

# Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

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

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**Monday, March 21, 2022**

**10:00 AM**

**Committee Room**

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## CALL TO ORDER

Joint with Budget & Appropriations committee

## MINUTES APPROVAL

Monday, March 7th at 10:00 a.m.

## I. ITEMS FOR DISCUSSION

1. [2022-89](#) ACT - Workers Comp Settlement (J.V.)

AN ACT authorizing the County Attorney to compromise the County's claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of a County employee from a settlement against a third-party tortfeasor and authorizing the County Attorney and the Commissioner of Finance to compromise the County's liability to pay a reduced lump sum in lieu of future payments.

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

Guest: Senior Assistant County Attorney Sean Carey

2. [2022-97](#) ACT - Lawsuit Settlement of Marceline Cruz v. County of Westchester

AN ACT authorizing the County Attorney to settle the lawsuit of Marcelino Cruz v. County of Westchester in the amount of FOUR HUNDRED THOUSAND (\$400,000) DOLLARS, inclusive of attorney's fees.

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

Guest: Senior Assistant County Attorney Mark Gardner

3. [2022-120](#) ACT - Agreement Amendment for Merestead

AN ACT authorizing the County to amend an agreement with the law firm of McCarthy Finger LLP, pursuant to which the firm serves in an "of counsel" capacity to the County Attorney, as needed, in connection with a matter concerning a will and an indenture, which specifically affect the County park known as Merestead, by increasing the authorized not-to-exceed amount of agreement by ONE HUNDRED THOUSAND (\$100,000) DOLLARS.

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

Guest: Chief Deputy County Attorney Stacey Dolgin-Kmetz

**II. OTHER BUSINESS**

**III. RECEIVE & FILE**

**ADJOURNMENT**

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

February 15, 2022

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

Re: An Act authorizing (i) the County Attorney to compromise the County's claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of a County employee from a settlement against a third-party tortfeasor; and (ii) the County Attorney and the Commissioner of Finance to compromise the County's liability to pay a reduced lump sum in lieu of future payments

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize (i) the County Attorney to compromise the County's claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of "J.V.," a former County employee who was injured in the line of duty, from a settlement against a third-party tortfeasor (the "Third-Party Action Piece"); and (ii) the County Attorney and the Commissioner of Finance to compromise the County's liability to pay a reduced lump sum in lieu of future payments owed to J.V. (the "Future Liability Settlement Piece"). 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.

Because this legislation involves two distinct pieces—the Third-Party Action Piece and the Future Liability Settlement Piece—this proposed legislation addresses these pieces in sequence.

### **Third-Party Action Piece**

#### *Statutory Background*

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

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

Telephone: 914-995-3610

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



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.

*Relevant Background*

On February 17, 2017, J.V., a police officer in the Westchester County Department of Public Safety (the “Department”), slipped on ice in the driveway of 21 New Castle Drive, Mount Kisco, NY (the “Subject Property”). As a result of the fall, he injured his back, neck, and left wrist in the fall. J.V. never returned to work following his injury, and he retired from service on February 9, 2021.

J.V. filed a claim for his injury with the NYS Workers’ Compensation Board, which was uncontroverted. On a parallel track to his Workers’ Compensation claim, J.V. retained counsel for a personal injury action against those responsible for maintaining the Subject Property, including Wells Fargo Bank, N.A. (“Wells Fargo”), Select Portfolio Servicing, Inc. (“SPS”), and Home Loan Services, Inc. d/b/a First Franklin Mortgage Loan Trust (“HLS”). J.V.’s counsel is James V. Galvin, Esq., of BONACIC AND MCMAHON, LLP. Wells Fargo and SPS are both represented by Lawrence Jay Buchman, Esq. of PILLINGER, MILLER & TARALLO, LLP. HLS is represented by Jason Robert Lipkin, Esq. of WINSTON & STRAWN LLP.

*Prior Settlement*

On or about May 1, 2021, J.V. agreed in principle to settle his personal injury claim with *HLS only* for five thousand and 00/100 dollars (\$5,000.00), pending the consent of the County. In connection with the proposed settlement, J.V.’s counsel notified this Office that if the settlement were approved, he would place the settlement funds in escrow pending full resolution of this matter. According to J.V.’s counsel, until the matter is fully resolved, there will be no disbursements or accounting of attorney’s fees, costs, and disbursements.

