

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

May 8, 2023

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

Re: An Act authorizing the County of Westchester (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 her legal action against a third-party tortfeasor.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County of Westchester (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 “D.O.,” from the settlement of her legal action against a third-party tortfeasor. 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.

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 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:

On July 2, 2018, D.O., an employee in the Westchester County Department of Social Services (the "Department") with the title of Supervisor of Case Work, was on foot as a pedestrian traversing the intersection of Martin Luther King Jr. Blvd. and Quarropas Street in White Plains, New York when she was struck by motor vehicle that was operated by Brian T. Connolly, an independent contractor employed by the City of White Plains. As a result of the accident, D.O. sustained injuries to neck, both wrists, both shoulders, left hip, right knee, and back. D.O. also sustained a concussion, post-traumatic stress disorder, and pain disorder. Said injuries required surgery for an ACL reconstruction with lateral meniscectomy, synovectomy, and chondroplasty on D.O.'s right knee. D.O. was out of work for thirty-five (35) weeks and six (6) days.

D.O. filed a claim for her injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to her Workers' Compensation claim, D.O. retained counsel and commenced a personal injury action against The City of White Plains and Brian T. Connolly. D.O.'s counsel is Matthew A. Schroeder of BERNSTONE AND GRIECO, LLP. located at 295 Madison Avenue, 25th Floor, New York, NY 10017.

On or about October 13, 2022, D.O. agreed in principle to settle her personal injury claim after commencement of litigation for one million two hundred thousand and 00/100 dollars (\$1,200,000.00), pending the consent of the County. In connection with the proposed settlement, D.O.'s counsel notified this Office that his costs and disbursements and legal fee totals four hundred eighteen thousand nine hundred forty-five and 56/100 dollars (\$418,945.56).

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 D.O.'s behalf in the amount of eighty-nine thousand twenty-six and 01/100 dollars (\$89,026.01) and indemnity (lost wage) benefits in the amount of thirty-two thousand ninety-one and 84/100 dollars (\$32,091.84) for a total expenditure of one hundred twenty-one thousand one hundred seventeen and 85/100 dollars (\$121,117.85). However, because D.O.'s injury was sustained in an automobile accident, the County's lien must be reduced by fifty thousand and 00/100 dollars (\$50,000.00) in lieu of first party no-fault benefits. Accordingly, the County's net lien for compensation and medical benefits in this matter is seventy-one thousand one hundred seven and 85/100 dollars (\$71,117.85)

Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to compromise the County's claim for reimbursement by reducing its lien by 34.92%, equaling a dollar reduction of twenty-four thousand eight hundred thirty-four and 35/100 dollars (\$24,834.35). The County would thereafter accept in satisfaction of its present lien a total of forty-six thousand two hundred eighty-three and 50/100 dollars (\$46,283.50). After the County is reimbursed and counsel fees are paid, D.O. would receive seven hundred thirty-four thousand seven hundred seventy and 94/100 dollars (\$734,770.94).

*[Remainder of Page Intentionally Left Blank]*

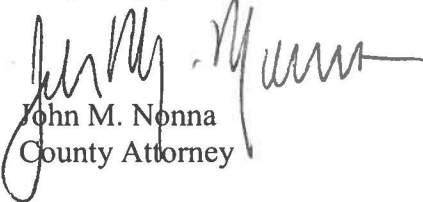
For the convenience of the reader, a chart of the aforementioned figures appears below:

Worker's Compensation Amounts	
Medical Expenses	\$ 89,026.01
Indemnity (Lost Wage) Payments	\$ 32,091.84
Worker's Comp, SUB-TOTAL	\$ 121,117.85
MVA ("Basic Economic Loss") Reduction	\$ 50,000.00
Worker's Comp, TOTAL	\$ 71,117.85

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 1,200,000.00
Disbursements	\$ 18,945.56
Attorney's Fees	\$ 400,000.00
Cost of Litigation (COL)	\$ 418,945.56
Net Proceeds of Third-Party Settlement	\$ 781,054.44
Percentage COL	34.92%
Carrier's COL	\$ 24,834.35
Carrier's Net Lien	\$ 46,283.50
Claimant's Net Recovery	\$ 734,770.94

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 D.O. from her recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/STC/GA

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 "D.O." 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.

