

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.B." 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,¹ 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.

¹ 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 November 26, 2014, D.B. was working as a correction officer for the Westchester County Department of Correction when an inmate assaulted him—fracturing his jaw, lacerating his eye, and injuring his neck and right shoulder. The assault also left D.B. with consequential post-traumatic stress disorder. D.B. never returned to work after the injury, and on May 13, 2017, D.B. voluntarily retired from service.

Medical expenses to date for D.B. total seventeen thousand four hundred seventy-seven and 00/100 dollars (\$17,477.00). The current reserve for twenty-two thousand four hundred twenty-eight and 00/100 dollars (\$22,428.00).

Indemnity (lost wage) expenses to date for D.B. total one hundred thirty-three thousand seven hundred three and 83/100 dollars (\$133,703.83). On September 14, 2016, the NYS Workers' Compensation Board classified D.B. as Permanent, Partially Disabled and awarded him four hundred (400) weeks of indemnity payments at the weekly rate of six hundred thirty-four and 55/100 dollars (\$634.55). As of the date of this letter, D.B. has three hundred two (302) weeks remaining on his award; the indemnity (lost wage) exposure on this matter is therefore one hundred ninety-one thousand six hundred thirty-four and 10/100 dollars (\$191,634.10).

The proposed settlement includes both a proposed Medicare Set Aside (the "MSA") an indemnity (lost wage) payout. Under the MSA, D.B. could receive the full value of the County's reserve for future medical expenses at a cost to the County of twelve thousand eight hundred three and 55/100 dollars (\$12,803.55). The indemnity (lost wage) payout under the proposed settlement totals one hundred twenty thousand and 00/100 dollars (\$120,000.00). The County's total obligation under the proposed settlement, including both the MSA expense and the indemnity (lost wage) payout is one hundred thirty-two thousand eight hundred three and 55/100 dollars (\$132,803.55).

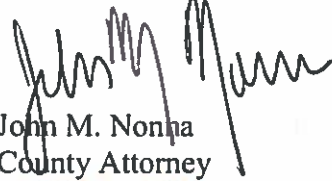
If the County accepts the proposed settlement, the potential savings to the County total eighty-one thousand two hundred fifty-eight and 55/100 dollars (\$81,258.55). Notably, the proposed settlement would terminate the County's obligation to pay future indemnity (lost wage) and medical benefits to D.B.

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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.B.'s benefit in the amount of twelve thousand eight hundred three and 55/100 dollars (\$12,803.55) and paying D.B. an indemnity (lost wage) payment of one hundred twenty thousand and 00/100 dollars (\$120,000.00) for a total payment of one hundred thirty-two thousand eight hundred three and 55/100 dollars (\$132,803.55) in full satisfaction of the future indemnity and medical payment.

We therefore recommend the accompanying Act.

Very truly yours,



John M. Nonha
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.B." 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.B.
Department:	Westchester County Department of Correction
Date of Injury:	November 26, 2014
Injuries:	jaw, right eye, right shoulder, neck, PTSD
Lump-Sum Settlement:	\$132,803.55

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.B. 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

COMMITTEE ON
Budget and Appropriations

lste - 2018.10.15

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.B., a former employee, by contributing \$132,803.55 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.B.)

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 \$ 132,803.55

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: *[Signature]*

Budget Department

8/15/18
12/15/18

If you need more space, please attach additional sheets.