

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

October 15, 2018

Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601

Re: Legislation authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester and pay a reduced lump sum to a former County employee in lieu of future payments

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester (the "County") to pay Workers' Compensation benefits to a former County employee, identified herein as "D.M." Consistent with prior practice in similar cases, we have deleted the name of the employee to protect the individual's privacy. The name, of course, will be disclosed to the Board of Legislators upon request.

Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers' Compensation benefits. Once the Workers' Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers' Compensation Law,<sup>1</sup> the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

In the past, the Department of Finance, in its role as administrator of the County's Workers' Compensation Program, has negotiated, with the cooperation of the County Attorney's Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers' Compensation Board.

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<sup>1</sup> The Workers' Compensation Law is a remedial statute that is construed liberally in the injured employees' favor.



This settlement is based upon the following criteria:

1. The degree of disability;
2. The claimant's estimated life expectancy; and
3. The settlement amount proposed by the claimant's attorney.

On August 8, 2013, D.M. was working as a correction officer for the Westchester County Department of Correction when an inmate assaulted him—injuring his neck, back, left shoulder, right wrist, left wrist, right hand, right eye, and left knee. The assault also left D.M. with post-traumatic stress disorder, depressive disorder, and headaches. D.M. never returned to work after the injury, and he voluntarily retired from service effective June 30, 2015.

Medical expenses to date for D.M. total one hundred eleven thousand one hundred ninety-seven and 53/100 dollars (\$111,197.53). The current reserve is eighty-eight thousand seven hundred fifty-one and 00/100 dollars (\$88,751.00).

Indemnity (lost wage) expenses to date for D.M. total two hundred sixteen thousand eighty-four dollars and 78/100 dollars (\$216,084.78). On September 14, 2016, the NYS Workers' Compensation Board classified D.M. as Permanent, Partially Disabled and awarded him three hundred fifty (350) weeks of indemnity payments at the weekly rate of eight hundred three and 21/100 dollars (\$803.21). As of the date of this letter, D.M. has two hundred forty-three (243) weeks remaining on his award; the indemnity (lost wage) exposure on this matter is therefore one hundred ninety-five thousand one hundred eighty and 03/100 dollars (\$195,180.03).

The proposed settlement includes both a proposed Medicare Set Aside (the "MSA") an indemnity (lost wage) payout. Under the MSA, D.M. could receive the full value of the County's reserve for future medical expenses at a cost to the County of sixty-four thousand seven hundred ninety-one and 96/100 dollars (\$64,791.96). The indemnity (lost wage) payout under the proposed settlement totals one hundred thirty thousand and 00/100 dollars (\$130,000.00). The County's total obligation under the proposed settlement, including both the MSA expense and the indemnity (lost wage) payout is one hundred ninety-four thousand seven hundred ninety-one and 96/100 dollars (\$194,791.96).

If the County accepts the proposed settlement, the potential savings to the County total eighty-nine thousand one hundred thirty-nine and 07/100 dollars (\$89,139.07). Notably, the proposed settlement would terminate the County's obligation to pay future indemnity (lost wage) and medical benefits to D.M.

*[Remainder of Page Intentionally Left Blank]*

Based upon the foregoing, both the County Attorney and the Commissioner of Finance request authority to compromise the liability of the County by funding an MSA for D.M.'s benefit in the amount of sixty-four thousand seven hundred ninety-one and 96/100 dollars (\$64,791.96) and paying D.M. an indemnity (lost wage) payment of one hundred thirty thousand and 00/100 dollars (\$130,000.00) for a total payment of one hundred ninety-four thousand seven hundred ninety-one and 96/100 dollars (\$194,791.96) in full satisfaction of the future indemnity and medical payment.

We therefore recommend the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney



Ann Marie Berg  
Commissioner of Finance

JMN/AMB/stc

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester (the "County") to pay Workers' Compensation benefits to a former County employee, identified herein as "D.M." Consistent with prior practice in similar cases, we have deleted the name of the employee to protect the individual's privacy. The name, of course, will be disclosed to the Board of Legislators upon request.

Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce the liability for ongoing benefits by paying a lump sum to the employee. When a County employee suffers a work-related injury, he or she qualifies for Workers' Compensation benefits. Once the Workers' Compensation Board issues a permanency finding, the County is obligated to make continuing payments. Pursuant to Section 32 of the New York State Workers' Compensation Law, the County is permitted to reduce its liability for ongoing benefits by paying the employee a reduced lump sum. As a result of this lump sum, future payments are eliminated and the County realizes substantial savings.

The Department of Finance, in its role as administrator of the County's Workers' Compensation Program, has negotiated, with the cooperation of the County Attorney's Office, lump-sum settlements with the attorneys for injured employees. Such settlements have been and remain subject to final approval in the interest of justice by the New York State Workers' Compensation Board.

Employee:	D.M.
Department:	Westchester County Department of Correction
Date of Injury:	November 26, 2014

Injuries: neck, back, left shoulder, right wrist,  
left wrist, right hand, right eye, left knee,  
PTSD, depressive disorder, headaches  
Lump-Sum Settlement: \$194,791.96

Your Committee has carefully considered the matter and recommends authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County to pay Workers' Compensation benefits to the above-named former County employee, thereby reducing the liability for ongoing benefits pay paying a lump sum to and/or for the benefit of D.M. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York  
October \_\_, 2018

COMMITTEE ON  
Law & Major Contracts

Estc - 2018.10.15

COMMITTEE ON  
Budget and Appropriations

ACT NO. 2018

AN ACT authorizing the County Attorney and the Commissioner of Finance to compromise the liability of the County of Westchester and pay a reduced lump sum to a former County employee in lieu of future payments.

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

1. The County Attorney and the Commissioner of Finance are hereby authorized to compromise the County's right to pay Workers' Compensation benefits to D.M., a former employee, by contributing \$194,791.96 towards a lump-sum settlement, thereby reducing the liability for ongoing benefits by paying a lump sum to and/or for the benefit of the employee.

2. The County Attorney or his designee and the Commissioner of Finance or her designee are hereby authorized to execute and deliver all documents and take such actions as the County Attorney and the Commissioner of Finance deem necessary or desirable to accomplish the purposes hereof.

3. This Act shall take effect immediately.

# FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Workers Comp Benefits (D.M.)     NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A)  GENERAL FUND     AIRPORT     SPECIAL REVENUE FUND (Districts)

### B) EXPENSES AND REVENUES

Total Current Year Cost    \$ 194,791.96

Total Current Year Revenue \$ \_\_\_\_\_

Source of Funds (check one):     Current Appropriations

Transfer of Existing Appropriations     Additional Appropriations     Other (explain)

Identify Accounts: 613-57-0014-4280

\_\_\_\_\_ Potential Related Operating Budget Expenses:    Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Potential Related Revenues:    Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Next Four years: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: Sean T. Carey

Title: Assistant County Attorney

Department: Law

Reviewed By: 

Budget Department

10/15/18

If you need more space, please attach additional sheets.