratch, P.C., 233 Broadway, Suite 1800, New York, New York 10279, is representing the plaintiff.

This matter arises out of an incident which occurred on January 3, 2018, at approximately 12:00 p.m., at the bus stop located at 7 Main Street, in the City of Yonkers. The plaintiff claims the bus door struck her in the face and body multiple times while she was attempting to exit the bus.

The plaintiff has a well-documented and extensive medical history after the incident. Following the current incident while exiting the bus, plaintiff underwent two surgeries. First, plaintiff underwent neck surgery to repair a metal plate in her neck which became dented as a result of being struck by the bus doors. Plaintiff's second surgery consisted of lumbar surgery,

¹ The County has already paid \$50,455.85 in indemnity payments to date, leaving a total of \$199,544.15 that the County will pay out of the self-insured retention fund and the excess carrier, RLI, will pay \$200,455.85.

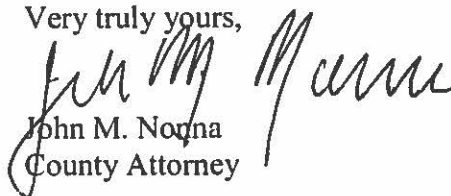


however plaintiff denies any relief since the surgery and claims her back and neck pain have become worse as a result of this incident.

The plaintiff will argue that the bus driver was negligent in their operation of the bus door. The plaintiff will further argue that the bus driver's negligence was the proximate cause of her injuries.

The settlement takes into consideration 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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in the amount of \$400,000.00, Westchester County Supreme Court Index No. 59664/2018, inclusive of attorney's fees.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Nogna". The signature is written in a cursive style with a large initial "J" and "M".

John M. Nogna
County Attorney

JMN/cb

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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00.²

This matter is pending in the Westchester County Supreme Court before the Honorable Joan B. Lefkowitz. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$400,000.00, inclusive of attorney's fees. Brian Dratch, Esq., of Franzblau Dratch, P.C., 233 Broadway, Suite 1800, New York, New York 10279, is representing the plaintiff.

This matter arises out of an incident which occurred on January 3, 2018, at approximately 12:00 p.m., at the bus stop located at 7 Main Street, in the City of Yonkers. The plaintiff claims the bus door struck her in the face and body multiple times while attempting to exit the bus.

The plaintiff has a well-documented and extensive medical history after the incident. Following the current incident while exiting the bus, plaintiff underwent two surgeries. First, plaintiff underwent neck surgery to repair a metal plate in her neck which became dented as a result of being struck by the bus doors. Plaintiff's second surgery consisted of lumbar surgery, however plaintiff denies any relief since the surgery and claims her back and neck pain have become worse as a result of this incident.

The plaintiff will argue that the bus driver was negligent in their operation of the bus door. The plaintiff will further argue that the bus driver's negligence was the proximate cause of her injuries.

² The County has already paid \$50,455.85 in indemnity payments to date, leaving a total of \$199,544.15 that the County will pay out of the self-insured retention fund and the excess carrier, RLI, will pay \$200,455.85.

The settlement takes into consideration 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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00, 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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00, 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

, 2021

COMMITTEE ON

ACT NO. -2021

AN ACT authorizing the County Attorney to settle the lawsuit of Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00 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 Laura Rodriguez v. Liberty Lines Transit, Inc., et al., in Westchester County Supreme Court, Index No. 59664/2018, in the amount of \$400,000.00, inclusive of attorney's fees.³

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.

³ The County has already paid \$50,455.85 in indemnity payments to date, leaving a total of \$199,544.15 that the County will pay out of the self-insured retention fund and the excess carrier, RLI, will pay \$200,455.85.

FISCAL IMPACT STATEMENT

SUBJECT: Laura Rodriguez Settlement 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 \$ 199,544

Total Current Year Revenue \$ -

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

Additional Appropriations Other (explain)

Identify Accounts: Fund 101 Org 44 Unit 2100 Object 4924

Potential Related Operating Budget Expenses: Annual Amount \$199,514

Describe: Settlement of lawsuit of Laura Rodriguez v. Liberty Lines Transit, Inc. et al.

