

21548

August 26, 2011

To: Honorable Members of the
Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Request for Authorization to Settle the Lawsuit of Joseph Wisenblitt v. Westchester County Department of Transportation by payment from the County of Westchester to Joseph Wisenblitt, in an amount not to exceed \$42,500

Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement of the lawsuit entitled Joseph Wisenblitt v. Westchester County Department of Transportation by payment from the County of Westchester to Joseph Wisenblitt in an amount not to exceed \$42,500.

This action was commenced by plaintiff Joseph Wisenblitt in the Supreme Court of the State of New York, County of Westchester.

On May 6, 2008, at approximately 11:15 am, Plaintiff, then a fifty-seven year old college professor at Seton Hall University School of Business, was bicycling in the second northbound bus lane from the right (eastern) sidewalk curb (hereinafter "bus lane #2") on Madison Avenue at or near its intersection with East 43rd Street in New York County, when he was struck by a Liberty Lines commuter bus. Plaintiff alleges that the Liberty Lines bus and the Plaintiff were traveling in the same bus lane #2 when the commuter bus allegedly struck the plaintiff's bicycle on the rear left side of the bicycle causing him to be thrown to the ground. As a result of the accident, Mr. Wisenblitt who is currently sixty years old was taken by ambulance to Bellevue Hospital Emergency Room where he complained of pain to his left shoulder and was examined, treated and released. On May 8, 2008 plaintiff was diagnosed with a fractured left clavicle by his treating doctor, which required open reduction and internal fixation. The Plaintiff's medical records indicate that the hardware will not be removed. Although Mr. Wisenblitt has returned to work, he alleges that he has pain and weakness in his left shoulder.

Both right hand lanes of Madison Avenue between East 42nd Street and East 59th Street are reserved for the use of buses between 2:00 pm and 7:00 pm on weekdays. However, during the time the bus lane regulations are in effect, bicycles are permitted to use the Madison Avenue bus lanes. This accident occurred on a weekday at 11:15 am, when the bus lane regulations were not in effect, and the Plaintiff was not in violation of any restrictions.

Pursuant to an agreement between Liberty Lines and the County of Westchester, Liberty Lines operates buses that form part of the County's public transportation system. Further, pursuant to this agreement, the County is required to indemnify Liberty Lines for all damages, claims, costs and judgments for negligence arising directly out of bus operating services provided by Liberty Lines under the agreement. If approved, this settlement will be paid by Liberty Lines from their Self Insured Retention Fund.

At trial, Plaintiff will argue that the driver failed to exercise reasonable care in the operation of the bus, and that this deviation from the standard of care was the proximate cause of his injuries. Plaintiff will further argue that the driver failed to properly observe the existing traffic conditions while operating the bus, failed to ascertain whether the Plaintiff's bicycle was a safe distance from the bus and that the driver's failure to maintain a safe distance between the bus and the Plaintiff's bicycle caused him to sustain injury.

Our outside counsel in this matter, Lifflander & Reich, LLP join in my recommendation that this case be settled by payment from the County of Westchester of \$42,500 to Joseph Wisenblitt. Plaintiff is represented by Brian R. Gunn from the law firm of Cerussi & Gunn, P.C. in this action.

For the foregoing reasons, I recommend settlement of this matter by payment from the County of Westchester to Joseph Wisenblitt in the amount of \$42,500.00. The Commissioner of the Department of Public Works and Transportation concurs in this recommendation.

RFM/faj

RESOLUTION

Upon the communication of the County Attorney; it is hereby

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit of Joseph Wisenblitt v. Westchester County Department of Transportation by payment from the County of Westchester to Joseph Wisenblitt in an amount not to exceed \$42,500.00; 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 \$N/A
First Amendment \$N/A
This Amendment \$N/A
TOTAL \$N/A

Agreement #

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	44	2100	4924		\$42,500

Budget Funding Year(s) 2011 Start Date 1/1/11 End Date 12/31/11

(must match resolution)

Funding Source Tax Dollars \$42,500
State Aid _____

\$ 42,500 Federal Aid _____

(must match resolution)

Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/06/2011 - JOMARY VIEIRA, SECRETARY