On June 28, 2021, the Westchester County Board of Legislators passed Act No. 117-2021, which, among other things:

- (i) authorized J.V. to settle his third party action against one of the three defendants therein for five thousand and 00/100 dollars (\$5,000.00); and
- (ii) deferred reimbursement of the County’s lien on such settlement proceeds pending resolution of the third party action as against the remaining defendants.

*Instant Settlement*

On or about August 19, 2021, J.V. agreed in principle to settle the remainder of his personal injury claim for four hundred twenty-five thousand and 00/100 dollars (\$425,000.00), pending the consent of the County. Including the prior settlement of \$5,000.00, the total settlement in this matter is four hundred thirty thousand and 00/100 dollars (\$430,000.00).

In connection with the proposed settlement, J.V.’s counsel notified this Office that his costs and disbursements in this matter total one thousand two hundred eighty-five and 35/100 dollars (\$1,285.35) and that his fee totals one hundred forty-two thousand nine hundred three and 45/100 dollars (\$142,903.45).

*The County's Lien on the Settlement Proceeds*

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 J.V.'s behalf in the amount of sixty-six thousand six hundred seventy-five and 49/100 dollars (\$66,675.49) and paid indemnity (lost wage) benefits in the amount of one hundred seventy-nine thousand eighty-seven and 10/100 dollars (\$179,087.10)—bringing the County's total expenditures in this matter to two hundred forty-five thousand seven hundred sixty-two and 59/100 dollars (\$245,762.59).

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 33.54%, equaling a dollar reduction of eighty-two thousand four hundred twenty-eight thousand and 77/100 dollars (\$82,428.77). The County would thereafter accept in satisfaction of its present lien a total of one hundred sixty-three thousand three hundred thirty-three and 82/100 dollars (\$163,333.82). After the County is reimbursed and counsel fees are paid, J.V. would recover one hundred twenty-two thousand four hundred seventy-seven and 38/100 dollars (\$122,477.38).

*Visual Summary*

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

<b>Worker's Compensation Amounts</b>	
Medical Expenses	\$ 66,675.49
Indemnity (Lost Wage) Payments	\$ 179,087.10
<b>Worker's Comp, TOTAL</b>	<b>\$ 245,762.59</b>

<b>Litigation Amounts</b>	
Third-Party Settlement (Gross Amt)	\$ 430,000.00
Disbursements	\$ 1,285.35
Attorney's Fees	\$ 142,903.45
Cost of Litigation (COL)	\$ 144,188.80
Net Proceeds of Third-Party Settlement	\$ 285,811.20
Percentage COL	33.54%
Carrier's COL	\$ 82,428.77
<b>Carrier's Net Lien</b>	<b>\$ 163,333.82</b>
<b>Claimant's Net Recovery</b>	<b>\$ 122,477.38</b>

## Future Liability Settlement Piece

### *Statutory Background*

Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers' Compensation benefits. Once the Workers' Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

In the past, the Department of Finance, in its role as administrator of the County's Workers' Compensation Program, has negotiated, with the cooperation of the County Attorney's Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers' Compensation Board.

This settlement is based upon the following criteria:

1. The degree of disability;
2. The claimant's estimated life expectancy; and
3. The settlement amount proposed by the claimant's attorney.

### *Past Expense*

As set forth above in the Third-Party Action Piece, the County has expended on this matter medical payments totaling sixty-six thousand six hundred seventy-five and 49/100 dollars (\$66,675.49) and indemnity (lost wage) benefits in the amount of one hundred seventy-nine thousand eighty-seven and 10/100 dollars (\$179,087.10)—bringing the County's total expenditures in this matter to two hundred forty-five thousand seven hundred sixty-two and 59/100 dollars (\$245,762.59).

For the reader's convenience, a chart of these figures appears immediately below:

<b>Expenses to Date</b>			
	<b>Indemnity</b>	<b>Medical</b>	<b>Total</b>
WCB Case No. G1792812	\$ 179,087.10	\$ 66,675.49	\$ 245,762.59

*[Remainder of Page Intentionally Left Blank]*

*Future Exposure*

Any PPD award would include two parts: an indemnity part and a medical part.