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: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: August 25, 2021

Reviewed By: [Signature]

08/25/21

Budget Director

Date: 8/25/21

Benjamin Boykin II

Chairman of the Board

Legislator, 5th District



TO: Hon. Catherine Borgia
Chair, Budget & Appropriations

Hon. Nancy Barr
Chair, Law & Major Contracts

FROM: Hon. Benjamin Boykin
Chairman of the Board

DATE: November 5, 2021

RE: ACT – Lawsuit Settlement – Phoenix Transportation Services

As Chairman of the Board of Legislators, I am placing the below item directly into the Committees on Budget & Appropriations and Law & Major Contracts.

Thank you.

(ID: 2021-588) AN ACT authorizing the County Attorney to settle an action on behalf of the County of Westchester (the "County"), against Phoenix Transportation Services, Inc. ("Phoenix") and Platte River Insurance Company ("Platte River") for the total amount of THREE HUNDRED FORTY THOUSAND (\$340,000) DOLLARS, regarding breach of an obligation under a payment and performance bond relating to a breach of an agreement by, and termination of an agreement with, Phoenix, dated September 1, 2017 for which Platte River is the Surety.

cc: Jill Axelrod
Melanie Montalto
Alie Restiano
Sunday Vanderberg

George Latimer
County Executive

John M. Nonna
County Attorney

November 4, 2021

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

Re: Legislation authorizing the County Attorney to settle an action on behalf of the County of Westchester (the "County"), against Phoenix Transportation Services, Inc. ("Phoenix") and Platte River Insurance Company ("Platte River") in the action titled *Phoenix Transportation Services, Inc v County of Westchester*, Index No. 65145/2020 (Sup Ct, Westchester County) for the total amount of \$340,000, regarding breach of an obligation under a payment and performance bond, relating to a breach of an agreement by, and termination of an agreement with, Phoenix, dated September 1, 2017, for which Platte River is the Surety.

Dear Honorable Members of the Board:

Attached for your consideration is an Act, which if approved by your Honorable Board, will authorize the County Attorney to settle its claims against Phoenix and Platte River in the action titled *Phoenix Transportation Services, Inc v County of Westchester*, Index No. 65145/2020 (Sup Ct, Westchester County) for the total amount of \$340,000.

Background to the Litigation

The Subject Contract

On September 1, 2017, Phoenix and the County—acting by and through the Westchester County Department of Social Services ("DSS")—entered a five-year contract for the provision of bus services for the transportation of homeless preschool and school-aged children and children placed in court-directed custody and/or foster care (the "Subject Contract"). Platte River was the surety for the Subject Contract, issuing an annually renewable performance bond for \$441,017.83.

During the first two years of the Subject Contract, Phoenix performed without substantial incident. At the beginning of the 2019–2020 school year however, Phoenix's ability to perform the Subject Contract was severely compromised by its serious financial woes. On September 10, 2019, at around noon, Phoenix's owner met with DSS Commissioner Kevin McGuire and notified him that unless the County immediately remits payment for Phoenix's then-outstanding

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.



August invoices, Phoenix would be unable to pick up the children it dropped off that morning. To stave off the countless issues associated with such a major failure, payment was processed as requested and Phoenix was able to perform for the remainder of September 2019. At the same time, DSS's Contracts Management & Compliance Unit and the Westchester County Attorney's Office's Contracts Bureau worked double time to locate available vendors who could provide county-wide bus service on essentially zero notice and set up emergency contracts (the "Emergency Replacement Contracts").

By October 1, 2019, the Emergency Replacement Contracts were in place. The day prior to those contracts going live, the Subject Contract was terminated for cause.

Post-Contract Demands on the Surety

Immediately after the Subject Contract was terminated, the County reached out to Platte River to demand reimbursement for the additional expenses it would incur as a result of the Emergency Replacement Contracts, which included higher per-route expenses than the Subject Contract. After ten months of back-and-forth, it became clear that Platte River interpreted the bond requiring reimbursement only in the event the County exceed the Subject Contract's not-to-exceed amount. As the worldwide COVID pandemic, which halted bus service in March 2020, the County did not exceed the budgeted amount.

The Subject Litigation

Before the County commenced an action against the Surety for non-payment, on November 23, 2020, Phoenix sued the County, former-Commissioner McGuire and Deputy Commissioner Rosa Boone for improperly terminating the Subject Contract. Phoenix was represented by Sanford Rosen, Esq. of ROSEN & ASSOCIATES, P.C., located at 747 Third Avenue, New York, NY 10017-2803.

On December 22, 2020, the County transferred the proceeding to the commercial division and the matter was assigned to the Honorable Gretchen Walsh.

