

OnBase ID #: 113518

PRIVILEGED & CONFIDENTIAL

Date: April 20, 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 (T.B.).

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

Relevant Background

On Thursday, October 3, 2024, T.B.—a probation officer in the Westchester County Department of Probation—was rear ended while driving southbound on the Bronx River Parkway, near its intersection with the Cross County Parkway. At the time of the accident, T.B. was driving a County vehicle and acting within the scope of her employment. T.B. injured her knee in the accident, and on October 8, 2025, she underwent bilateral knee replacement surgery.

As of the date of this resolution, the County has expended medical benefits through workers' compensation to or on your client's behalf in the amount of seventy-three thousand two hundred eleven and 11/100 dollars (\$73,211.11), paid indemnity (lost wage) benefits in the amount of twenty-two thousand eight hundred twenty-six and 69/100 dollars (\$22,826.69)—bringing the County's total expenditures in this matter to ninety-six thousand thirty-seven and 80/100 dollars (\$96,037.80). However, because your client 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 for compensation and medical benefits to or on behalf of your client in this matter is forty-six thousand thirty-seven and 80/100 dollars (\$46,037.80).

On a separate track from her workers' compensation claim, on February 19, 2025, T.B. commenced a plenary action against the owner and operator of the vehicle that struck her. The owner and operator are both represented by the LAW OFFICE OF BRYAN M. KULAK, 90 Crystal Run Road, Suite 102, Middletown, NY 10941.

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.

Settlement Offer

Recently, T.B. received an offer to settle the action for sixteen thousand six hundred sixty-six and 66/100 dollars (\$16,666.66), pending the County's consent. T.B. also informed this Office that the costs and disbursements in the action total one thousand four hundred six and 71/100 dollars (\$1,406.71) and that her attorney's fee totals five thousand five hundred fifty-five and 55/100 dollars (\$5,555.55).

Proposed Settlement of County Lien

Because the proposed settlement of T.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).

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

| Worker's Compensation Amounts | |
|---------------------------------------|--------------|
| Medical Expenses | \$73,211.11 |
| Indemnity (Lost Wage) Payments | \$22,826.69 |
| Worker's Comp, SUB-TOTAL | \$ 96,037.80 |
| MVA ("Basic Economic Loss") Reduction | \$ 50,000.00 |
| Worker's Comp, TOTAL | \$ 46,037.80 |

| Litigation Amounts | |
|--|-------------|
| Third-Party Settlement (Gross Amt) | \$16,666.66 |
| Disbursements | \$1,406.71 |
| Attorney's Fees | \$5,555.55 |
| Cost of Litigation (COL) | \$6,962.26 |
| Net Proceeds of Third-Party Settlement | \$9,704.40 |
| Percentage COL | 100.00% |
| Carrier's COL | \$6,962.26 |
| Carrier's Net Lien | \$9,704.40 |
| Claimant's Net Recovery | \$ - |

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

JMN/stc

\$ 9,704.40

State Aid _____

Federal Aid _____

(must match resolution) Other__6J
fund \$9,704.40