

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

ONBASE I.D.#: 102641

August 3, 2023

To: Honorable Members of the
Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Request for Authorization to Settle the Lawsuit of Shandel Carter v. The County of Westchester, et al, in the amount of \$50,000.

Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement of the lawsuit entitled Shandel Carter v. The County of Westchester, et al, Index No. 67941/2016. This matter is pending in Supreme Court. The case tentatively settled on July 27, 2023 pending this Board's approval of a settlement in the amount of \$50,000.00, inclusive of attorney's fees.

The circumstances of this Liberty Lines bus accident case are as follows. The accident occurred in the Bronx on October 5, 2015 at approximately 8:55 a.m. on East 189th Street at the intersection of Washington Avenue. Plaintiff claimed she was making a right turn onto E. 189th Street when the bus overtook her and attempted to make a right turn on to E. 189th Street, thereby colliding with her vehicle. The bus video does not demonstrate conclusively whether plaintiff actually moved forward into the turning bus, or if the bus did not swing the turn wide enough and struck plaintiff's stopped vehicle, so liability is unclear.

Plaintiff was transported from the scene by ambulance to Einstein Hospital with complaints of pain to her neck and left shoulder. There she made complaints of her left shoulder, left knee, neck, and back. She was examined, received an X-ray, and possibly a CT scan. She was given a neck brace, medication and told to follow up with her doctor.



Plaintiff's initial physical therapy went from 10/13/2016 to 1/16/2017. She began a second round of physical therapy on 5/14/2018 and it continued until 6/12/2018. Plaintiff did not have any injections or surgery.

In her Bill of Particulars, plaintiff claims the following injuries as a result of the accident: displaced fracture of the left shoulder acromion; left shoulder rotator cuff tear; left shoulder SLAP tear; left knee popliteo-meniscal tear; left knee ACL tear; left knee lateral meniscus tear; soft tissue cervical injuries; and lumbar soft tissue injuries with radiculopathy.

Plaintiff also claims confinement to bed for approximately one week and to home for two weeks. She claims she was totally disabled for three months and remains partially disabled to date.

This accident was deemed non preventable on the part of the operator. Thus, there was no disciplinary action taken against the operator.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County will pay the \$50,000 settlement as part of the \$250,000 self-insured retention in its insurance policy.

APPROVED BOARD OF ACQUISITION & CONTRACT 05/31/2023 JOAN COGIARDI, SECRETARY

RESOLUTION

Upon the communication of the County Attorney, it is hereby

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit entitled, Shandel Carter v. The County of Westchester, et al, Index No. 67941/2016, by payment from the County of Westchester to Shandel Carter in an amount not to exceed \$50,000.00; and it is further

RESOLVED, that the County Attorney or his designee is authorized to execute any documents necessary to implement this resolution.

Original Agreement	\$
First Amendment	\$
This Amendment	\$
TOTAL	\$

Account to be
Charged/Credited

Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	44	2100	4924		50,000.00

Budget Funding Year(s) 2023 Start Date 1/1/23 End Date 12/31/23
(must match resolution)

Funding Source Tax Dollars 50,000.00

State Aid _____

\$ 50,000.00

Federal Aid

(must match resolution)

PRIVILEGED AND CONFIDENTIAL

August 3, 2023

To: John Nonna
County Attorney

From: Mark Gardner
Senior Assistant County Attorney

Re: Request for Authorization to Settle the Lawsuit of Shandel Carter v. The County of Westchester, et al, in the amount of \$50,000.

Attached for your review is a proposed resolution in the above-referenced matter.

The circumstances of this Liberty Lines bus accident case are as follows. The accident occurred in the Bronx on October 5, 2015 at approximately 8:55 a.m. on East 189th Street at the intersection of Washington Avenue. Plaintiff claimed she was making a right turn onto E. 189th Street when the bus overtook her and attempted to make a right turn on to E. 189th Street, thereby colliding with her vehicle. The bus video does not demonstrate conclusively whether plaintiff actually moved forward into the turning bus, or if the bus did not swing the turn wide enough and struck plaintiff's stopped vehicle, so liability is unclear.

Plaintiff was removed from the scene by ambulance with complaints of pain to her neck and left shoulder. The ambulance brought her to Einstein Hospital where she was seen in the ER. She made complaints of her left shoulder, left knee, neck, and back. She was examined, received an X-ray, and possibly a CT scan. She was given a neck brace, medication and told to follow up with her doctor.

A few days after the accident, plaintiff went to a physical therapy facility. She made the same complaints, was given a series of tests, and sent for physical therapy three times a week for her shoulder, knee and neck. Initial physical therapy went from 10/13/2016 to 1/16/2017. She began a second round of

physical therapy from 5/14/2018 through 6/12/2018. Plaintiff did not have any injections or surgery.

In her Bill of Particulars, plaintiff claims the following injuries as a result of the accident: displaced fracture of the left shoulder acromion; left shoulder rotator cuff tear; left shoulder SLAP tear; left knee popliteo-meniscal tear; left knee ACL tear; left knee lateral meniscus tear; soft tissue cervical injuries; and lumbar soft tissue injuries with radiculopathy.

Our doctor, Dr. Faierman, noted the left knee MRI report finding of a tear of the lateral meniscus and ACL.

Plaintiff also claims confinement to bed for approximately one week and to home for two weeks. She claims she was totally disabled for three months and remains partially disabled to date.

The estimated attorney fee for Jason Bernheimer for trial preparation is approximately \$5,000 to \$7,500. His estimated attorney fee for a trial for this case is approximately \$15,000 to \$20,000. Dr. Faierman charges approximately \$10,000 for appearing in court and an additional fee for trial preparation of approximately \$500 to \$750.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The County will pay the \$50,000 settlement as part of the \$250,000 self-insured retention in its insurance policy.

This accident was deemed non preventable on the part of the operator. Thus, there was no disciplinary action taken against the operator.

If you require any further information, please feel free to contact me.