On February 22, 2020, the County impleaded Platte River and asserted counterclaims against Phoenix. Platte River was represented by Marc Lepelstat, Esq., of CHIESA SHAHINIAN & GIANTOMASI, P.C., located at One Boland Drive, West Orange, NJ 07052. In their pleadings, the County asserted the full amount of damages it incurred during the 2019–2020 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.

Discovery closed on August 23, 2020, and a note of issue was filed that same day.

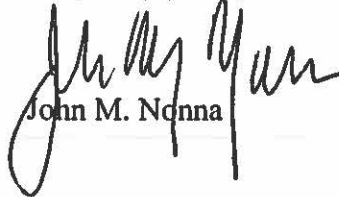
While both the County and Platte River were contemplating summary judgment motions, the Court delayed the issuance of a summary judgment schedule to accommodate a mediation between the parties scheduled for October 18, 2021, before Eugene Farber, Esq., of FARBER, PAPPALARDO & CARBONARI, located at 200 East Post Road, White Plains, NY 10601. The mediation—which was lengthy, extending from 9:30 AM to 7:17 PM—was ultimately successful, with the parties agreeing to the essential terms pending the approval of the Westchester County Board of Legislators. A stipulation of settlement signed by all parties—a copy of which is provided herewith for your reference—was filed the next day.

The Proposed Settlement

Under the proposed settlement, Platte River agrees to pay the County \$340,000, representing approximately 77% of the penal sum of the bond. In return for that sum, the County would agree to release and forever discharge Platte River and Phoenix from all liability related to the Subject Contract. 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.

Accordingly, I request authority on behalf of the County to settle the County's claims against Platte River and Phoenix for the total amount of \$340,000.

Very truly yours,



John M. Nanna

JMN/stc

BOARD OF LEGISLATORS

COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if approved by your Honorable Board, would authorize the County Attorney to settle an action on behalf of the County of Westchester (the “County”), against Phoenix Transportation Services, Inc. (“Phoenix”) and Platte River Insurance Company (“Platte River”) in the action titled *Phoenix Transportation Services, Inc v County of Westchester*, Index No. 65145/2020 (Sup Ct, Westchester County) for the total amount of \$340,000.

To provide some background to the subject litigation: On September 1, 2017, Phoenix and the County—acting by and through the Westchester County Department of Social Services (“DSS”)—entered a five-year contract for the provision of bus services for the transportation of homeless preschool and school-aged children and children placed in court-directed custody and/or foster care (the “Subject Contract”). Platte River was the surety for the Subject Contract, issuing an annually renewable performance bond for \$441,017.83.

During the first two years of the Subject Contract, Phoenix performed without substantial incident. At the beginning of the 2019–2020 school year however, Phoenix’s ability to perform the Subject Contract was severely compromised by its serious financial woes. As a result of several breaches by Phoenix, the County determined to terminate the Subject Contract effective September 30, 2019. The next day, the bus services that were covered by the Subject Contract were replaced by new vendors hired under emergency contracts (the “Emergency Replacement Contracts”).

Immediately after the Subject Contract was terminated, the County reached out to Platte River to demand reimbursement for the additional expenses it would incur as a result of the

Emergency Replacement Contracts, which included higher per-route expenses than the Subject Contract. After ten months, it became clear that Platte River would not reimburse the County absent litigation.

Before the County commenced an action against Platte River, on November 23, 2020, Phoenix sued the County for improperly terminating the Subject Contract. On February 22, 2020, the County impleaded Platte River and asserted counterclaims against Phoenix. In their pleadings, the County asserted the full amount of damages it incurred during the 2019–2020 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 inability to pay.

During a mediation held in the matter on October 18, 2021, the parties agreed to a proposed settlement, the terms of which require approval by the Westchester County Board of Legislators.

Under the proposed settlement, Platte River agrees to pay the County \$340,000, representing approximately 77% of the penal sum of the bond. In return for that sum, the County agrees to release and forever discharge Platte River and Phoenix from all liability related to the Subject Contract. 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.

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For the reasons set forth above, it is advisable that the County Attorney be granted authority to settle the County's claims against Phoenix and Platte River for the total amount of \$340,000.

An affirmative vote of a majority of the Board is required to pass this Act.

