

OnBase ID #: 110222

PRIVILEGED & CONFIDENTIAL

Date: January 3, 2025
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 (M.H.).

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 "M.H.,"¹ from the settlement of his legal claim against a third-party tortfeasor.

Relevant Background

On November 17, 2011, M.H.—a Police Officer in the Westchester County Department of Public Safety ("DPS")—was injured in a motor vehicle accident. The accident occurred near the Wakefield Avenue Bridge, just over the border between the City of Yonkers and Bronx County. M.H. was the front seat passenger in a DPS vehicle when defendant Andrew Llewellyn ("Defendant Llewellyn") drove his BMW across the double-yellow line, colliding head-on with the DPS vehicle at high speed. The parties disagree about the collision's cause. Both M.H. and the DPS officer who was driving the vehicle (collectively, the "DPS Officers") maintain that at the time of the collision, Defendant Llewellyn was evading an unmarked New York City Police Department ("NYPD") vehicle that was chasing him. The DPS Officers further maintain that the NYPD's chase was the collision's proximate cause, and that it was performed recklessly and dangerously.

Procedural Posture

Commencement

On June 13, 2012, the DPS Officers and their respective spouses (collectively, "Plaintiffs") commenced an action in the Supreme Court of the State of New York, County of Bronx ("Bronx

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.

Supreme”) against the City of New York, the NYPD, NYPD officer Patrick Jean (collectively, “City Defendants”) and Defendant Llewellyn. At the time of commencement, Plaintiffs were represented by GRANT & LONGWORTH, LLP, located at 377 Ashford Avenue, Dobbs Ferry, NY 10522. At the time of commencement and throughout the litigation, City Defendants were represented by Corporation Counsel, located at 100 Church Street, New York, NY 10007; and Llewellyn was represented by RUSSO & TONER, LLP, located at 33 Whitehall Street, New York, NY 10004.

First Order & First Appeal

On August 10, 2018, the trial court denied Plaintiffs’ then-pending motion for partial summary judgment against Defendant Llewellyn (the “First Order”). In its decision, the court noted that the “record reveals two different versions of the events that took place in the 2-3 seconds leading up to the impact.”

On August 24, 2018, Plaintiffs appealed the First Order (the “First Appeal”). The First Appeal was handled by appellate counsel—first by Marie R. Hodukavich, Esq., ATTORNEY AT LAW, with an office at 1831 Carhart Avenue, Peekskill, NY 10566; then by KENNETH J. GORMAN, P.C., with an office at 225 Broadway, New York, NY 10007.

On February 25, 2020, the Appellate Division First Department (the “First Department”) affirmed the trial court’s decision.

Second Order & Second Appeal

On December 22, 2020, the trial court granted City Defendants’ motion for summary judgment (the “Second Order”). In its decision, the court found that “the NYPD officers conduct in pursuing Mr. Llewellyn was privileged pursuant to [Vehicle and Traffic Law] §1104(b)”; that “there is no evidence that the NYPD officers acted recklessly as a matter of law”; and that City Defendants’ “pursuit was not the proximate cause or a concurrent cause of [the underlying] incident.”

On December 31, 2020, Plaintiffs appealed the Second Order (the “Second Appeal”). The Second Appeal was handled by the aforementioned KENNETH J. GORMAN, P.C. in conjunction with Jonathan Rice, Esq., ATTORNEY AT LAW, with an office at 235 Main Street, Suite 450, White Plains, NY 10601.

On June 23, 2022, the First Department overturned the trial court’s decision granting City Defendants’ summary judgment. In so deciding, the First Department found “issues of fact concerning whether the pursuit was a proximate cause or a concurrent cause of the accident.”

Settlement in Principle

On October 21, 2024, the parties settled the action in principle and on the record—subject to the County’s consent to same. The proposed settlement includes a contribution from City Defendants in the amount of five million and 00/100 dollars (\$5,000,000.00) and a contribution from Defendant Llewellyn in the amount of twenty-five thousand and 00/100 dollars (\$25,000.00)—for a total proposed settlement of five million twenty-five thousand and 00/100 dollars (\$5,025,000.00).

