

OnBase ID #: 114034

PRIVILEGED & CONFIDENTIAL

Date: July 6, 2026

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 (K.B.).

Attached for your consideration is a resolution that, if approved, will 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 "K.B.,"¹ from the settlement of his legal claim against a third-party tortfeasor.

Relevant Background

On Monday, October 25, 2021, K.B.—a police officer in the Westchester County Department of Public Safety—reported to an accident that occurred on the Cross County Parkway's westbound parkway near the New Rochelle Road intersection in the Town of Eastchester (the "First Accident"). After arriving, K.B. parked his car behind one of the vehicles involved in the First Accident to shelter it from oncoming traffic and set up road flares. Thereafter, he returned to his vehicle to fill out paperwork. While seated in his vehicle, K.B. was rear-ended by another motorist (the "Second Accident").

Shortly after the Second Accident, K.B. submitted a workers' compensation claim for his back, right knee, neck, and left shoulder. As a result of that claim, the County to date expended medical benefits in the amount of five thousand three hundred seventeen and 05/100 dollars (\$5,317.05) and indemnity (lost wage) benefits in the amount of one hundred fifty-three thousand two hundred thirty-two and 28/100 dollars (\$153,232.28)—bringing the County's total expenditures in this matter to one hundred fifty-eight thousand five hundred forty-nine and 33/100 dollars (\$158,549.33). However, because K.B. was injured in an automobile accident, the County's lien must be reduced by fifty thousand and 00/100 dollars (\$50,000.00) in lieu of first party no-fault benefits. Accordingly, the County's net lien in this matter is one hundred eight thousand five hundred forty-nine and 33/100 dollars (\$108,549.33).

On a separate track from his workers' compensation claim, on June 11, 2024, K.B. commenced a plenary action (the "Action") against the owner/operator of the vehicle involved in

¹ Consistent with prior practice, 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.

the Second Accident (the “Owner/Operator”). In that action, K.B. is represented by CUSANO SMITH PLLC, 483 Cherry Street, Bedford Hills, NY 10507. The owner/operator is represented by Marshall Dennehey, P.C., 287 Bowman Avenue – Suite 404, Purchase, NY 10577.

Settlement Offer

Recently, K.B. received an offer to settle the Action for one hundred thousand and 00/100 dollars (\$100,000.00), pending the County’s consent. K.B. also informed this Office that (i) his attorney’s fee in the Action totals thirty thousand and 00/100 dollars (\$30,000.00); and (ii) his costs and disbursements total seven hundred eighty-five and 52/100 dollars (\$785.52)

Proposed Settlement of County Lien

Because the proposed settlement of K.B.’s third party action is for less than the County’s lien, this is a “deficiency matter” (*see, e.g., Lodestro v Upstate Milk Coops, Inc.*, 37 AD3d 1075, 1076 [4th Dept 2007]; *Burkhardt v Amtrust N. Am., Inc.*, 2016 NY Slip Op 31764[U], at *5 [Sup Ct, Queens County 2016]). In a deficiency matter, “the carrier assumes the entire cost of obtaining the recovery and is entitled to recover the net remaining amount after taking such deduction” (*Burkhardt*, 2016 NY Slip Op 31764[U], at *5). As a result, the amount to which the carrier is entitled can and sometimes will subsume the remaining proceeds (*see, e.g., Lodestro*, 37 AD3d at 1076; *Burkhardt*, 2016 NY Slip Op 31764[U], at *5). The amount due and owing to the County will therefore total sixty-nine thousand two hundred fourteen and 48/100 (\$69,214.48).

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

Worker's Compensation Amounts	
Medical Expenses	\$ 5,317.05
Indemnity (Lost Wage) Payments	\$ 153,232.28
Worker's Comp. SUB-TOTAL	\$ 158,549.33
MVA ("Basic Economic Loss") Reduction	\$ 50,000.00
Worker's Comp. TOTAL	\$ 108,549.33
Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 100,000.00
Disbursements	\$ 785.52
Attorney's Fees	\$ 30,000.00
Cost of Litigation (COL)	\$ 30,785.52
Net Proceeds of Third-Party Settlement	\$ 69,214.48
Percentage COL	100.00%
Carrier's COL	\$ 30,785.52
Carrier's Net Lien	\$ 69,214.48
Claimant's Net Recovery	\$ -

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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 K.B. from his recovery against a third-party tortfeasor. I therefore recommend passage of the accompanying resolution.

JMN/stc

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/16/2026 - 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 "K.B.", from a settlement of his legal claim against several third parties; and it is further

RESOLVED, that the County's reimbursement is \$69,214.48, with full reservation of the County's right to set off K.B.'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	0021	4280		\$69,214.48

Budget Funding Year(s) 2021 Start Date 1/1/2021 End
Date 12/31/2021
(must match resolution)

Funding Source

Tax Dollars _____

\$ 69,214.48

State Aid _____

Federal Aid _____

(must match resolution) Other__6J
fund _____\$69,214.48_____

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