Indemnity Part

*Future Award*

As of the date of this legislation, WCB has yet to issue an award regarding J.V.’s disability. As a result, the County is under no current direction to continue payments. However, both J.V.’s doctor and an Independent Medical Examiner (the “IME”) who examined J.V. at the County’s direction agree that J.V. is permanently partially disabled.

It is the opinion of Triad Group, LLC (“Triad”)—*i.e.*, the third-party administrator for the County’s workers’ compensation plan—that should the County decline to settle, a PPD award is a certainty.

*Future Award’s Duration*

Triad has determined that if an award were to issue, it would likely be for the maximum possible period given the date of injury: 400 weeks (*see* L 2007, ch 6, §§ 4, 82 [a] [codified at Workers Compensation Law § 15 [3] [w]). That award would be further enlarged by the lag in time before the award could be issued, estimated by Triad to be 6 months (*i.e.*, 26 weeks)—a period of time that would be added to the award. Additionally, because J.V. retired approximately one year ago (on February 9, 2021) and because J.V. has not received job-injury benefits during that period of time, the award would be further enlarged by an additional 52 weeks. The total exposure of the probable award would therefore be 478 weeks.

For the reader’s convenience, a chart of this subtotal appears immediately below.

Indemnity Exposure Calculation	
<b>Max Capped Exposure (in Weeks)</b>	
Probable Award Amount	400 weeks
Lookback Period ( <i>i.e.</i> , date of retirement (02/09/21) to today (02/10/22))	52 weeks
Lag Period ( <i>i.e.</i> , today (02/10/22) to estimated award date (08/10/22))	26 weeks
<b>TOTAL</b>	<b>478 weeks</b>

*Future Award’s Rate*

Triad has also estimated that J.V. would be entitled to the maximum weekly rate of indemnity, which is \$864.32 per week.

*Authorized Offset (“Holiday”)*

As set forth above in the Third-Party Action Piece, J.V. is expected to receive a net recovery of one hundred twenty-two thousand four hundred seventy-seven and 38/100 dollars (\$ 122,477.38). Under decisional law, the County is entitled to offset future medical and indemnity payments owed to J.V. (the “Holiday”) by an amount equal to that net recovery less a “litigation fee” equal to the claimant’s net recovery multiplied by the previously determined percentage cost of litigation (*i.e.*, \$122,477.38 x 33.54% or \$41,078.91) (*see Burns v Varriale*, 9 NY3d 207 [2007]). Here, the Holiday totals eighty-one thousand three hundred ninety-eight and 47/100 dollars (\$ 81,398.47).

For the reader’s convenience, a chart of this subtotal appears immediately below.

Holiday Calculation	
Net Recovery in Third-Party Action	\$ 122,477.38
Percentage Cost of Litigation (“COL”)	33.54%
COL on Future Benefits	\$ 41,078.91
Holiday	\$ 81,398.47

*Estimated Exposure (Not Reduced to Net Present Value)*

The total exposure in this matter—not reduced to net present value—equals the max capped exposure period (*i.e.*, 478 weeks) multiplied by the estimated weekly rate of indemnity (*i.e.*, \$ 864.32) less the Holiday (*i.e.*, \$ 81,398.47). That amount totals three hundred thirty-one thousand seven hundred forty-six and 49/100 dollars (\$ 331,746.49).

For the reader’s convenience, a chart of this subtotal appears immediately below.

Estimated Exposure (Not Reduced to Net Present Value)	
Max Capped Exposure Period	478 weeks
Weekly Rate of Indemnity	\$ 864.32
Holiday	\$ 81,398.47
<b>TOTAL</b>	<b>\$ 331,746.49</b>

*Estimated Exposure (Reduced to Net Present Value)*

Reducing that amount to net present value using (i) a discount rate equal to 2.021% (*i.e.*, the 10-year Treasury note rate as of February 10, 2022); and (ii) an estimated award date of August 10, 2022 results in total estimated exposure of two hundred ninety-seven thousand eight hundred fifty-one and 44/100 dollars (\$ 297,851.44).

For the reader’s convenience, a chart of this subtotal appears immediately below.

