

OnBase ID # 63851

June 19, 2018

To: Honorable Members of the
Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Request for authorization to settle the lawsuit of Barbara Cortes and Barbara Cortes, as Temporary Guardian of the Property and Person of Dennis A. Cortes v. Westchester County and Kathleen O'Connor, Commissioner of Westchester County Department of Parks, Recreation And Conservation, by payment from the County of Westchester, in an amount not to exceed \$50,000.00.

Attached for your consideration is a proposed resolution which, if approved by your Board, would authorize settlement of the lawsuit titled Barbara Cortes and Barbara Cortes, as Temporary Guardian of the Property and Person of Dennis A. Cortes v. Westchester County and Kathleen O'Connor, Commissioner of Westchester County Department of Parks, Recreation And Conservation, by payment from the County of Westchester, in an amount not to exceed \$50,000.00.

This action was commenced by plaintiff Barbara Cortes, as temporary guardian of her son, Dennis Cortes, in the Westchester County Supreme Court. Plaintiff Barbara Cortes alleges that on August 24, 2014 at approximately 12:30 p.m., her son, Dennis A. Cortes, aged eighteen at the time of the incident, was caused to fall off of his horse and fall to the ground from his horse as he rode the Derby Racer ride at Rye Playland Amusement Park. As a result of the fall, and his subsequent striking of his head upon a pole upon the floor, plaintiff alleges that the County was negligent in its operation of the Derby Racer Ride, in that, among other things, the County failed to provide adequate supervision of her son Dennis Cortes as he rode the ride, that the ride was operated at an excessive and unsafe speed, with the County's prior knowledge of same, and that the County failed to assign adequate staff to observe, operate and monitor the riders/patrons while the Derby Racer ride was in progress.

As a result of Dennis Cortes' fall from his horse as he rode the Derby ride, he sustained a deep scalp laceration wound requiring sutures, scalp hematoma, loss of tooth, Ellis class III fracture of tooth #8 requiring root canal treatment, Ellis class II fracture of tooth #9 requiring root canal and post and crown, lacerations of the upper lip, and bruises to both the face and knees.

Plaintiff is represented in this action by Soccoro & Associates P.C., 778 Castle Hill Avenue, Bronx, New York 10473.

At trial, plaintiff will argue that the County negligently operated the Derby Racer Ride, by specifically contending that the ride was operated at an excessive rate of speed, with the County having prior knowledge of same, that the ride was improperly and inadequately supervised by Playland employees, and that Dennis Cortes and other riders were inadequately warned about the hidden risks associated with the ride, as a result of the County inadequately ensuring that the riders had their feet properly placed upon the pegs located in the stirrups of the ride and that the patrons feet remained in their proper position throughout the duration of the ride.

In light of the nature of this accident, and the possibility that a jury may believe that the personal injuries sustained by Dennis Cortes were caused by the negligent operation of the Derby Racer ride, a settlement of \$50,000.00, inclusive of attorney fees, is proposed and plaintiff's Counsel has indicated that such an amount is acceptable to plaintiff.

TAL/tal

APPROVED BOARD OF ACQUISITION & CONTRACT - 18/12/2018 - LISA MURPHY 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 Barbara Cortes and Barbara Cortes, as Temporary Guardian of the Property and Person of Dennis A. Cortes v. Westchester County and Kathleen O'Connor, Commissioner of Westchester County Department of Parks, Recreation And Conservation, by payment from the County of Westchester, in an amount not to exceed \$50,000.00.

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

Original Agreement	\$
First Amendment	\$
This Amendment	\$
TOTAL	\$ _____

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/Sub Object	Trust Account	Dollars
			Unit/subunit	Object/sub		
	615	59	0694/3810	4280/04		\$50,000.00

Budget Funding Year(s) 2018 Start Date 1/1/2018 End Date 12/31/2018
 (must match resolution)

Funding Source

Tax Dollars	
State Aid	
Federal Aid	
Other	6N Fund

\$50,000.00