Dated: November , 2021
White Plains, New York

COMMITTEE ON

l:stc

AN ACT authorizing the County Attorney to settle an action on behalf of the County of Westchester (the "County"), against Phoenix Transportation Services, Inc. ("Phoenix") and Platte River Insurance Company ("Platte River") for the total amount of \$340,000, regarding breach of an obligation under a payment and performance bond, relating to a breach of an agreement by, and termination of an agreement with, Phoenix, dated September 1, 2017, for which Platte River is the Surety.

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

Section 1. The County Attorney is hereby authorized on behalf of the County to settle its claims against Phoenix and Platte River in the action titled *Phoenix Transportation Services, Inc v County of Westchester*, Index No. 65145/2020 (Sup Ct, Westchester County) for the total amount of \$340,000, regarding breach of an obligation under a performance bond, relating to a breach of an agreement by, and termination of an agreement with, Phoenix, dated September 1, 2017, for which Platte River is the Surety.

Section 2. The County Attorney or his duly designated representative is hereby authorized to undertake all legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PHOENIX TRANSPORTATION SERVICES, INC.,

Plaintiff,

v.

COUNTY OF WESTCHESTER,

KEVIN M. MAGUIRE,
Commissioner, Department of Social Services, and

ROSA W. BOONE,
Deputy Commissioner, Department of Social Services

Defendants.

COUNTY OF WESTCHESTER,

Third-Party Plaintiff,

v.

PLATTE RIVER INSURANCE COMPANY,

Third-Party Defendant.

PLATTE RIVER INSURANCE COMPANY,

Second Third-Party Plaintiff,

v.

VINCENT GURGIGNO, and

MAURITS CROES,

Second Third-Party Defendants.

**STIPULATION
OF SETTLEMENT
AND DISCONTINUANCE
OF ACTION**

Index No.
65145/2020

Assigned Justice:
Hon. Gretchen Walsh, J.S.C.

WHEREAS, on or about July 25, 2017, Plaintiff Phoenix Transportation Services, Inc. ("Phoenix"), along with Second Third-Party Defendants Vincent Gurgigno ("Gurgigno"); Maurits Croes ("Croes") and Marlaina Koller ("Koller") (Phoenix, Gurgigno and Koller are collectively referred to as "Indemnitors") executed a General Indemnity Agreement ("GIA") in favor of Third-

Party Defendant and Second Third-Party Plaintiff Platte River Insurance Company (“Platte River”), as Surety; and

WHEREAS, on or about September 1, 2017, Phoenix entered into a contract with Defendant and Third-Party Plaintiff County of Westchester (the “County”) to provide transportation services for homeless preschool and school age children and children placed in court directed custody and in foster care for the Westchester County Department of Social Services, Westchester County, NY (the “Contract”); and

WHEREAS, on or about September 1, 2017, Platte River, as Surety, executed an Annually Renewable Performance Bond # 41375197 (the “Bond”), in the penal sum of \$441,017.83, on behalf of Phoenix, as Principal, and in favor of the County, as Obligee, in connection with the Contract; and

WHEREAS, the original annual Bond period was September 1, 2017 to September 1, 2018; and

WHEREAS, Platte River issued Continuation Certificates extending the Bond period twice: (a) from September 1, 2018 to September 1, 2019; and (b) from September 1, 2019 to September 1, 2020; and

WHEREAS, in a letter dated September 27, 2019 (the “Termination Notice”) and sent to Phoenix on that date, the County stated that Phoenix was in default of the Contract; and

WHEREAS, in the Termination Notice, the County advised Phoenix that “in accordance with the Termination Clause...the County is terminating the [Contract] effective 11:59 PM Eastern Time on September 30, 2019;” and

WHEREAS, in a letter dated September 27, 2019 and sent to Platte River on that date, the County asserted a claim under the Bond; and

WHEREAS, on November 6, 2019, Platte River made a demand on Phoenix, Croes and the other Indemnitors for additional collateral (the “Collateral Demand”) in the sum of \$269,656.83; and

WHEREAS, Phoenix and Croes have failed to satisfy the Collateral Demand; and

WHEREAS, on November 23, 2020, Phoenix filed its Complaint in this action (the “Action”) against the County and Defendants Kevin M. Maguire, as Commissioner, Department of Social Services, and Rosa W. Boone, as Deputy Commissioner, Department of Social Services (the County, Maguire, and Boone are collectively referred to as the “County Defendants”), in which Phoenix seeks judgment for various forms of relief in connection with the alleged wrongful termination of the Contract; and

WHEREAS, on February 22, 2021, the County filed an Answer with Counterclaims against Phoenix and a Third-Party Complaint for damages against Platte River for the penal sum of \$441,017.83; and

WHEREAS, on March 19, 2021, Platte River filed its Answer to the Third-Party Complaint, which contained Counterclaims against Phoenix; and

WHEREAS, on March 19, 2021, Platte River also filed a Second Third-Party Complaint against Second Third-Party Defendants Vincent Gurgigno and Maurits Croes.