Estimated Exposure (Reduced to Net Present Value)	
Estimated Exposure (Not Reduced)	\$ 331,746.49
Discount Rate	2.021%
Award Date (Estimated)	8/10/2022
<b>NET PRESENT VALUE</b>	<b>\$ 297,851.44</b>



Medical Part

As in all PPD awards irrespective of the date of injury, the medical piece would run for the remainder of J.V.'s life.<sup>1</sup> After consulting the Centers for Medicare & Medicaid Services, a federal agency within the U.S. Department of Health and Human Services ("CMS"), Triad has set the reserve for medical expenses in this matter at eighteen thousand eight hundred thirty-five and 00/100 dollars (\$18,835.00).

For the reader's convenience, a chart of these figures appears immediately below.

<b>Medical Exposure Calculation</b>	
	<b>Reserve</b>
County Exposure	\$ 18,835.00

*Proposed Settlement*

The proposed settlement also includes two parts.

Indemnity Part

The proposed settlement's indemnity piece is a one-time payout of one hundred sixty-three thousand three hundred thirty-three and 82/100 dollars (\$ 163,333.82). As compared to the net present value of the indemnity reserve (*i.e.*, \$ 297,851.44), the proposed payout would save the County one hundred thirty-four thousand five hundred seventeen and 62/100 dollars (\$ 134,517.62).

For the reader's convenience, a chart of these figures appears immediately below.

<b>Projected Savings</b>	
	<b>Indemnity</b>
County Exposure	\$ 297,851.44
Proposed Settlement	\$ 163,333.82
Potential Savings	\$ 134,517.62

*[Remainder of Page Intentionally Left Blank]*

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<sup>1</sup> Note, of course, that medical liability is limited to treatment of the subject injury.

Medical Part

The proposed settlement’s medical piece involves a Workers’ Compensation Medicare Set-Aside Arrangement (the “MSA”). If the MSA—which CMS has already pre-approved—is authorized, the County will (i) deposit seed money into an interest-bearing account maintained by J.V., which J.V. could draw from to pay future Medicare-covered, reimbursable medical treatment costs, and (ii) purchase an annuity, the payments from which will be deposited into J.V.’s interest-bearing account yearly for twenty years (see 42 USC § 1395y [b] [Medicaid Secondary Payer Statute]).

The proposed seed money payment is two thousand five hundred eighty-three and 00/100 dollars (\$ 2,583.00), and the proposed annuity will cost the County sixteen thousand two hundred fifty-two and 00/100 dollars (\$ 16,252.00), for a total structured settlement payment of eighteen thousand eight hundred thirty-five and 00/100 dollars (\$ 18,835.00). As a result of the proposed annuity’s anticipated yield, the total benefit of the MSA to J.V. is estimated to be twenty-six thousand seven hundred forty-six and 00/100 dollars (\$ 26,746.00).

For the reader’s convenience, a chart of these figures appears immediately below.

<b>Proposed WCMSA</b>			
	<b>Cost</b>	<b>Guaranteed Yield</b>	<b>Expected Payments Over Lifetime</b>
Seed Money	\$ 2,583.00	\$ 2,583.00	\$ 2,583.00
Annuity	\$ 16,252.00	\$ -	\$ 24,163.00
Structured Settlement Totals	\$ 18,835.00	\$ 2,583.00	\$ 26,746.00

*Proposed Settlement’s Estimated Savings*

The County’s total obligation under the proposed settlement—including both the indemnity payout and MSA—is one hundred eighty-two thousand one hundred sixty-eight and 82/100 dollars (\$ 182,168.82). If the County were to accept the proposed settlement, the potential savings to the County would total one hundred thirty-four thousand five hundred seventeen and 62/100 dollars (\$ 134,517.62).

For the reader’s convenience, a chart of the summary figures appears below:

<b>Projected Savings</b>			
	<b>Indemnity</b>	<b>Medical</b>	<b>Total</b>
County Exposure	\$ 297,851.44	\$ 18,835.00	\$ 316,686.44
Proposed Settlement	\$ 163,333.82	\$ 18,835.00	\$ 182,168.82
Potential Savings	\$ 134,517.62	\$ -	\$ 134,517.62

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**Conclusion**

If the County were to accept the proposed settlement of the third-party action (*i.e.*, the Third Party Action Piece), the County would recover proceeds totaling one hundred sixty-three thousand three hundred thirty-three and 82/100 dollars (\$ 163,333.82). If the County were to accept the proposed settlement of future liability (*i.e.*, the Future Liability Settlement Piece), the County would pay out an amount totaling one hundred eighty-two thousand one hundred sixty-eight and 82/100 dollars (\$182,168.82). Viewing these two approvals in concert, the net expense to the County would be eighteen thousand eight hundred thirty-five and 00/100 dollars (\$18,835.00).