County's Lien

Total Amount of Lien

As of the date of this draft legislation, the County has expended medical benefits through workers' compensation to or on M.H.'s behalf in the amount of one hundred fifty-six thousand two hundred forty-one and 93/100 dollars (\$156,241.93) and paid indemnity (lost wage) benefits in the amount of four hundred fifty-eight thousand seventy-eight and 17/100 dollars (\$458,078.17)—bringing the County's total expenditures in this matter to six hundred fourteen thousand three hundred twenty and 10/100 dollars (\$614,320.10). However, because the subject accident was motor vehicle accident, the first fifty thousand and 00/100 dollars (\$50,000.00) expended were payments in lieu of first party benefits under the New York State No Fault Automobile Insurance Law and therefore not recoverable. As a result of the foregoing, the County's lien in this matter totals five hundred sixty-four thousand three hundred twenty and 10/100 dollars (\$564,320.10).

Cost of Litigation

M.H. has also notified my Office that the costs and disbursements in this action—which has been pending for thirteen years—total one hundred ten thousand three hundred twenty-four and 70/100 dollars (\$110,324.70). M.H. has also notified my Office that the combined attorneys' fees for this action, including the fees for both the First and Second Appeal, totals two million fifty thousand one hundred thirty-eight and 26/100 dollars (\$2,050,138.26).² The total cost of litigation in this matter is therefore two million one hundred fifteen thousand three hundred eighty-five and 76/100 dollars (\$2,115,385.76), which comes to 43.00% of the total settlement amount.

Proposed Reduction of 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 43.00%, equaling a dollar reduction of two hundred forty-two thousand six hundred fifty-seven and 64/100 dollars (\$242,657.64). The County shall thereafter accept in satisfaction of its present lien a total of three hundred twenty-one thousand six hundred sixty-two and 46/100 dollars (\$321,662.46). Pursuant to this reduction and after attorney's fees, M.H. would recover two million five hundred forty-two thousand eight hundred seventy-four and 58/100 dollars (\$2,542,874.58).

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² *N.b.*, “attorneys and their clients can negotiate a different retainer agreement for work performed in connection with the appeal” (*Stewart v New York City Tr. Auth.*, 125 AD3d 129, 133 [1st Dept 2014], citing *Albunio v City of New York*, 23 NY3d 65, 76 [2014]). This is true “notwithstanding the fact that trial counsel was entitled to receive 33⅓%” (*id.* at 134).

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

Worker's Compensation Amounts	
Medical Expenses	\$ 156,241.93
Indemnity (Lost Wage) Payments	\$ 458,078.17
Worker's Comp, SUB-TOTAL	\$ 614,320.10
MVA ("Basic Economic Loss") Reduction	\$ 50,000.00
Worker's Comp, TOTAL	\$ 564,320.10

Litigation Amounts	
Third-Party Settlement (Gross Amt)	\$ 5,025,000.00
Disbursements	\$ 110,324.70
Attorney's Fees	\$ 2,050,138.26
Cost of Litigation (COL)	\$ 2,160,462.96
Net Proceeds of Third-Party Settlement	\$ 2,864,537.04
Percentage COL	43.00%
Carrier's COL	\$ 242,657.64
Carrier's Net Lien	\$ 321,662.46
Claimant's Net Recovery	\$ 2,542,874.58

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

JMN/stc

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 “M.H.”, from a settlement of her legal claim against several third parties; and it is further

RESOLVED, that the County’s reimbursement is \$321,662.46, representing a 43.00% reduction of its lien, with full reservation of the County’s right to set off M.H.’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	0024	4280		\$321,662.46

Budget Funding Year(s) 2025 Start Date 1/1/2025 End Date 12/31/2025
 (must match resolution)

Funding Source

Tax Dollars _____

State Aid _____

\$ 321,662.46

Federal Aid _____

(must match resolution)
fund \$321,662.46

Other 6J

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/30/2025 - RAYMOND SCULKY, SECRETARY