

21576

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 Rosabeth Escott v County of Westchester,
John Ortiz and Liberty Lines Inc. in the amount of \$40,000.00

Date: September 8, 2011

Attached for your consideration is a resolution, which, if approved by your Honorable Board, would authorize settlement of the lawsuit of Rosabeth Escott v County of Westchester, John Ortiz and Liberty Lines Inc. in the amount of \$40,000.00.

This incident involves a bus, operated by bus driver John Ortiz, that was making a left turn and made contact with a pedestrian in the crosswalk causing her to fall to the ground. The incident occurred on June 9, 2008 at approximately 5:45 p.m. The bus was making a left turn from westbound Main Street onto southbound Riverdale Avenue in Yonkers. Plaintiff, Rosabeth Escott, was in the crosswalk of Riverdale Avenue walking eastbound. Both had lights in their favor, but the vehicle making the left turn is obligated by law to yield to the pedestrian in the crosswalk. The contact allegedly took place near the western side of Riverdale Avenue. Plaintiff told the police that she was crossing Riverdale Avenue from west to east with the "walk" signal when she was struck by the bus knocking her to the ground.

Plaintiff allegedly suffered a torn lateral meniscus in her right knee and a right tibial plateau fracture. She was taken to the hospital via EMS and treated in the emergency room and released. She claims her knee started hurting 2-3 days after the accident and that her neck and back started hurting a few weeks after the accident. She underwent a course of physical therapy at Wellness Medical Care and had arthroscopic knee surgery on September 25, 2008. Plaintiff allegedly missed one week of work following the accident and one and a half months following the surgery.

Plaintiff is represented by Thomas Markovits of Mirman Markovits & Landau, PC, 291 Broadway 6th Floor, New York New York 10007. The County, the driver John Ortiz 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 hitting her in failing to yield to her right of way in the intersection. 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 plaintiff's cause of action, her injury, the risk of a substantial damages verdict, and the anticipated expense to the County to retain the appropriate medical expert witnesses to challenge the extent of damages, a settlement of \$40,000.00 would be in the best interests of the County. Accordingly, it was determined that settling the case for \$40,000.00 would ensure a substantial savings to 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 - AUTHORITY 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 Rosabeth Escott v County of Westchester John Ortiz and Liberty Lines Inc. in the amount of \$40,000.00, 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	Dollars
101	44	2100/2100	4924		\$40,000

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

Funding Source Tax Dollars \$40,000

State Aid _____

\$ 40,000 Federal Aid _____

(must match resolution)
Other _____