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

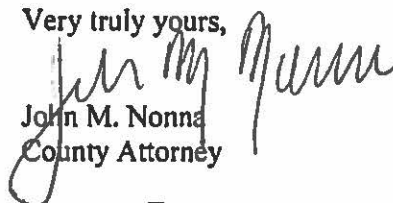
<b>Total Transaction</b>	
Third-Party Action Piece	\$ 163,333.82
Future Liability Settlement Piece	<b>\$ (182,168.82)</b>
<b>Total</b>	<b>\$ (18,835.00)</b>

*[Remainder of Page Intentionally Left Blank]*

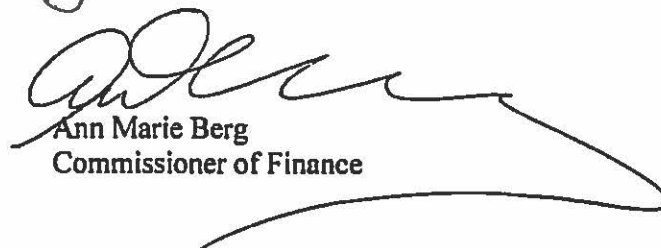
Based upon the foregoing, (i) the County Attorney requests authority from this Board pursuant to Section 158.11 of the Westchester County Charter to compromise the County's right to be reimbursed for health care and wage benefits paid to or on behalf of J.V. from his recovery against a third-party tortfeasor, and (ii) the County Attorney and the Commissioner of Finance together request authority to compromise the liability of the County by contributing \$182,168.82 toward a lump-sum settlement to J.V. in full satisfaction of the County's indemnity and medical obligation in this matter.

We therefore recommend the accompanying Act

Very truly yours,



John M. Nonna  
County Attorney



Ann Marie Berg  
Commissioner of Finance

JMN/AMB/stc

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if approved, would authorize (i) the County Attorney to compromise the County's claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of "J.V.," a former County employee who was injured in the line of duty, from a settlement against a third-party tortfeasor (the "Third-Party Action Piece"); and (ii) the County Attorney and the Commissioner of Finance to compromise the County's liability to pay a reduced lump sum in lieu of future payments owed to J.V. (the "Future Liability Settlement Piece"). 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.

**The Third-Party Action Piece**

On February 17, 2017, J.V., a police officer in the Westchester County Department of Public Safety (the "Department"), slipped on ice in the driveway of 21 New Castle Drive, Mount Kisco, NY (the "Subject Property"). As a result of the fall, he injured his back, neck, and left wrist in the fall. J.V. never returned to work following his injury, and he retired from service on February 9, 2021.

Shortly after the fall, J.V. filed a claim for his injury with the NYS Workers' Compensation Board, which was not controverted. On a parallel track to his Workers' Compensation claim, J.V. commenced a personal injury action against three parties allegedly responsible for maintaining the Subject Property.

On June 28, 2021, the Westchester County Board of Legislators passed Act No. 117-2021, which, among other things: (i) authorized J.V. to settle his third party action against one of the three defendants for five thousand and 00/100 dollars (\$5,000.00); and (ii) deferred reimbursement

of the County's lien on such settlement proceeds pending resolution of the third party action as against the remaining defendants.

Recently, J.V. agreed in principle to settle his personal injury claim with the remaining defendants for four hundred twenty-five thousand and 00/100 dollars (\$425,000.00), pending the consent of the County.

The total proposed settlement in this matter is now four hundred thirty thousand and 00/100 dollars (\$430,000.00). In connection with the proposed settlement, J.V.'s counsel notified this Office that his costs and disbursements in this matter total one thousand two hundred eighty-five and 35/100 dollars (\$1,285.35) and that his fee totals one hundred forty-two thousand nine hundred three and 45/100 dollars (\$142,903.45).

