

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

August 15, 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 James Darrell Davis v. Westchester County and Leandra Eustache in the amount of \$90,000.00 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 James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.) in the amount of \$90,000.00, inclusive of attorney's fees.

This matter is pending in the United States District Court for the Southern District of New York. The matter tentatively settled after a lengthy mediation process, pending this Board's approval of a settlement in the amount of \$90,000.00, inclusive of attorney's fees.

Nathaniel Charny, Esq. of Charny & Wheeler, P.C., 9 West Market Street, Rhinebeck, New York, is representing the Plaintiff.

Plaintiff, who was a Grade 9 Community Work Assistant in the Taxi and Limousine Commission (the "Department") brought a federal lawsuit under the ADA against Westchester County and Leandra Eustache, the Department's Chairperson and Chief Executive Officer, in her individual capacity. Prior to his filing a federal lawsuit, Plaintiff filed a Complaint with the New York State Division of Human Rights ("NYSDHR"), in which he alleged that he was discriminated against and did not receive reasonable accommodations for his physical disabilities, alleged to include his back pain resulting from a prior automobile accident and an amputated pinky finger. The NYSDHR investigated and determined that "probable cause" existed to believe that Respondents engaged in discriminatory practices.




In his federal lawsuit, Plaintiff alleges that he did not receive a reasonable accommodation that he requested for his disabilities, that he suffered a loss of income and emotional damages, and that the County filed charges against him in retaliation for his filing a Complaint with the NYSDHR. After filing our Answer, this case was automatically referred to the Southern District of New York's mediation program because it is a counseled employment discrimination case.

After two lengthy mediation sessions and hearing the strengths and weaknesses of the parties' claims and defenses, the mediator submitted her Mediator's Proposal of \$90,000, which was accepted by both sides (subject to the Board's approval). The Plaintiff entered mediation with a settlement demand of \$650,000. In light of the claims alleged and the unlikelihood that this matter will resolve via summary judgment as there are many issues of fact, we recommend settling this action for \$90,000.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal and, in the event the Plaintiff is successful following a jury trial, the payment of Plaintiff's counsel fees. The accompanying Act will authorize settlement of the lawsuit entitled James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.) in the amount of \$90,000.00, inclusive of attorney's fees.

Very truly yours,



John M. Nonna
County Attorney

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 James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.), in the amount of \$90,000.00.

This matter is pending in the United States District Court for the Southern District of New York. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$90,000.00, inclusive of attorney's fees, at the third and final court-mandated mediation session. Nathaniel Charny, Esq. of Charny & Wheeler, P.C., 9 West Market Street, Rhinebeck, New York, is representing the Plaintiff.

Plaintiff, who was a Grade 9 Community Work Assistant in the Taxi and Limousine Commission (the "Department") brought a federal lawsuit under the ADA against Westchester County and Leandra Eustache, the Department's Chairperson and Chief Executive Officer, in her individual capacity. Prior to his filing, he filed a Complaint with the New York State Division of Human Rights ("NYSDHR"), in which he alleged that he was discriminated against and did not receive reasonable accommodations for his physical disabilities, alleged to include his back injuries from a prior automobile accident and an amputated pinky finger. The NYSDHR investigated and determined that "probable cause" existed to believe that Respondents engaged in discriminatory practices.

In his federal lawsuit, Plaintiff alleges that he did not receive a reasonable accommodation that he requested for his disabilities and that the County filed charges against him in retaliation for his filing a Complaint with the NYSDHR. He claims that he suffered a loss of income and emotional damages as a result of the alleged discrimination. After the County filed its Answer, this case was automatically referred to the Southern District of New York's mediation program because it is a counseled employment discrimination case. After two lengthy mediation sessions and hearing the strengths and weaknesses of the parties' claims and defenses, the mediator submitted her Mediator's Proposal of \$90,000, which was accepted by both sides (subject to the Board's approval). The Plaintiff entered mediation with a settlement demand of \$650,000. In light of the claims alleged and the unlikelihood that this matter will resolve via summary judgment as there are many issues of fact, we recommend settling this action for \$90,000.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal and, in the event the Plaintiff is successful following a jury trial, the payment of Plaintiff's counsel'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 James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.) in the amount of \$90,000.00, 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

ACT NO. 2022

AN ACT authorizing the County of Westchester to settle the the lawsuit of James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.), in the amount of \$90,000.00, inclusive of attorney's fees

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

1. The County Attorney is authorized to settle the lawsuit of James Darrell Davis v. Westchester County and Leandra Eustache, 22 cv 0598 (S.D.N.Y.), in the amount of \$90,000.00, inclusive of attorney's fees.
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: Lawsuit Settlement: Davis, James Darrell

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 \$ 90,000

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 0699/4350 4280/04

Potential Related Operating Budget Expenses: Annual Amount \$ N/A

Describe: Settlement of General Liability Claim (G190130 Davis, James Darrell)

Potential Related 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: Loren Zeitler

Title: Senior Assistant County Attorney

Department: Law

Reviewed By: 

Budget Director

8/17/02

If you need more space, please attach additional sheets.