

24406

January 17, 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 Rachel Boyd v. County of Westchester
in the amount of \$70,000.00.

Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement of the lawsuit of Rachel Boyd v. County of Westchester in the amount of \$70,000.00, inclusive of counsel fees.

Plaintiff, 24 years old at the time of the accident, alleges that in the late evening of August 18, 2007 while she was walking within Playland Amusement Park ("Playland") along with her father and her then four (4) year old daughter, she was caused to trip and fall over a raised, uneven, and broken asphalt patch approximately three (3') feet in front of Freshens Funnel Cake booth. Plaintiff alleged that the lack of adequate lighting and abrupt height differential and disrepair of the asphalt at this location caused her to trip and fall to the ground.

As a result of her accident, Plaintiff claims to have suffered a hyperextension injury to the left knee comprised of a depressed fracture to the lateral tibial plateau with a depression and a non-displaced fracture of the fibular neck. Plaintiff underwent emergency surgery at Montefiore Hospital to reset the bones, and remained hospitalized for one week. Approximately two (2) weeks after this emergency surgery, Plaintiff developed an infection and wound dehiscence within the knee (splitting open of internal tissue under its own pressure). Consequently, Plaintiff underwent a second emergency operation to clear the infection, irrigate the wound site, and remove the damaged tissue. Plaintiff's full recovery from this accident was never realized inasmuch as she was admitted as a permanent resident in a nursing home in or about August 2009 due to complications from a prior medical condition. The County has taken the position that Plaintiff's placement in the nursing home is unrelated to this accident. However, Plaintiff's attorney never conceded this point and left this issue open for further argument should this matter go to trial. It is believed that Plaintiff still resides at the nursing home as of this date

In light of Plaintiff's age, the serious nature of her injuries, her confinement to a nursing home and the possibility that a jury may believe that the alleged asphalt condition constituted a

tripping hazard, it is the recommendation of this office that this matter be settled for \$70,000, inclusive of counsel fees. The Commissioner of Parks, Recreation and Conservation concurs in this recommendation.

RFM:jaf

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/22/2012 - JOMARY VIEIRA, SECRETARY

RESOLUTION

Upon the communication of the County Attorney; it is hereby

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit Rachel Boyd v. County of Westchester in the amount of \$70,000.00.

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
615	59	0687 / 3110	4280 / 04		\$70,000

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

Funding Source Tax Dollars _____

State Aid _____

\$70,000 Federal Aid _____

(must match resolution)

Other: **6N fund - \$70,000**