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 J.V.'s behalf in the amount of sixty-six thousand six hundred seventy-five and 49/100 dollars (\$66,675.49) and paid indemnity (lost wage) benefits in the amount of one hundred seventy-nine thousand eighty-seven and 10/100 dollars (\$179,087.10)—bringing the County's total expenditure in this matter to two hundred forty-five thousand seven hundred sixty-two and 59/100 dollars (\$245,762.59).

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 33.54%, equaling a dollar reduction of eighty-two thousand four hundred twenty-eight thousand and 77/100 dollars (\$82,428.77). The County would thereafter accept in satisfaction of its present lien a total of one hundred sixty-three thousand three hundred thirty-three and 82/100 dollars (\$163,333.82).

After the County is reimbursed and counsel fees are paid, J.V. would recover one hundred twenty-two thousand four hundred seventy-seven and 38/100 dollars (\$122,477.38).

**The Future Liability Settlement Piece**

Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers' Compensation benefits. Once the Workers' Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

The Department of Finance, in its role as administrator of the County's Workers' Compensation Program, has negotiated, with the cooperation of the County Attorney's Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers' Compensation Board.

Employee:	J.V.
Department:	Public Safety
Date of Injury:	February 17, 2017
Injuries:	Back, neck, and left wrist
Lump-Sum Settlement (Medical & Indemnity):	\$ 182,168.82

*[Remainder of Page Intentionally Left Blank]*

Your Committee has carefully considered the matter and recommends (i) 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 J.V. from the settlement of his legal action against a third-party tortfeasor; and (ii) authorizing the County Attorney and the Commissioner of Finance to compromise the County's liability for J.V.'s future Workers' Compensation benefits by paying a lump sum.

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

Dated: White Plains, New York  
February \_\_, 2022



ACT NO. 2022

AN ACT authorizing the County Attorney to compromise the County's claim to be reimbursed for health care expenditures and wage benefits paid to or on behalf of a County employee from a settlement against a third-party tortfeasor and authorizing the County Attorney and the Commissioner of Finance to compromise the County's liability to pay a reduced lump sum in lieu of future payments

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 "J.V.," from a settlement of his legal action against a third party. The County's reimbursement is \$163,333.82, representing a 33.54% reduction of its lien, with full reservation of the County's right to set off J.V.'s net recovery against any future compensation in accordance with the provisions of New York State Workers' Compensation Law.

2. The County Attorney and the Commissioner of Finance are hereby authorized to compromise the County's right to pay Workers' Compensation benefits to J.V. by contributing \$ 182,168.82 towards a lump-sum settlement, thereby reducing the County's liability for ongoing benefits to and/or for the benefit of the employee.

3. The County Attorney or his designee and the Commissioner of Finance or her designee are hereby authorized to execute and deliver all documents and take such actions as the County Attorney and/or the Commissioner of Finance deem necessary or desirable to accomplish the purposes hereof

4. This Act shall take effect immediately.

# FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Workers Comp Lien (J.V.)

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      \$ 182,169

Total Current Year Revenue \$ 163,334

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0017-4280

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: Michael Dunn

Title: Budget Analyst

Department: Budget

Reviewed By: 

Budget Department

If you need more space, please attach additional sheets.

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

February 24, 2022

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 Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, 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 Marcelino Cruz v. County of Westchester, in the amount of \$400,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court. Mark Stumer, Esq., of Budin, Reisman, Kupferberg, & Bernstein, LLP, 112 Madison Avenue, New York, New York 10016 is representing the plaintiff. Patrick Butler, Esq., of Maroney O'Connor LLP, 11 Broadway, New York, New York 10004 is representing the County. The matter tentatively settled on February 4, 2022 pending this Board's approval of a settlement in the amount of \$400,000.00, inclusive of attorney's fees.

This matter arises out of a passenger accident which occurred on October 31, 2018. The then 42-year-old plaintiff alleges that at 4:39 p.m. on Grassland Road, near the east gate entrance to Westchester Community College in Valhalla., Bee Line Bus #572 turned left in front of the pick-up truck plaintiff was driving down the hill. The driver of the bus made a left turn in front of plaintiff's truck while the traffic light was green.

Plaintiff was brought to Westchester County Medical Center by ambulance. Plaintiff complained of pain in his entire left leg, right knee, lower back, and neck.

