



George Latimer  
County Executive

Department of Law  
John M. Nonna  
County Attorney

October 23, 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 his 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 “B.J.,” from the settlement of his 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:

Michaelian Office Building  
148 Martine Avenue, 6<sup>th</sup> Floor  
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132\*

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



On October 22, 2018, B.J.—a Senior Maintenance Mechanic II (Electrician) in the Westchester County Department of Environmental Facilities (the “Department”)—tripped and fell on construction materials that were left out in the North Yonkers Pump Station’s maintenance room by County vendor E.C.C.O. III Enterprises, Inc. (“ECCO”). When B.J. fell, he was carrying an auxiliary-generator battery, an item which weighed more than one hundred pounds. The battery fell on B.J.’s shin. As a result of the fall, B.J. injured his right ankle, right shin, and right arm. He eventually underwent surgery related to the fall, and missed a grand total of forty-one (41) weeks of work.

After the injury B.J. filed a NYS Workers’ Compensation claim, which the County did not controvert. On a parallel track to his Workers’ Compensation claim, B.J. retained counsel and commenced a personal-injury action against ECCO. B.J. is represented therein by SCARCELLA LAW OFFICE, located at 44 Church Street, Suite 150, White Plains, NY 10601. ECCO is represented by Fabiani Cohen & Hall, LLP, located at 570 Lexington Avenue, 4th Floor, New York, NY 10022.

On or about October 5, 2023, B.J. agreed in principle to settle his personal-injury action for two hundred fifteen thousand and 00/100 dollars (\$215,000.00), pending the County’s consent. In connection with the proposed settlement, B.J.’s counsel notified this Office that its costs and disbursements total five thousand five hundred eighty-two and 70/100 dollars (\$5,582.70) and that its attorney’s fee totals seventy-one thousand six hundred sixty-six and 67/100 dollars (\$71,666.67)—for a total litigation cost of seventy-seven thousand two hundred forty-nine and 37/100 dollars (\$77,249.37).

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 B.J.’s behalf in the amount of fourteen thousand one hundred eleven and 59/100 dollars (\$14,111.59) and indemnity (lost wage) benefits in the amount of thirty-six thousand eight hundred three and 65/100 dollars (\$36,803.65)—bringing the County’s total expenditures in this matter to fifty thousand nine hundred fifteen and 24/100 dollars (\$50,915.24).

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 35.93%, equaling a dollar reduction of eighteen thousand two hundred ninety-three and 85/100 dollars (\$18,293.85). The County would thereafter accept in satisfaction of its present lien a total of thirty-two thousand six hundred twenty-one and 39/100 dollars (\$32,621.39). After the County is reimbursed and counsel fees are paid, B.J. would receive one hundred five thousand one hundred twenty-nine and 24/100 dollars (\$105,129.24).

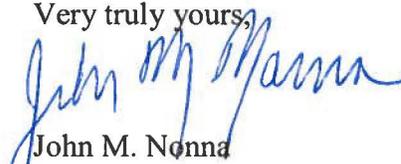
*[Remainder of Page Intentionally Left Blank]*

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

<b>Worker's Compensation Amounts</b>	
Medical Expenses	\$14,111.59
Indemnity (Lost Wage) Payments	\$36,803.65
<b>Worker's Comp, TOTAL</b>	<b>\$ 50,915.24</b>
<b>Litigation Amounts</b>	
Third-Party Settlement (Gross Amt)	\$215,000.00
Disbursements	\$5,582.70
Attorney's Fees	\$71,666.67
Cost of Litigation (COL)	\$77,249.37
Net Proceeds of Third-Party Settlement	\$137,750.63
Percentage COL	35.93%
Carrier's COL	\$ 18,293.85
<b>Carrier's Net Lien</b>	<b>\$ 32,621.39</b>
<b>Claimant's Net Recovery</b>	<b>\$ 105,129.24</b>

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 B.J. from his recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/stc

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 “B.J.” 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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Based upon a review of the facts and circumstances of this matter, the County Attorney seeks the authority to compromise the County's claim for reimbursement by reducing its lien by 35.93%, equaling a dollar reduction of eighteen thousand two hundred ninety-three and 85/100 dollars (\$18,293.85). The County would thereafter accept in satisfaction of its present lien a total of thirty-two thousand six hundred twenty-one and 39/100 dollars (\$32,621.39). After the County is reimbursed and counsel fees are paid, B.J. would receive one hundred five thousand one hundred twenty-nine and 24/100 dollars (\$105,129.24).

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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 B.J. from the settlement of his 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  
November \_\_\_\_, 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 his 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 "B.J.", from a settlement of his legal action against a third party. The County's reimbursement is \$32,621.39, representing a 35.93% reduction of its lien, with full reservation of the County's right to set off B.J.'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 (B.J.)

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 \$ 32,621.39

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: Associate County Attorney

Department: Law

*SC*  
Reviewed By: 

Budget Department

10/23/23

If you need more space, please attach additional sheets.