



George Latimer
County Executive

Department of Law
John M. Nonna
County Attorney

September 12, 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 “A.Y.,” 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 February 11, 2021, at approximately 4:45 p.m., A.Y.—a Senior Social Caseworker in the Westchester County Department of Social Services (the “Department”)—slipped and fell while attempting to locate a customer’s family home. As a result of the accident, A.Y. fractured her left wrist—an injury that required surgery. As a result of that injury, A.Y. was out of work for just over six months.

A.Y. filed a claim for her injury with the NYS Workers’ Compensation Board, which was uncontroverted. On a parallel track to her Workers’ Compensation claim, A.Y. retained counsel and commenced a personal injury action against the property owners. A.Y.’s counsel is BRIAN J. LEVY & ASSOCIATES, P.C., which has an office at 3265 Westchester Avenue, Bronx, NY 10461. The property owners’ counsel is BRUNO, GERBINO, SORIANO & AITKEN, LLP, located at 445 Broad Hollow Road, Suite 420, Melville, NY 11747-3601.

On or about June 20, 2023, A.Y. agreed in principle to settle her personal-injury action for one hundred ninety-five thousand and 00/100 dollars (\$195,000.00), pending the consent of the County. In connection with the proposed settlement, A.Y.’s counsel notified this Office that its costs and disbursements total four thousand twenty-nine and 65/100 (\$4,029.65) and that its attorney’s fee totals sixty-five thousand and 00/100 (\$65,000.00)—for a total litigation cost of sixty-nine thousand twenty-nine and 65/100 (\$69,029.65).

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 A.Y.’s behalf in the amount of twenty-one thousand ninety-six and 79/100 dollars (\$21,096.79) and indemnity (lost wage) benefits in the amount of fifty-three thousand seventy-six and 22/100 dollars (\$53,076.22)—bringing the County’s total expenditures in this matter to seventy-four thousand one hundred seventy-three and 01/100 dollars (\$74,173.01).

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 35.40%, equaling a dollar reduction of twenty-six thousand two hundred fifty-seven and 25/100 dollars (\$26,257.25). The County would thereafter accept in satisfaction of its present lien a total of forty-seven thousand nine hundred fifteen and 76/100 dollars (\$47,915.76). After the County is reimbursed and counsel fees are paid, A.Y. would receive seventy-eight thousand fifty-four and 59/100 dollars (\$78,054.59).

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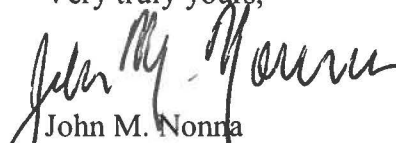
For the reader's convenience, a chart of the previously mentioned figures appears below:

Worker's Compensation Amounts	
Medical Expenses	\$ 21,096.79
Indemnity (Lost Wage) Payments	\$ 53,076.22
Worker's Comp, SUB-TOTAL	\$ 74,173.01
MVA ("Basic Economic Loss") Reduction	\$ -
Worker's Comp, TOTAL	\$ 74,173.01

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 195,000.00
Disbursements	\$ 4,029.65
Attorney's Fees	\$ 65,000.00
Cost of Litigation (COL)	\$ 69,029.65
Net Proceeds of Third-Party Settlement	\$ 125,970.35
Percentage COL	35.40%
Carrier's COL	\$ 26,257.25
Carrier's Net Lien	\$ 47,915.76
Claimant's Net Recovery	\$ 78,054.59

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 A.Y. 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

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 “A.Y.” 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 and wage benefits paid to or on behalf of A.Y. 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
September __, 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 "A.Y.", from a settlement of her legal action against a third party. The County's reimbursement is \$47,915.76, representing a 35.40% reduction of its lien, with full reservation of the County's right to set off A.Y.'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 (A.Y.)

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 \$ 47,915.76

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 613-57-0021-4280

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

 Reviewed By: 
Budget Department

9/13/23

If you need more space, please attach additional sheets.