In the weeks after the accident, plaintiff received acupuncture and electrical stimulation. In the months that followed, plaintiff underwent two epidural steroid injections to his lower back. From February 2019 until 2020, plaintiff regularly received physical therapy. For approximately one year following the accident, Plaintiff states he was confined to his home, only leaving for medical treatment.

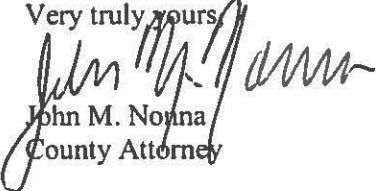


In 2019 and 2020, plaintiff underwent three arthroscopic surgeries to his knees. Plaintiff has also received prescription pain medication and medicated patches for his neck and back. Plaintiff claims that he now must wear eye glasses to read; whereas before the accident, he did not.

The New York State Insurance Fund has filed a lien of \$142,377.66 against plaintiff's recovery.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County's insurance policy will cover \$300,000 of the \$400,000 settlement, and the County will only pay its \$100,000. deductible.

The accompanying Act will authorize settlement of the lawsuit entitled, Marcelino Cruz v. County of Westchester, in the amount of \$400,000.00, Westchester County Supreme Court Index No. 62239/2019, inclusive of attorney's fees.

Very truly yours,  
  
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 the settlement of the lawsuit of Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00.

This matter is pending in the Westchester County Supreme Court. The matter tentatively settled on February 4, 2022 pending this Board's approval of a settlement in the amount of \$400,000.00, inclusive of attorney's fees.

This matter arises out of a passenger accident which occurred on October 31, 2018. The then 42-year-old plaintiff alleges that at 4:39 p.m. on Grassland Road, near the east gate entrance to Westchester Community College in Valhalla., Bee Line Bus #572 turned left in front of the pick-up truck plaintiff was driving down the hill. The driver of the bus made a left turn in front of plaintiff's truck while the traffic light was green.

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In the weeks after the accident, plaintiff received acupuncture and electrical stimulation. In the months that followed, plaintiff underwent two epidural steroid injections to his lower back. From February 2019 until 2020, plaintiff regularly received physical therapy. For approximately one year following the accident, Plaintiff states he was confined to his home, only leaving for medical treatment.

In 2019 and 2020, plaintiff underwent three arthroscopic surgeries to his knees. Plaintiff has also received prescription pain medication and medicated patches for his neck and back. Plaintiff claims that he now must wear eye glasses to read; whereas before the accident, he did not.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County's insurance policy will cover \$300,000 of the \$400,000 settlement, and the County will only pay its \$100,000. deductible.

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 Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, 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

, 2022

COMMITTEE ON:

ACT NO. -2022

AN ACT authorizing the County Attorney to settle the lawsuit of Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, 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 Marcelino Cruz v. County of Westchester, in Westchester County Supreme Court, Index No. 62239/2019, in the amount of \$400,000.00 inclusive of attorney's fees. The County will pay \$100,000.00 of this settlement as required by the self-insured retention applicable to its insurance policy.

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: Lawsuit Settlement: M. Cruz  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 \$ 100,000

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 0698/4270 4280/05

Potential Related Operating Budget Expenses: Annual Amount n/a

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

Potential Related Operating Budget Revenues: Annual Amount n/a

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

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

Current Year: n/a

Next Four Years: n/a

Prepared by: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: February 23, 2022

Reviewed By: 

DV 2/23/22 Budget Director

Date: 2/23/22





**George Latimer**  
County Executive

Office of the County Attorney

**John M. Nonna**  
County Attorney

February 28, 2022

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 that, 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 McCarthy Fingar LLP ("McCarthy Fingar"), pursuant to which the firm was retained, at County expense, to serve in an "of counsel" capacity to the County Attorney, as needed. The retention was made in connection with litigation relating to a will and indenture, which conveyed to the County parkland known as Merestead (the "Litigation"). The County Attorney is requesting an increase in the authorized not-to-exceed amount of the Agreement by One Hundred Thousand Dollars (\$100,000.00).

Under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), payable at various hourly rates for various personnel. The proposed amendment would authorize the County to increase the not-to-exceed amount of the Agreement to a new total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00).