IT IS HEREBY STIPULATED AND AGREED, by and among the parties to this litigation that any and all claims, counterclaims, and cross-claims which have been or could have been asserted in this litigation are settled and resolved pursuant to the following terms and conditions:

1. As soon as reasonably possible, the County Attorney will seek approval of this settlement by the Westchester County legislature and the County Attorney will use best efforts to obtain such approval.

2. Within ten calendar days after notification of approval by the Westchester County legislature, Platte River shall pay the County the sum of three hundred forty thousand and 00/100 dollars (\$340,000.00).

3. Subject to the approval of the Westchester County legislature and subject to receipt and full negotiation of the payment of three hundred forty thousand and 00/100 dollars (\$340,000.00), the County releases and forever discharges Platte River, Phoenix and Croes and their officers, directors, employees, agents, attorneys, affiliates, successors, predecessors, assigns from any and all claims, liabilities, liens, actions, causes of action, demands, rights, damages, judgments, debts, obligations and/or costs of any kind or nature, at law or in equity, which the County now has or may hereafter have, known or unknown, foreseen or unforeseen, from the beginning of the world to the date of this Agreement, which arise from or are in any way related to the Contract, the Bond and the Action.

4. Subject to the approval of the Westchester County legislature and subject to receipt and full negotiation of the payment of three hundred forty thousand and 00/100 dollars (\$340,000.00), Platte River releases and forever discharges the County Defendants and its respective officers, directors, employees, agents, attorneys, affiliates, lenders, successors, predecessors, and assigns from any and all claims, liabilities, liens, actions, causes of action, demands, rights, damages, judgments, debts, obligations and/or costs of any kind or nature whatsoever, at law or in equity, which Platte River now has or may hereafter have, known or

unknown, foreseen or unforeseen, from the beginning of the world to the date of this Agreement which arise from or are in way related to the GIA, Contract, Bond, and the Action.

5. Subject to the approval of the Westchester County legislature and subject to receipt and full negotiation of the payment of three hundred forty thousand and 00/100 dollars (\$340,000.00), Phoenix and Croes release and forever discharge the County Defendants and Platte River and their respective officers, directors, employees, agents, attorneys, affiliates, lenders, successors, predecessors, and assigns from any and all claims, liabilities, liens, actions, causes of action, demands, rights, damages, judgments, debts, obligations and/or costs of any kind or nature whatsoever, at law or in equity, which Phoenix and Croes now have or may hereafter have, known or unknown, foreseen or unforeseen, from the beginning of the world to the date of this Agreement which arise from or are in way related to the GIA, Contract, Bond, and the Action.


6. Subject to approval of the settlement by the Westchester County legislature and subject to payment of the three hundred forty thousand and 00/100 dollars (\$340,000.00), this action is discontinued as follows:

- a. Any and all claims by Platte River and Phoenix against the County Defendants are discontinued with prejudice and without costs.
- b. Any and all claims by the County against Platte River and Phoenix are discontinued with prejudice and without costs.
- c. The claims of Platte River against Phoenix and the individual indemnitors, Vincent Gurgigno and Maurits Croes, are discontinued without prejudice and without costs.

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7. This stipulation may be executed electronically and in counterparts.

