

OnBase ID #: 109548

PRIVILEGED & CONFIDENTIAL

Date: July 9, 2024
To: Honorable Members of the Board of Acquisition & Contract
From: John M. Nonna
County Attorney
Re: Request for authorization to settle workers' compensation lien on a County employee's proposed settlement of a legal action against a third-party tortfeasor (E.J.).

Attached for your consideration is a resolution 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 "E.J.,"¹ from the settlement of his legal claim against a third-party tortfeasor.

Relevant Background

On February 10, 2022, E.J.—a Senior Social Case Worker in the Westchester County Department of Social Services—was injured in a slip-and-fall accident while acting within the scope of her County employment.

As of the date of this resolution, the County has expended medical benefits through workers' compensation to E.J. or on her behalf in the amount of fifty-two thousand five hundred five and 63/100 dollars (\$52,505.63) and paid indemnity (lost wage) benefits in the amount of forty-two thousand nine hundred eighty-five and 84/100 dollars (\$42,985.84)—bringing the County's total expenditures in this matter to ninety-five thousand four hundred ninety-one and 47/100 dollars (\$95,491.47).

On separate tracks from her workers' compensation claim, E.J. commenced two plenary actions regarding the slip and fall:

- (i) *Johnson v South Shore Waccabuc Association, Inc.*, Index No. 61912/2022 (Sup Ct Westchester County), which was commenced on June 24, 2022, against institutional defendant South Shore Waccabuc Association, Inc. ("SSWA") and the individual defendants William and Joan Nisbeth (collectively, the "Nisbeths"); and
- (ii) *Johnson v Keith Bauer Landscaping LLC*, Index No. 55292/2023 (Sup Ct, Westchester County), which was commenced on January 9, 2023, against affiliated

¹ 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 if that is desired.

defendants Keith Bauer Landscaping LLC, Keith Bauer Landscaping, Inc.; and Keith Bauer (collectively, “Bauer Defendants”).

On May 25, 2023, the second-filed action was consolidated into the first.

In that consolidated action, E.J. is represented by BLOCK O’TOOLE & MURPHY, LLP, located at One Penn Plaza – Suite 5315, New York, NY 10119; SSWA is represented by AHMUTY, DEMERS & MCMANUS, located at 634 Plank Road, Suite 203A, Clifton Park, NY 12065; Bauer Defendants are represented by MOUND COTTON WOLLAN & GREENGRASS, located at 855 Franklin Avenue, Garden City, NY 11530; and the Nisbeths are unrepresented.

Third Party’s Offer to Settle Third-Party Action

Recently, E.J. received an offer to settle the consolidated action for one million eight hundred fifty thousand and 00/100 dollars (\$1,850,000.00) pending the County’s consent. E.J. also notified this Office that (i) the costs and disbursements in the consolidated action total twenty-six thousand three hundred eighty-four and 76/100 dollars (\$26,384.76); and (ii) the attorney’s fee for the consolidated action totals six hundred seven thousand eight hundred seventy-one and 74/100 dollars (\$607,871.74).

Proposed Settlement of County Lien

In accordance with applicable statutory and decisional law, this Office seeks the authority to compromise the County’s claim for reimbursement by reducing its lien by 34.29%, equaling a dollar reduction of thirty-two thousand seven hundred forty-four and 03/100 dollars (\$32,744.03). The County shall thereafter accept in satisfaction of its present lien a total of sixty-two thousand seven hundred forty-seven and 44/100 dollars (\$62,747.44). Pursuant to this reduction and after attorney’s fees, E.J. would recover one million one hundred fifty-two thousand nine hundred ninety-six and 06/100 dollars (\$1,152,996.06).

For the reader’s convenience, a chart of the previously mentioned figures is set forth below:

Worker's Compensation Amounts	
Medical Expenses	\$52,505.63
Indemnity (Lost Wage) Payments	\$42,985.84
Worker's Comp, TOTAL	\$ 95,491.47
Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$1,850,000.00
Disbursements	\$26,384.76
Attorney's Fees	\$607,871.74
Cost of Litigation (COL)	\$634,256.50
Net Proceeds of Third-Party Settlement	\$1,215,743.50
Percentage COL	34.29%
Carrier's COL	\$ 32,744.03
Carrier's Net Lien	\$ 62,747.44
Claimant's Net Recovery	\$ 1,152,996.06

Summation

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 E.J. from her recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying resolution.

JMN/stc

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/08/2024 - RAYMOND SCULKY, SECRETARY

RESOLUTION

Upon the communication of the County Attorney, it is hereby:

RESOLVED, that the County Attorney is hereby authorized to compromise the County of Westchester’s right to be reimbursed for health care and wage benefits paid or owing to or on behalf of a County employee, identified as “E.J.”, from a settlement of her legal claim against several third parties; and it is further

RESOLVED, that the County’s reimbursement is \$62,747.44, representing a 34.29% reduction of its lien, with full reservation of the County’s right to set off E.J.’s net recovery against any future compensation in accordance with the provisions of New York State Workers’ Compensation Law; 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/Sub Unit	Object/ Sub- Object	Trust Account	Dollars
613	57	0022	4280		\$62,747.44

Budget Funding Year(s) 2022 Start Date 1/1/2022 End
 Date 12/31/2022
 (must match resolution)

Funding Source

Tax Dollars _____

State Aid _____

\$ 62,747.44

Federal Aid _____

(must match resolution)

Other fund \$62,747.44

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/08/2024 - RAYMOND SCULKY, SECRETARY