On July 2, 2018, D.O., an employee in the Westchester County Department of Social Services (the "Department") with the title of Supervisor of Case Work, was on foot as a pedestrian traversing the intersection of Martin Luther King Jr. Blvd. and Quarropas Street in White Plains, New York when she was struck by motor vehicle that was operated by Brian T. Connolly, an independent contractor employed by the City of White Plains. As a result of the accident, D.O. sustained injuries to neck, both wrists, both shoulders, left hip, right knee, and back. D.O. also sustained a concussion, post-traumatic stress disorder, and pain disorder. Said injuries required surgery for an ACL reconstruction with lateral meniscectomy, synovectomy, and chondroplasty on D.O.'s right knee. D.O. was out of work for thirty-five (35) weeks and six (6) days.

D.O. filed a claim for her injury with the NYS Workers' Compensation Board, which was uncontroverted. On a parallel track to her Workers' Compensation claim, D.O. retained counsel and commenced a personal injury action against The City of White Plains and Brian T. Connolly. D.O.'s counsel is Lisa Lynn Grieco of BERNSTONE AND GRIECO, LLP. located at 295 Madison Avenue, 25th Floor, New York, NY 10017.

On or about October 13, 2022, D.O. agreed in principle to settle her personal injury claim after commencement of litigation for one million two hundred thousand and 00/100 dollars

(\$1,200,000.00), pending the consent of the County. In connection with the proposed settlement, D.O.'s counsel notified this Office that his costs and disbursements and legal fee totals four hundred eighteen thousand nine hundred forty-five and 56/100 dollars (\$418,945.56).

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 D.O.'s behalf in the amount of eighty-nine thousand twenty-six and 01/100 dollars (\$89,026.01) and indemnity (lost wage) benefits in the amount of thirty-two thousand ninety-one and 84/100 dollars (\$32,091.84) for a total expenditure of one hundred twenty-one thousand one hundred seventeen and 85/100 dollars (\$121,117.85). However, because D.O.'s injury was sustained in an automobile accident, the County's lien must be reduced by fifty thousand and 00/100 dollars (\$50,000.00) in lieu of first party no-fault benefits. Accordingly, the County's net lien for compensation and medical benefits in this matter is seventy-one thousand one hundred seven and 85/100 dollars (\$71,117.85)

Based upon a review of the facts and circumstances of this matter, this Office seeks the authority to compromise the County's claim for reimbursement by reducing its lien by 34.92%, equaling a dollar reduction of twenty-four thousand eight hundred thirty-four and 35/100 dollars (\$24,834.35). The County would thereafter accept in satisfaction of its present lien a total of forty-six thousand two hundred eighty-three and 50/100 dollars (\$46,283.50). After the County is reimbursed and counsel fees are paid, D.O. would receive seven hundred thirty-four thousand seven hundred seventy and 94/100 dollars (\$734,770.94).

***[Remainder of Page Intentionally Left Blank]***

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 D.O. from the settlement of her legal action against a third-party tortfeasor. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York  
May \_\_\_\_, 2023

ACT NO. 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 her legal action against a third-party tortfeasor.

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 "D.O.", from a settlement of her legal action against a third party. The County's reimbursement is \$46,283.50, representing a 34.92% reduction of its lien, with full reservation of the County's right to set off D.O.'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: Settlement of Workers Comp lien (D.G.)

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 \$ 46,283.50

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0018-4280

Potential Related Operating Budget Expenses:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Potential Related Revenues:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Current Year: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Next Four years: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared by: Sean T. Carey

Title: Sr. Assistant County Attorney

Department: Law

Reviewed By: Lawrence C. Dwyer

Budget Department

5/10/23

If you need more space, please attach additional sheets.