Dated: White Plains, New York
October 18, 2021

By: 
Sean T. Carey
Sr. Assistant County Attorney, of Counsel
Westchester County Attorney's Office
*Counsel for County of Westchester,
Kevin M. McGuire, and Rosa W. Boone*
148 Martine Avenue, 6th Floor
White Plains, NY 10601

Dated: White Plains, New York
October 18, 2021

By: _____
Sanford Rosen
ROSEN & ASSOCIATES, P.C.
*Counsel for Phoenix Transportation Services, Inc.
and Maurits Croes*
747 Third Avenue
New York, NY 1017-2803

Dated: White Plains, New York
October 18, 2021

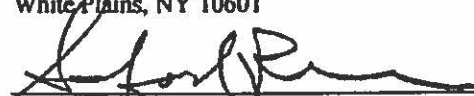
By: _____
Marc R. Lepelstat
CHIESA SHAHINIAN & GIANTOMASI PC
Counsel for Platte River Insurance Company
One Boland Drive
West Orange, NJ 07052

7. This stipulation may be executed electronically and in counterparts.

Dated: White Plains, New York
October 18, 2021

By: _____
Sean T. Carey
Sr. Assistant County Attorney, of Counsel
Westchester County Attorney's Office
*Counsel for County of Westchester,
Kevin M. McGuire, and Rosa W. Boone*
148 Martine Avenue, 6th Floor
White Plains, NY 10601

Dated: White Plains, New York
October 18, 2021

By: 
Sanford Rosen
ROSEN & ASSOCIATES, P.C.
*Counsel for Phoenix Transportation Services, Inc.
and Maurits Croes*
747 Third Avenue
New York, NY 1017-2803

Dated: White Plains, New York
October 18, 2021

By: _____
Marc R. Lepelstat
CHIESA SHAHINIAN & GIANTOMASI PC
Counsel for Platte River Insurance Company
One Boland Drive
West Orange, NJ 07052

7. This stipulation may be executed electronically and in counterparts.


Dated: White Plains, New York
October 18, 2021

By: _____
Sean T. Carey
Sr. Assistant County Attorney, of Counsel
Westchester County Attorney's Office
*Counsel for County of Westchester,
Kevin M. McGuire, and Rosa W. Boone*
148 Martine Avenue, 6th Floor
White Plains, NY 10601

Dated: White Plains, New York
October 18, 2021

By: _____
Sanford Rosen
ROSEN & ASSOCIATES, P.C.
*Counsel for Phoenix Transportation Services, Inc.
and Maurits Croes*
747 Third Avenue
New York, NY 1017-2803

Dated: White Plains, New York
October 18, 2021

By: 

Marc R. Lepelstat
CHIESA SHAHINIAN & GIANTOMASI PC
Counsel for Platte River Insurance Company
One Boland Drive
West Orange, NJ 07052

FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Action Against Surety

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 \$ 340,000.00

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-22-8900-8900-9340

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: The County will be settling an action to receive \$340,000.

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

Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Senior Assistant County Attorney

Department: Law

Reviewed By: _____

Budget Department

11/4/21

If you need more space, please attach additional sheets.



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

September 15, 2021

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

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to amend an agreement (the "Agreement") with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss"). Pursuant to the Agreement, the County retained Paul, Weiss, at County expense, to serve in an "of counsel" capacity to the County Attorney in connection with the Chapter 11 bankruptcy petition and the adversary proceeding (the "Adversary Proceeding") filed by Standard Amusements LLC ("Standard") in the United States Bankruptcy Court for the Southern District of New York. In the Adversary Proceeding, Standard claimed that the County breached the Amended and Restated Playland Management Agreement (the "Management Agreement"). The County asserted counterclaims for breach against Standard.

The proposed amendment would increase the authorized not-to-exceed amount of the Agreement (the "NTE Amount") by Ninety Thousand Dollars (\$90,000.00), from an amount not-to-exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00) to a new amount not-to-exceed Five Million Five Hundred Ninety Thousand Dollars (\$5,590,000.00), which shall be payable at various hourly rates for various personnel. The hourly rates to be paid by the County include a previously-obtained additional discount of 5% off of the standard hourly rates from Paul, Weiss, which was in addition to the discount of 15% that was originally provided, meaning that the total discount from the firm's standard hourly rates is now 20% for pending and future invoices.

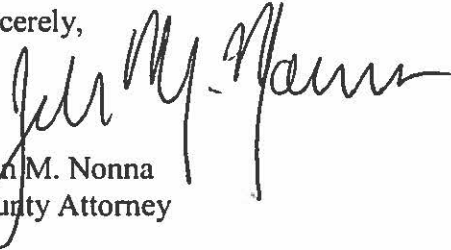
The reason for the requested increase in the NTE Amount is twofold: (1) During the period from February through April 2021, Paul, Weiss partner Elizabeth Sacksteder participated with the County Attorney's Office in multiple meetings before your Honorable Board's committees to explain and answer questions about the revised Playland Management Agreement. Ms. Sacksteder was also involved in negotiations with Standard Amusements and its investors' counsel over revisions to the Playland Management Agreement requested by your Honorable

Board. This work amounts, through June, to \$69,446.83 in currently-owed fees, of which \$41,476.69 needs to be added to the NTE Amount. (2) The remainder of the increase in the NTE Amount under the proposed amendment will be for the possible need for Paul, Weiss services for the rest of this year.

The proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. No environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

I respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,



John M. Nonna
County Attorney

JMN/bdm/nn

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the approval of an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”) to amend an agreement (the “Agreement”) with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”). Your Committee has been advised that, pursuant to the Agreement, the County retained Paul, Weiss, at County expense, to serve in an “of counsel” capacity to the County Attorney in connection with the Chapter 11 bankruptcy petition and the adversary proceeding (the “Adversary Proceeding”) filed by Standard Amusements LLC (“Standard”) in the United States Bankruptcy Court for the Southern District of New York. Your Committee has been advised that, in the Adversary Proceeding, Standard claimed that the County breached the Amended and Restated Playland Management Agreement (the “Management Agreement”). Your Committee has been advised that the County asserted counterclaims for breach against Standard.

Your Committee has been advised that the proposed amendment would increase the authorized not-to-exceed amount of the Agreement (the “NTE Amount”) by Ninety Thousand Dollars (\$90,000.00), from an amount not-to-exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00) to a new amount not-to-exceed Five Million Five Hundred Ninety Thousand Dollars (\$5,590,000.00), which shall be payable at various hourly rates for various personnel. Your Committee has been advised that the hourly rates to be paid by the County include a previously-obtained additional discount of 5% off of the standard hourly rates from Paul, Weiss, which was in addition to the discount of 15% that was originally provided, meaning

that the total discount from the firm's standard hourly rates is now 20% for pending and future invoices.

Your Committee has also been advised as follows, by the County Attorney, concerning the proposed amendment:

The reason for the requested increase in the NTE Amount is twofold: (1) During the period from February through April 2021, Paul, Weiss partner Elizabeth Sacksteder participated with the County Attorney's Office in multiple meetings before committees of the Board of Legislators to explain and answer questions about the revised Playland Management Agreement. Ms. Sacksteder was also involved in negotiations with Standard Amusements and its investors' counsel over revisions to the Playland Management Agreement requested by the Board of Legislators. This work amounts, through June, to \$69,446.83 in currently-owed fees, of which \$41,476.69 needs to be added to the NTE Amount. (2) The remainder of the increase in the NTE Amount under the proposed amendment will be for the possible need for Paul, Weiss services for the rest of this year.

Your Committee concurs with the conclusion that the proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. Accordingly, no environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

Your Committee has been advised that the adoption of the proposed Act requires an

affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Act.

Dated: _____, 2021

White Plains, New York

COMMITTEE ON

C BDM-091521

FISCAL IMPACT STATEMENT

SUBJECT: Paul Weiss Amendment 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 \$ 90,000

Total Current Year Revenue \$ -

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

Additional Appropriations Other (explain)

Identify Accounts: 101-18-1000-4923

Potential Related Operating Budget Expenses: Annual Amount \$ -

Describe: _____

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: Gideon Grande

Title: Deputy Director

Department: Budget

Date: September 9, 2021

Reviewed By: 
Budget Director

Date: 9/9/21

ACT NO. 2021 - _____

AN ACT authorizing the County to amend an agreement with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, pursuant to which the firm was retained, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the bankruptcy filing (Case No. 19-23061) by Standard Amusements LLC in the United States Bankruptcy Court for the Southern District of New York, by increasing the authorized not-to-exceed amount of the agreement by \$90,000.00.

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

Section 1. The County of Westchester (the “County”) is hereby authorized to amend an agreement (the “Agreement”) with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), pursuant to which the County retained Paul, Weiss, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the bankruptcy filing (Case No. 19-23061) by Standard Amusements LLC in the United States Bankruptcy Court for the Southern District of New York, by increasing the authorized not-to-exceed amount of the Agreement by Ninety Thousand Dollars (\$90,000.00), from an amount not-to-exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00) to a new amount not-to-exceed Five Million Five Hundred Ninety Thousand Dollars (\$5,590,000.00), which shall be payable at various hourly rates for various personnel.

§2. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§3. This Act shall take effect immediately.