

29851

October 10, 2012

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 Kelly Mandl v. City of New York and Liberty Lines Transit, Inc. by payment from the County of Westchester to Kelly Mandl, in an amount not to exceed \$50,000

Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement of the lawsuit entitled Kelly Mandl v. City of New York and Liberty Lines Transit, Inc. by payment from the County of Westchester to Kelly Mandl in an amount not to exceed \$50,000. The action was discontinued against the co-defendant City of New York.

This action was commenced by plaintiff Kelly Mandl in the Supreme Court of the State of New York, Bronx County. Plaintiff, then a forty-three year old graduate student at the College of New Rochelle, alleges that on February 10, 2006, at approximately 6:00 pm, while alighting from the rear door of a Liberty Lines Transit ("LLT") Bus Route 45, she stepped from the bus directly into a concave depression in the roadway and fell. The accident occurred on Westchester Avenue near Bruckner Boulevard at the Pelham Bay subway station. Plaintiff alleges that the Liberty Lines bus was negligently operated, as it failed to provide her with a safe place to alight.

As a result of the accident, Ms. Mandl, who is currently forty-nine years old, was treated at Beth Israel Medical Center where she was diagnosed with a fractured left ankle. Ms. Mandl alleges that she was required to wear a cast for approximately 6-8 weeks and used crutches to ambulate for approximately 5-6 weeks. Plaintiff claims that she missed two weeks of work and school immediately after the accident, and although she has made a full recovery, she continues to experience pain and weakness in her left foot and ankle and experiences pain when dancing recreationally.

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. Based on 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 its Self Insured Retention Fund.

At trial, plaintiff will argue that the LLT 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 her injuries. The plaintiff will further argue that the negligent operation of the LLT bus resulted in a breach of LLT's duty to provide a safe place for passengers to board and alight from the bus, and that this breach of duty caused her to sustain injury.

Plaintiff is represented in this action by David P. Lesch from the law firm of Lesch & Lesch, P.C., 860 Grand Concourse, Bronx, NY 10451.

In light of the nature of plaintiff's injuries and the possibility that a jury may believe that the negligent operation of the bus was the proximate cause of plaintiff's injuries, a settlement of \$50,000.00 is proposed and plaintiff's counsel has indicated that such an amount is acceptable to plaintiff. Our outside counsel in this matter, Lifflander & Reich, LLP, recommends that this case be settled by payment from the County of Westchester of \$50,000.00 to Kelly Mandl.

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 Kelly Mandl v. City of New York and Liberty Lines Transit, Inc. by payment from the County of Westchester to Kelly Mandl in an amount not to exceed \$50,000.00; 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	<u>\$N/A</u>
TOTAL	\$N/A

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	44	2100	4924		\$50,000.00

Budget Funding Year(s) 2012 Start Date 1/1/2012 End Date 12/31/2012
(must match resolution)

Funding Source Tax Dollars \$50,000.00

State Aid _____

\$ 50,000.00 Federal Aid _____

(must match resolution)

Other _____