

Westchester County

George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

May 23, 2023

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

Re: An Act authorizing 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 personal-injury action.

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize 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 “J.N.,” from the settlement of his personal-injury action. 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 October 3, 2019, J.N.—then a part time Emergency Services Training Instructor working in the Westchester County Department of Emergency Services—was performing a drill inside a County-owned fire-training simulator (the “Trainer”). After J.N. descended the interior stairs wearing full personal protective equipment, a gas-fired training prop on the opposite side of

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



the Trainer exploded. The explosion damaged J.N.'s eardrums and threw him backward onto the stairs. The next day, Plaintiff filed a workers' compensation claim with the County, which the County promptly granted.

In March 2021, J.N. commenced a personal injury action (the "Action") against the Trainer's manufacturer, Fireblast Global, Inc. ("Fireblast"). J.N.'s counsel in that action is SHEPS LAW GROUP P.C., 25 High Street, Huntington, NY 11743. Fireblast's counsel is KIERNAN TREBACH LLP, 40 Exchange Place, Suite 1600, New York, NY 10005.

On December 17, 2021, Fireblast impleaded into the Action under a theory of contractual liability both the original owner of the Trainer, the City of Yonkers ("Yonkers") and the County.¹ Yonkers was represented by BLANCHARD & WILSON, LLP, 235 Main Street, Suite 330, White Plains, NY 10601, and SAVAD CHURGIN, 55 Old Turnpike Road, Suite 209, Nanuet, NY 10954. The County was represented by the County Attorney's Office.

On or about April 6, 2023, J.N. agreed in principle to settle the Action for a global settlement of three hundred fifty-five thousand and 00/100 dollars (\$ 355,000.00),² pending the County's consent to settle its workers' compensation claim. In connection with the proposed settlement, J.N.'s counsel notified this Office that his fee in the Action is one hundred eighteen thousand three hundred twenty-one and 50/100 dollars (\$118,321.50). He also notified this Office that his costs and disbursements in the Action total six thousand eight hundred seventy-six and 91/100 dollars (\$6,876.91).

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.N.'s behalf in the amount of seven thousand one hundred sixty and 41/100 dollars (\$7,160.41). No indemnity (lost wages) payments were made.

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 35.27%, equaling a dollar reduction of two thousand five hundred twenty-five and 48/100 dollars (\$2,525.48). The County shall thereafter accept in satisfaction of its present lien a total of four thousand six hundred thirty-four and 93/100 dollars (\$4,634.93). After the County is reimbursed and counsel fees are paid, J.N. would receive two hundred twenty-five thousand one hundred sixty-six and 66/100 dollars (\$225,166.66).

¹ Yonkers gifted the Trainer to the County in August 2017 (*see* Westchester County Act No. 150-2017 [approved August 16, 2017]).

² The County has agreed in principle to contribute fifty thousand and 00/100 dollars (\$50,000.00) towards the settlement. Legislation to that effect has already been submitted to the Westchester County Board of Acquisition and Contract ("A&C") (*see* A&C Resolution, OnBase ID No. 101153; *see also* Charter and Administrative Code of Westchester County § 158.11 [5] ["[T]he County Attorney with the approval of [A&C] may compromise, settle or adjust rights, claims, demands or causes of action against the county for personal injury . . . for an amount not to exceed seventy-five thousand dollars (\$75,000.00)."]). It is anticipated that the A&C legislation will be approved on or about June 1, 2023.

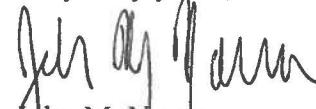
For the reader's convenience, a chart of the aforementioned figures appears below:

Worker's Compensation Amounts	
Medical Expenses	\$7,160.41
Indemnity (Lost Wage) Payments	\$0.00
Worker's Comp, TOTAL	\$7,160.41

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$355,000.00
Costs & Disbursements	\$6,876.91
Attorney's Fees	\$118,321.50
Cost of Litigation (COL)	\$125,198.41
Net Proceeds of Third-Party Settlement	\$229,801.59
Percentage COL	35.27%
Carrier's COL	\$2,525.48
Carrier's Net Lien	\$4,634.93
Claimant's Net Recovery	\$225,166.66

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 benefits paid to or on behalf of J.N. from his recovery in a personal-injury action. 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 “J.N.” 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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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 benefits paid to or on behalf of J.N. from the settlement of his personal-injury action. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
June ____, 2023

ACT NO. 2023

AN ACT authorizing the County of Westchester to compromise its right to be reimbursed for health care benefits paid to or on behalf of a County employee from a settlement of his personal-injury action.

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 benefits paid or owing to or on behalf of a County employee, identified as "J.N.", from a settlement of his personal-injury action. The County's reimbursement is \$4,634.93, representing a 35.27% reduction of its lien, with full reservation of the County's right to set off J.N.'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 (J.N.)

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 \$ 4,634.93

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 613-57-0019-4280

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

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

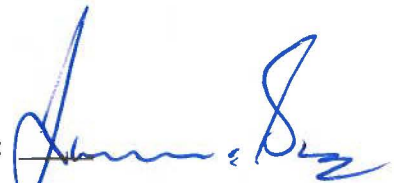
Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Sr. Assistant County Attorney

Department: Law

2/10
Reviewed By: 
Budget Department

If you need more space, please attach additional sheets.