

34194

May 6, 2013

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 Andres Joyce-DiBart v. County of Westchester in the amount of \$50,000, of which \$5,000 will be paid to satisfy a Public Assistance lien on the proceeds

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Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement of the lawsuit of Andres Joyce-DiBart v. County of Westchester ("County") in the amount of \$50,000, of which \$5,000 will be paid to satisfy a Public Assistance lien on the settlement proceeds.

Plaintiff alleges that on or about April 4, 2010, while an inmate at the County's Department of Correction, he was attacked and sexually assaulted by other inmates that he identifies as gang members. Plaintiff commenced a personal injury lawsuit against the County, alleging that the correction officers on duty failed to properly supervise the inmates and that this failure was the proximate cause of the sexual assault upon him. Specifically, plaintiff alleges that because the inmates were not locked down but instead were permitted to move freely between the different housing units on the block, he was sexually attacked. Plaintiff claims that if there had been proper supervision on the block, the sexual assault upon him would not have occurred.

Plaintiff claims damages of pain and suffering and emotional distress, among other things. After his release from jail, plaintiff had become the recipient of Public Assistance in the amount of \$17,253, for which a lien existed against any settlement funds received by plaintiff as a result of the within lawsuit.

Plaintiff is represented by the Law Office of Jonathan Lovett, located at 305 Old Tarrytown Road, 2<sup>nd</sup> Floor, White Plains, New York 10603.

At trial, plaintiff will argue that if the block had been properly supervised, the sexual assault would not have happened. Plaintiff will also argue that when

inmates are not locked down, it creates a dangerous situation that the County had notice of and failed to remedy by providing greater security.

In light of the serious nature of Plaintiff's claims, it is possible that a jury may believe that where inmates are not locked down and can intermingle with one another, the County should have provided greater security. Although plaintiff's counsel had agreed to settle this matter for \$50,000 in the early stages of the litigation, upon notice of the Public Assistance lien, the parties agreed to the reduction of the proposed settlement to \$45,000.00 so that \$5,000 could be paid toward the Public Assistance lien. Plaintiff's counsel has indicated that such an amount is acceptable to Plaintiff. If this Board approves the within proposed settlement then payment shall be conditioned upon court approval of the settlement.

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/11/2013 - JONATHAN V. 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 Andres Joyce-DiBart v. County of Westchester in the amount of \$50,000, of which \$5,000 will be paid to satisfy the Public Assistance lien on the settlement proceeds, subject to court approval.

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	0690/3450	4280/04		\$50,000.00

Budget Funding Year(s) 2013 Start Date 1/1/2013 End Date 12/31/2013  
(must match resolution)

Funding Source Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

**\$ 50,000.00** Federal Aid \_\_\_\_\_

(must match resolution)

Other 6N Fund \_\_\_\_\_