

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 6, 2007

☒ Consent ☐ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Approve: a Mediation Settlement Agreement, inclusive of attorneys fees and costs, in the total amount of \$95,000.00 in the personal injury action styled Frank and Magda Szydowski, his wife vs. Palm Beach County, Case No. 50 2006 CA000489XXXMBAH.

Summary: This is a personal injury claim arising from an alleged motor vehicle accident that occurred on October 13, 2004 on Lucerne Ave. Lake Worth, Florida. The Plaintiff, Frank Szydowski, alleged that a County truck that was negligently operated collided with his car on Lucerne Ave, causing him to sustain major neck and back injuries. His wife also has a loss of consortium claim. Staff, including the Risk Management Round Table Committee, agrees that the settlement is in the best interest of the County. Countywide (DRO)

Background and Justification: This is a personal injury claim arising from an alleged motor vehicle accident that occurred on October 13, 2004. Plaintiff, Frank Szydowski, alleged that he was driving west on Lucerne Ave. Lake Worth in a Mazda motorcar when the driver of a County truck improperly changed lanes and collided with his vehicle.

As a result of the accident Plaintiff sustained neck and back injuries and underwent a neck fusion for a herniated disc. He also received several epidural injections for his lower back injury.

Plaintiff's wife's consortium claim is based on her allegations that her marital relations with her husband deteriorated since the accident in 2004.

An Independent Medical Examination (IME) performed by the County's expert determined that Plaintiff sustained a permanent neck injury.

Considering the foregoing, the Mediation Settlement Agreement is reasonable under the circumstances, and it is in the County's best interest to approve the Agreement. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$95,000.00.

Attachments:

1. Settlement Agreement
- 2.

Recommended by: _____

County Attorney

Date

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

	Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$95,000.00	—	—	—	—	—
Operating Costs	—	—	—	—	—	—
External Revenues	—	—	—	—	—	—
Program Income (County)	—	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—	—
NET FISCAL IMPACT	<i>\$95,000</i>	—	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—	—

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511

Reporting Category_____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Ca. 1-25-07
OFMB
B. Legal Sufficiency: 1-25-07 PM 1-24-07
ag
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

RECEIVED

JAN 16 2007

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 9 day of January, 2007, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, FRANK SZYDLOWSKI and MAGDA SZYDLOWSKI, his wife.

P.B. COUNTY ATTORNEY

WHEREAS, FRANK SZYDLOWSKI and MAGDA SZYDLOWSKI, sued the COUNTY in a lawsuit presently styled Frank Szydlowski and Magda Szydlowski, his wife v. Palm Beach County, CASE NO.: 50 2006 CA000489XXXXMBAH, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an motor vehicle accident that occurred on October 13, 2004 on Lucerne Avenue, Lake Worth, Palm Beach County, Florida.

WHEREAS, the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve that portion of the Pending Lawsuit that involves PALM BEACH COUNTY without further litigation of the claims made and defenses raised therein.


NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Within thirty (30) days of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Frank Szydlowski and Magda Szydlowski, his wife, the amount of **NINETY FIVE THOUSAND DOLLARS AND NO CENTS (\$95,000.00)**, by a check made payable to Law Office of Gregg R. Wexler, P.A., Trust Account (Tax I.D. No. 65-0184866) and Frank Szydlowski and Magda Szydlowski, his wife.
3. Within ten (10) days of receipt of the COUNTY's payment, Frank Szydlowski and Magda Szydlowski, his wife, shall (i) execute and deliver to the Palm Beach County Attorney's Office a Release in the form of that attached hereto as Exhibit A, and (ii) execute and deliver to the Palm Beach County Attorney's Office a Stipulation and Final Order of Dismissal with Prejudice, in the form of that attached hereto as Exhibit B, which, in turn, the Palm Beach County Attorney's Office will also execute and thereafter forward to the Court for execution, service by mail and filing.
4. The Law Office of Gregg R. Wexler, P.A. and/or Frank Szydlowski and Magda Szydlowski, his wife, shall not disburse, and Frank Szydlowski and Magda Szydlowski, his wife, shall not accept, any proceeds from the settlement check described in paragraph 2 unless and until the Release has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been filed and served in accordance with paragraph 3 above.
5. Frank Szydlowski and Magda Szydlowski, his wife, acknowledges and agrees that they are responsible for the payment of any liens against this settlement and that the COUNTY shall not be responsible for any portion of said liens. Frank Szydlowski and Magda Szydlowski, his wife, on behalf of themselves and their officers, agents, employees, heirs, executors, administrators and assigns, further agree to indemnify, defend, and hold the COUNTY, its officers, agents, elected officials, and employees, their heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorneys' fees, arising out of or related to such liens or claims of lien.