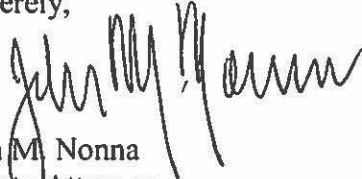
The Litigation was commenced pursuant to the Real Property Actions and Proceedings Law Section 1955 and the Estates, Powers and Trusts Law Section 8-1.1 to obtain relief from certain restrictions in the deed and trust that conveyed Merestead to the County. The relief requested included: (1) modifying some restrictions on the use of the main dwelling and other structures on the property, while retaining its use as parkland; (2) removal of the restrictions on the use of the trust fund created by the grantor for the use and maintenance of the property, based upon the principle of equitable deviation; and (3) authorizing the sale, through the principle of deaccessioning, of certain artwork in the main dwelling. This additional funding is now being requested because the Litigation is continuing in New York State Supreme Court.

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 January 14, 2022, 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,

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

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 that, 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 McCarthy Fingar LLP (“McCarthy Fingar”), pursuant to which the firm was retained, at County expense, to serve in an “of counsel” capacity to the County Attorney, as needed. The County Attorney has advised your Committee that the retention was made in connection with litigation relating to a will and indenture, which conveyed to the County parkland known as Merestead (the “Litigation”). The County Attorney has advised your Committee that he is requesting an increase in the authorized not-to-exceed amount of the Agreement by One Hundred Thousand Dollars (\$100,000.00).

The County Attorney has advised your Committee that, under the Agreement, McCarthy Fingar was to be paid a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), payable at various hourly rates for various personnel. The County Attorney has advised your Committee that the proposed amendment would authorize the County to increase the not-to-exceed amount of the Agreement to a new total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00).

The County Attorney has advised your Committee that the Litigation was commenced pursuant to the Real Property Actions and Proceedings Law Section 1955 and the Estates, Powers and Trusts Law Section 8-1.1 to obtain relief from certain restrictions in the deed and

trust that conveyed Merestead to the County. The County Attorney has advised your Committee that the relief requested included: (1) modifying some restrictions on the use of the main dwelling and other structures on the property, while retaining its use as parkland; (2) removal of the restrictions on the use of the trust fund created by the grantor for the use and maintenance of the property, based upon the principle of equitable deviation; and (3) authorizing the sale, through the principle of deaccessioning, of certain artwork in the main dwelling. The County Attorney has advised your Committee that this additional funding is now being requested because the Litigation is continuing in New York State Supreme Court.

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 January 14, 2022, 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.

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

Dated: \_\_\_\_\_, 2022  
White Plains, New York

**COMMITTEE ON**

C:BDM-022822

# FISCAL IMPACT STATEMENT

SUBJECT: McCarthy Fingar LLP - 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 TBD (NTE \$100,000)

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

To amend an agreement by increasing the authorized NTE amount of the agreement by \$100,000.

Potential Related Operating Budget Expenses: Annual Amount TBD

Describe: An Act authorizing the County to retain, at County expense, the law firm of McCarthy Fingar LLP to serve in an "of counsel" capacity to the County Attorney, in connection with litigation relating to a will and indenture which specifically affect the County park known as Merestead.

Potential Related Operating Budget Revenues: Annual Amount \$0

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

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

Current Year: \$0

Next Four Years: \$0

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: February 24, 2022

Reviewed By: 

Budget Director

Date: 2/24/22

ACT NO. 2022 - \_\_\_\_\_

AN ACT authorizing the County to amend an agreement with the law firm of McCarthy Fingar LLP, pursuant to which the firm serves in an “of counsel” capacity to the County Attorney, as needed, in connection with a matter concerning a will and an indenture, which specifically affect the County park known as Merestead, by increasing the authorized not-to-exceed amount of the agreement by \$100,000.00.

**BE IT ENACTED** by the County Board 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 McCarthy Fingar LLP (“McCarthy Fingar”) 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 a matter concerning a will and an indenture, which specifically affect the County park known as Merestead, by increasing the authorized not-to-exceed amount of the Agreement by One Hundred Thousand Dollars (\$100,000.00), from a total amount not-to-exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) to a new total amount not-to-exceed Three Hundred and Fifty Thousand Dollars (\$350,000.00).

§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.