

35708

August 26, 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 Bertha McDonald v. Liberty Lines Transit Inc., The County of Westchester and Westchester County Department of Transportation, by payment from the County of Westchester to Bertha McDonald, 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 Bertha McDonald v. Liberty Lines Transit Inc., The County of Westchester and Westchester County Department of Transportation, by payment from the County of Westchester to Bertha McDonald in an amount not to exceed \$50,000.

This action was commenced by plaintiff Bertha McDonald in the Supreme Court of the State of New York, County of Westchester.

Plaintiff, Bertha McDonald, alleges that on October 26, 2008, a Liberty Lines bus driver closed the doors on her as she was exiting the bus through its rear doors. Plaintiff, a seventy year old female, alleges that as she attempted to exit the bus, the doors closed on her left shoulder and neck. She further alleges that she was pinned between the doors for approximately one minute and screamed to alert the driver who re-opened the doors allowing her to alight.

Plaintiff went directly home after the alleged incident to rest, and approximately one hour later went to Jacobi Medical Center where she was treated and released for pain in her left shoulder and neck. Plaintiff alleges that she sustained cervical and lumbar disc herniations to her back as a result of the incident. She also alleges that she sustained a partial tear of the rotator cuff of the left shoulder, a tear of the anterior superior glenoid labrum, hypertrophic synovitis and subacromial bursitis, requiring arthroscopic surgery on her left shoulder. Plaintiff further alleges that she frequently experiences pain in her left shoulder, arm and wrist, and that the incident exacerbated a pre-existing back injury for which she has received social security disability benefits since 1988.

At trial, Plaintiff will argue that the 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. Plaintiff will further argue that the driver failed to observe the existing conditions while discharging passengers from the bus, and failed to ascertain that all exiting passengers had cleared the rear doors before closing them, and that this negligence caused her to sustain injury.

The County is represented by Lifflander & Reich, LLP. Plaintiff is represented by Mark B. Rubin, Esq. from the law firm of Mark B. Rubin, P.C., 3413 White Plains Road, Bronx, N.Y. 10467.

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 Bertha McDonald.

RFM/faj

APPROVED BOARD OF ACQUISITION & CONTRACTS
9/10/2013 - JOHANNY VIERA, 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 Bertha McDonald v. Liberty Lines Transit, Inc., The County of Westchester and Westchester County Department of Transportation, by payment from the County of Westchester to Bertha McDonald 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.

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) 2013 Start Date 1/1/2013 End Date 12/31/2013
 (must match resolution)

Funding Source Tax Dollars \$50,000.00

State Aid _____

\$ 50,000.00 Federal Aid _____

(must match resolution) Other _____