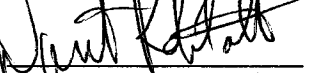
6. Each party shall bear its respective attorney's fees and costs.
7. This Settlement Agreement does not constitute an admission of liability by either party.
8. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.
9. Frank Szydlowski and Magda Szydlowski, his wife, declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY.
10. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.
11. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.

WITNESS:


Print Name: Danielle Robitaille


WITNESS:


Print Name: Danielle Robitaille

Plaintiff


Frank Szydlowski

Plaintiff


Magda Szydlowski

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

By: _____
Addie L. Greene, Chairperson
Board of County Commissioners

RELEASE OF ALL CLAIMS

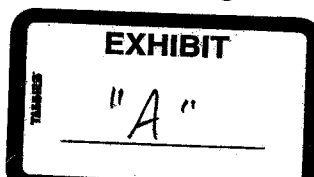
KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, FRANK SZYDLOWSKI and MAGDA SZYDLOWSKI, being of lawful age, for the sole consideration of **NINETY FIVE THOUSAND DOLLARS (\$95,000.00)**, to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for their executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY**, (hereinafter referred to as "the Releasees"), and their officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages, and any and all consequences thereof, resulting or to result from an alleged accident that occurred on or about **October 13, 2004** on Lucerne Avenue, Lake Worth, in Palm Beach County, State of Florida.

FURTHERMORE, the undersigned agree that each party shall bear their own costs and attorney's fees, and the undersigned shall bear sole responsibility for any and all hospital, physician, diagnostic, rehabilitation, training, maintenance, medical or pharmaceutical expenses, bills, statements, liens or subrogable interests, of any nature whatsoever, which are or may be outstanding and payable on the date of execution of this agreement, or which may be incurred and payable in the future. The undersigned further agree to indemnify and save harmless the Releasees from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the Releasees for payment or collection of the aforementioned expenses, the undersigned agree to indemnify and save harmless the Releasees for any attorney's fees, costs and/or judgments which may be entered against the Releasees.

FURTHERMORE, the undersigned understand and agree that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasees, and that the Releasees deny any liability therefor and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned hereby declare and represent that any injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release the undersigned understands and agrees that the undersigned relied wholly upon the undersigned's own judgment, belief and knowledge of the nature, extent, effect and duration of any injuries and liability therefore, without reliance upon any statement or representation by the Releasees, or by their representatives or by any physician or surgeon employed by them. The undersigned further declare and represent that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this agreement are contractual and not merely a recital.



FURTHERMORE, the undersigned state that while they hereby release any and all claims against the Releasees, and their officers, agents, employees, heirs, executors, administrators, successors and assigns, for both past and future losses, including medical expenses, health care expenses and related expenses, the necessity for future medical treatment and expenses incurred is speculative and unknown at this time and therefore, as a result, the undersigned reserve the right to pursue and recover all future medical expenses, health care expenses and related expenses, from any person, firm, or organization who may be responsible for payment of such expenses, including any first-party health or automobile insurance coverage, but such reservation specifically does not include the Releasees.



FURTHERMORE, notwithstanding the language contained in this Release, this release shall not be construed as releasing any medical providers for potential claims which may arise based upon treatment and care rendered as a result of the accident which is the subject of this Release. Moreover, this Release shall not be construed as releasing any health insurance carrier or other insurer from medical and lost wage benefits to which the Releasers are entitled.



THE UNDERSIGNED hereby declare that the undersigned have completely read, fully understood and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise settlement and adjustment of any and all claims, disputed or otherwise, on account of the injuries and damages set forth above, and for the express purpose of precluding forever any further or additional claims against the Releasees arising out of the aforementioned incident.

THE UNDERSIGNED hereby accept the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, Frank Szydlowski and Magda Szydlowski, his wife, have hereunto set my hand and seal this 9 day of January, 2007.

IN THE PRESENCE OF:


WITNESS

WITNESS


FRANK SZYDLOWSKI

MAGDA SZYDLOWSKI

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 9 day of January, 2007, by Frank + Magda Szydlowski,
who:

☒ is personally known to me; OR

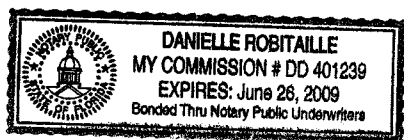
☐ has produced _____,
as identification; and who

☐ did take an oath; OR

☐ did not take an oath.

and who executed the within Release of All Claims, and who acknowledged the within Release of All Claims to be freely and voluntarily executed for the purposes therein recited.

