

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

April 1, 2022

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

Re: Legislation 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.

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 "M.D.," from the settlement of her legal action against defendant tortfeasors; Wesley Harrison Lindsay and Maverick Transportation (collectively, "Defendant 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 May 13, 2016, M.D., an employee in the Westchester County Department of Public Safety (the “Department”) was involved in a motor vehicle accident at a location identified as Nannyhagen Road, Thornwood, NY – approximately one half mile east of Davidson Drive. On said date, a tractor trailer owned and operated by defendant tortfeasors crossed a double yellow line and collided with the vehicle driven by M.D. As a result of the accident, M.D. sustained injuries to her head, neck, shoulders, back and both wrists and missed 129 weeks of work. She returned to full-time regular duty on April 11, 2019, and is currently back at work in full capacity without restrictions.

M.D. filed a claim for her injury with the NYS Workers’ Compensation Board, which was uncontroverted. On a parallel track to her Workers’ Compensation claim, M.D. retained counsel in advance of commencing a personal injury action against the operator of the tractor trailer, individually, and against their employer Maverick Transportation, LLC, headquartered in North Little Rock, Arkansas.<sup>1</sup> M.D.’s counsel is Gary A. Cusano, Esq. of CUSANO SMITH PLLC, 483 Cherry Street, Bedford Hills, New York 10507.

On or about March 8, 2022, M.D. agreed in principle to settle her personal injury claim after issue was joined in federal court, for three hundred eighty-five thousand and 00/100 dollars (\$385,000.00), pending the consent of the County. In connection with the proposed settlement, M.D.’s counsel notified this Office that his legal fee totaled one hundred twenty thousand four hundred eighty-six and 74/100 dollars (\$120,486.74) and that his costs and disbursements totaled twenty-three thousand five hundred thirty-nine and 76/100 dollars (\$23,539.76).

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 M.D.’s behalf in the amount of thirty-one thousand six hundred forty-four and 55/100 dollars (\$31,644.55), paid indemnity (lost wage) benefits in the amount of twenty-six thousand eight hundred forty-eight and 42/100 dollars (\$26,848.42)—bringing the County’s total expenditures in this matter to fifty-eight thousand four hundred ninety-two and 97/100 dollars (\$58,492.97). As this is a motor vehicle accident within which M.D. sustained a physical injury, the first fifty thousand and 00/100 dollars (\$50,000.00) in Worker’s Compensation benefits paid for injuries arising from the accident are exempt from liens under New York’s No-Fault rules. As such, the total worker’s compensation value of the County’s lien, reduced by No-Fault, is eight thousand four hundred ninety-two and 97/100 dollars (\$8,492.97).

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 37.41%, equaling a dollar reduction of three thousand one hundred seventy-seven and 22/100 dollars (\$3,177.22). The County would thereafter accept in satisfaction of its present lien a total of five thousand three hundred fifteen and 75/100 dollars (\$5,315.75). After the County is reimbursed and counsel fees are paid, M.D. would receive two hundred thirty-five thousand six hundred fifty-seven and 75/100 dollars (\$235,657.75).

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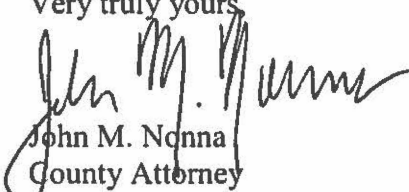
<sup>1</sup> Maverick Transportation, LLC, is a transportation company that provides flatbed and open-air equipment services to the steel, glass, and building material industries in North America. The company also provides truck maintenance services with equipment and diagnostics, with a regional officer and/or terminal in Gary, Indiana.

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

<b>Worker's Compensation Amounts</b>	
Medical Expenses	\$31,644.55
Indemnity (Lost Wage) Payments	\$26,848.42
No-Fault Equivalency for MVA Cases	(\$50,000.00)
<b>Worker's Comp, TOTAL</b>	<b>\$8,492.97</b>

<b>Litigation Amounts</b>	
Third-Party Settlement (Gross Amt)	\$385,000.00
Disbursements	\$23,539.76
Attorney's Fees	\$120,486.74
Cost of Litigation (COL)	\$144,026.50
Net Proceeds of Third-Party Settlement	\$240,973.50
Percentage COL	37.41%
County's COL	\$3,177.22
County's Net Lien	\$5,315.75
Claimant's Net Recovery	\$235,657.75

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 M.D. 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/GA

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 "M.D." 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.

On May 13, 2016, M.D., an employee in the Westchester County Department of Public Safety (the "Department") was involved in a motor vehicle accident at a location identified as Nannyhagen Road, Thornwood, NY – approximately one half mile east of Davidson Drive. On said date, a tractor trailer owned and operated by defendant tortfeasors crossed a double yellow line and collided with the vehicle driven by M.D. As a result of the accident, M.D. sustained injuries to her head, neck, shoulders, back and both wrists and missed 129 weeks of work. She returned to full-time regular duty on April 11, 2019, and is currently back at work in full capacity without restrictions.

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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 M.D.'s behalf in the amount of thirty-one thousand six hundred forty-four and 55/100 dollars (\$31,644.55), paid indemnity (lost wage) benefits in the amount of twenty-six thousand eight hundred forty-eight and 42/100 dollars (\$26,848.42)—bringing the County's total expenditures in this matter to fifty-eight thousand four hundred ninety-two and 97/100 dollars (\$58,492.97). Furthermore, because the matter involved a motor vehicle accident, that figure is reduced by fifty thousand and 00/100 dollars (\$50,000.00) to eight thousand four hundred ninety-two and 97/100 dollars (\$8,492.97).

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 37.41%, equaling a dollar reduction of three thousand one hundred seventy-seven and 22/100 dollars (\$3,177.22). The County would thereafter accept in satisfaction of its present lien a total of five thousand three hundred fifteen and 75/100 dollars (\$5,315.75). After the County is reimbursed and counsel fees are paid, M.D. would receive two hundred thirty-five thousand six hundred fifty-seven and 75/100 dollars (\$235,657.75).

*[Remainder of Page Intentionally Left Blank]*

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 M.D. from the settlement of her legal action against defendant tortfeasor. An affirmative vote of a majority of the Board is required to pass this legislation.

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

COMMITTEE ON

ACT NO. 2022

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 defendant 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 "M.D.", from a settlement of her legal action against a third party. The County's reimbursement is \$5,315.22, representing a 37.41% reduction of its lien, with full reservation of the County's right to set off M.D.'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 (M.D.)

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 \$ 5,315.75

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 613-57-0016-4280

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: Gianfranco Arlia

Title: Assistant County Attorney

Department: Law

Reviewed By:  \_\_\_\_\_

Budget Department

4/1/22

If you need more space, please attach additional sheets.