



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

February 7, 2023

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 Deborah M. Faust and David Bacchioni against Village of Rye Brook and The County of Westchester in the amount of \$550,000.00

Dear Honorable Members of the Board:

Attached for your review is a draft of proposed legislation in connection with the above-referenced matter.

In or about January 2019, Deborah M. Faust (“Faust”) and David Bacchioni (“Bacchioni”), her husband, commenced an action in the Supreme Court, Westchester County against the County of Westchester, et al., for personal injuries sustained on February 28, 2018, when Faust tripped and fell while walking on the sidewalk approach to the North Ridge Street Bridge, Village of Rye Brook. Faust was 64 years old at the time of her accident. Bacchioni’s claim was a derivative action based on loss of consortium. The Bacchioni claim was withdrawn upon the settlement of the action.

On the date of the accident, Faust left her home early morning for a recreational walk. At about 7:30 a.m., while walking in a westerly direction, she tripped on a height differential between two (2) sidewalk flags located on the southerly sidewalk approach of the North Ridge Street Bridge. The trip hazard was approximately 2” in height.

Faust argued that the County owned the bridge sidewalk approach, was responsible for sidewalk maintenance, and that the County had prior written notice of the sidewalk defect. At the time of the accident, North Ridge Street, at the bridge location, was a County-maintained roadway. However, the County never acknowledged ownership and/or control of the adjacent sidewalk to North Ridge Street. Plaintiff’s land and survey experts opined that the sidewalk

approach to the bridge was, in fact, owned by the County. The County's expert opined that the land records are inconclusive as to ownership.

The North Ridge Street Bridge was constructed in or about 2000 by the New York State Department of Transportation ("NYSDOT"). The bridge, while owned by NYSDOT, carries the County-designated roadway. The County had argued that despite the disputed ownership of the subject sidewalk and accident location, it never received prior written notice of sidewalk defect and, therefore, could not be held liable pursuant to County Law Chapter 780.

During discovery of this matter, two (2) separate NYSDOT bridge inspection reports that predated the date of the accident disclosed and documented the sidewalk condition. A non-party NYSDOT Bridge Inspection Supervisor was deposed and testified that these reports would have been forwarded to the County. The County argued that it never received these reports prior to the accident.

Co-defendant Village of Rye Brook moved for summary judgment on the basis that it did not own the accident location and that it never received prior written notice of the alleged sidewalk condition. The County also moved for summary judgment on the basis that it did not own or have the obligation to maintain the sidewalk, and that even if it did have such ownership/obligation, the County never received prior written notice of the alleged defect thereby barring any action for the condition. The Court (Hon. Charles D. Wood, JSC) granted Rye Brook's motion. However, the Court denied the County's motion on the basis that expert opinion concluded that the County may have owned the accident location and may have also had prior written notice of the alleged defective condition based upon the testimony of the NYSDOT witness asserting that the bridge inspection reports were provided to the County. The County appealed the denial of its motion which was still pending at the time of settlement.

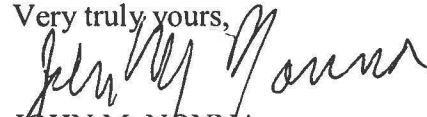
However, additional evidence was produced near the conclusion of jury selection indicating that the County had, in fact, received prior notice of the sidewalk condition from the NYSDOT. This written evidence provided specific reference, including photographs, of the accident location and condition while also warning that the condition represented a trip hazard. At this point, the jurors had been advised of the County's defense of lack of prior written notice. The new evidence, which the trial judge ruled would be admissible over the County's objection, essentially refuted the County's defense thereby creating a high likelihood of liability being found against the County.

Had this matter gone to trial, Faust would have argued that the County was responsible to have maintained the accident location and failed to correct the alleged dangerous condition over which plaintiff tripped after having been notified by the NYSDOT of said condition. Considering the facts of this matter and the recently discovered evidence tending to show the County having received prior written notice of the accident condition, the parties engaged in settlement negotiations after jury selection was completed. As a result of her accident plaintiff suffered a permanent physical injury to her right shoulder which required reconstructive surgery with permanent installation of metal hardware, two (2) emergency craniotomies to evacuate blood collecting on her brain as a result of striking her head in the accident, remained in ICU for 10 days, 6 months of physical therapy, and missed 6 months of work as a result of this accident.

Under these circumstances, a jury would likely find in plaintiff's favor and rule the County liable for the accident and plaintiff's injuries. After jury selection, the parties agreed to settle plaintiff's claim for \$550,000. This matter has a reserve of \$750,000.00 with the County's 6N Fund.

Please advise if further information is needed.

Very truly yours,

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

JOHN M. NONNA
Westchester County Attorney

JMN/jf
Enclosure

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 Deborah M. Faust and David Bacchioni against Village of Rye Brook and The County of Westchester in the amount of \$550,000.00.

Plaintiff Deborah M. Faust (“plaintiff”) alleges that on February 28, 2018, at approximately 7:30 a.m., she suffered physical injuries when she tripped and fell on an uneven sidewalk flag while walking on the sidewalk approach to the North Ridge Street Bridge, Village of Rye Brook.

While the adjacent roadway to the bridge is a County-designated roadway, the County disputed ownership and/or control of the accident site itself. Further, the County argued, in any event, that it did not receive prior written notice of the sidewalk condition and, therefore, could not be held liable for this accident. However, expert opinion concluded that the County was responsible for the sidewalk approach to the bridge where the accident occurred and additional records provided by NYSDOT indicated that the County was notified of the sidewalk condition prior to this accident.

At a trial, plaintiff, 64 years old at the time of the accident, will argue that she suffered a permanent physical injury to her right shoulder, which required reconstructive surgery with permanent installation of metal hardware, two (2) emergency craniotomies as a result of striking her head in the accident, remained in ICU for 10 days, 6 months of physical therapy, and missed 6 months of work as a result of this accident. Under these circumstances, a jury would likely

find in plaintiff's favor and rule the County liable for the accident location and plaintiff's injuries.

Your Committee has carefully considered the subject matter, the settlement proposal, and the attached Act and recommends authorizing the County Attorney or his designee to settle this lawsuit by payment to plaintiff in the amount not to exceed \$550,000, 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
 , 2023

COMMITTEE ON

1:jf

ACT NO.

2023

AN ACT authorizing the County Attorney to settle the lawsuit of Deborah M. Faust and David Bacchioni against Village of Rye Brook and The County of Westchester, Supreme Court of the State of New York, Westchester County, Index No. 51279/2019

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

Section 1. The County Attorney is hereby authorized to settle the lawsuit of Deborah M. Faust and David Bacchioni against Village of Rye Brook and The County of Westchester in the amount of \$550,000 to plaintiff, inclusive of counsel fees.

Section 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 purposes hereof.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement:Faust, Deborah 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 \$ 550,000

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 0698/4210 4280/04

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Settlement of General Liability Claim G180079 Faust, Deborah

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: John Fico

Title: Associate County Attorney

Department: Law

Date: January 25, 2023

JF
Reviewed By:

[Signature]
Budget Director

Date:

1/26/23