[seal]



[Signature]
Danielle Robitaille


Notary Public in and for Palm Beach County, Florida

My commission expires: 6/26/09

STATEMENT OF ATTORNEY FOR RELEASOR

I, Karen A. Curran, Esq., state that I am the attorney for Frank Szydlowski and Magda Szydlowski, the above-signed Releasors; that I have explained to Frank Szydlowski and Magda Szydlowski, all the terms of this Release and the Settlement Agreement upon which it is based; and that Frank Szydlowski and Magda Szydlowski, have represented to me that they understand all the terms and their significance. Frank Szydlowski and Magda Szydlowski, have signed this Release knowingly, voluntarily and on my advice.

DATED this 9 day of January 2007.



Karen A. Curran, Esq.
The Law Office of Gregg R. Wexler, P.A.
Attorney for Frank and Magda Szydlowski
Florida Bar No. 358347

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2006 CA000489XXXMBAH

FRANK SZYDLOWSKI and
MAGDA SZYDLOWSKI, his wife,

Plaintiff,

v.

PALM BEACH COUNTY,

Defendant.

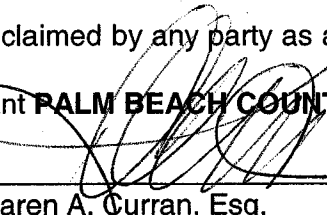
STIPULATION AND FINAL ORDER OF DISMISSAL WITH PREJUDICE
WITH RESPECT TO DEFENDANT PALM BEACH COUNTY

COMES NOW the Plaintiffs, **FRANK SZYDLOWSKI and MAGDA SZYDLOWSKI, his wife**, with their attorney, joined by the Defendant, **PALM BEACH COUNTY**, by and through its attorney, and shows unto the Court that all matters in controversy having been compromised and settled to the satisfaction of the parties herein, it is agreed that the action of the Plaintiffs against Defendant **PALM BEACH COUNTY** be dismissed with prejudice, each party to bear their own costs and attorney's fees, and with the Plaintiff's to hold Defendant **PALM BEACH COUNTY** harmless from all subrogation claims and other liens that are or may be claimed by any party as a result of the matters giving rise to the Plaintiffs claims against Defendant **PALM BEACH COUNTY**.

BY:


David R. Ottey, Esq.
Florida Bar No. 15590
Assistant County Attorney
301 North Olive Avenue
6th Floor
West Palm Beach, FL 33401
Tel.: (561) 355-6557
Fax.: (561) 355-4234
Attorney for Defendant, PBC

BY:


Karen A. Curran, Esq.
Florida Bar No. 358347
The Law Office of Gregg R. Wexler, P.A.
Cedar Square- Suite 208
2112 South Congress Avenue
West Palm Beach, FL 33406
Tel.: (561) 641-8020
Fax.: (561) 641-0971
Attorney for Plaintiffs

DATED:

1.16.07

DATED:

1/9/07

EXHIBIT

"B"

FINAL ORDER OF DISMISSAL WITH PREJUDICE
WITH RESPECT TO DEFENDANT PALM BEACH COUNTY

THIS CAUSE having come before the Court upon the foregoing Stipulation, and the Court being otherwise fully advised in the premises, it is therefore

ORDERED AND ADJUDGED that the above-styled cause, be and the same is hereby Dismissed With Prejudice, each party to bear their own costs and attorney's fees, and the Plaintiffs, **FRANK SZYDLOWSKI and MAGDA SZYDLOWSKI, his wife**, shall hold the Defendant, **PALM BEACH COUNTY**, harmless from all subrogation and other liens that are or may be claimed by any party as a result of the matters giving rise to Plaintiffs claims against Defendant **PALM BEACH COUNTY**.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this _____ day of **JANUARY**, 2007.

The Honorable Edward H. Fine
Circuit Court Judge

Copies Furnished:

Counsel for Plaintiff:

Karen A. Curran, Esq.
The Law Office of Gregg R. Wexler, P.A.
Cedar Square- Suite 208
2112 South Congress Avenue
West Palm Beach, FL 33406

Counsel for Defendant:

David R. Ottey, Esq.
Assistant County Attorney
301 North Olive Avenue
6th Floor
West Palm Beach, Florida 33401