

21577

September 8, 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 Janet Schwartz v. County of Westchester, Liberty Lines Inc. et al. in the amount of \$75,000.00

Attached for your consideration is a resolution, which if approved by your Honorable Board, would authorize settlement of the lawsuit of Janet Schwartz v. County of Westchester, Liberty Lines Inc. et al. in the amount of \$75,000.00.

On September 16, 2006, at approximately 5:20 p.m. plaintiff, then sixty-four years old was a passenger on a Liberty Lines bus which was stopped on Tuckahoe Road, in the City of Yonkers, just north of the intersection with Central Avenue. Plaintiff alleges she was the last passenger to exit the bus and she alleges that as she exited the bus but before she could clear her way through the doorway the driver closed the doors on her right arm. She claims that she remained there with her arm stuck in the door for approximately two minutes until the driver got out of his seat and manually opened the doors. Immediately after the incident she claims to have felt pain in her right shoulder and biceps. She alleges that she first sought treatment six days after the incident and she complained of pain in her right shoulder, arm, neck and back. The doctor prescribed a course of treatment in physical therapy and ordered an MRI which was performed on November 24, 2006. Plaintiff was thereafter diagnosed with a full rotator cuff tear and a partial tear of the long bicep tendon. She continued in physical therapy with allegedly little or no improvement until December 2007 when she had surgery on her allegedly right shoulder. She claims to have residual pain and reduced range of motion in her shoulder.

Plaintiff is represented by Howard B. Ross, Ross, Legan, Rosenberg Zelen & Flaks, LLP, 450 Seventh Avenue, New York, New York 10123. The County and Liberty Lines are represented by our outside counsel firm of Lifflander & Reich.

At trial the Plaintiff will argue that her injuries were proximately caused by the negligence of the driver in closing the door on her arm. The Plaintiff will further argue that all of

her pain and suffering and ultimately her corrective surgery were directly related to the injuries she received in the accident.

Considering the evidence supporting the Plaintiff's cause of action, Plaintiff's age, injury and current medical condition, the risk of a Plaintiff's verdict and the anticipated expense to the County to retain the appropriate medical expert witnesses to challenge all aspects of Plaintiff's injuries, a settlement of \$75,000.00 would be in the best interests of the County. This office recommends settling this matter. The Commissioner of the Department of Public Works and Transportation concurs with the recommendation to settle this matter.

RFM:jhf

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/17/2011 - JOMARY WELLS SECRETARY

RESOLUTION

Upon the communication of the County Attorney, it is hereby

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit of Janet Schwartz v. County of Westchester, Liberty Lines Inc. et al in the amount of \$75,000.00, and be it further

RESOLVED, that the County Attorney or his designee is authorized to execute any documents necessary to implement this resolution.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account t	Dollars
101	44	2100/2100	4924		\$75,000.

Budget Funding Year(s) 2011 Start Date 1/1/2011 End Date 12/31/2011
(must match resolution)

Funding Source Tax Dollars \$75,000

State Aid _____

\$75,000 Federal Aid _____

(must match resolution)

Other _____