

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 10, 2007 **Consent** **Regular**
 Public Hearing

Department: COUNTY ATTORNEY

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: Approve Settlement Agreement in the amount of \$75,000.00, inclusive of attorneys fees and costs, in the personal injury case of Janos Varga v. Palm Beach County, Case No. 2005 CA 008367 AA.

Summary: On February 17, 2004, Mr. Varga allegedly drove his car into a pothole approximately two feet deep causing him to "bottom out" and get stuck. When his right rear wheel went into the pothole, his neck snapped back and he had immediate discomfort in his neck. The pothole was repaired before and after the accident due to persistent deterioration. Plaintiff sued the County seeking damages for personal injuries incurred. Staff, including the Risk Management Roundtable Committee and the Road and Bridge Department concurs that this settlement is in the best interest of Palm Beach County. Countywide. (SCL)

Background and Justification: On February 17, 2004, Mr. Varga drove into a pothole approximately two feet deep causing him to "bottom out" and get stuck. When his right rear wheel went into the pothole, his neck snapped back. Plaintiff contends that as a result of the impact he sustained permanent injuries, to wit: a herniated disc at C4/5. Mr. Varga was evaluated by a neurosurgeon who recommended an anterior cervical discectomy and fusion at C4/5 which was performed in September, 2004 followed by additional therapy. His doctor opined that plaintiff was at maximum medical improvement as of December, 2004 and rated him as having a 10% permanent impairment to the body as a whole. Plaintiff claims that symptoms from the accident persist, including neck pains. To date, Mr. Varga's medical bills total \$73,602.84 and he has a lost wage claim.

Following administrative review, it was determined that a negotiated settlement would be preferable to trial. This settlement is reasonable under the circumstances and is in the County's best interest because it avoids and limits the uncertainty of a jury verdict. Accordingly, it is recommended that this settlement be approved in the total amount of \$75,000.00.

Attachments:

1. Settlement Agreement

Recommended by: _____

County Attorney

Date

3/6/7

Approved by: _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$75,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$75,000	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ 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 Development and Control Comments:

City 3-7-07
3/07/2007
OFMB 88 3/7/07
Contract Development and Control
3/18/07
At the time of copy review, the documents were not executed.

David L. Lindsey
Assistant County Attorney

C. Other Department Review:

[Signature]
Department Director

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

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SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2007, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and JANOS VARGA.

WHEREAS, JANOS VARGA sued the COUNTY in a lawsuit presently styled Janos Varga v. Palm Beach County, Case No. 2005 CA 008367 AA, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on February 17, 2004, at 5295 Town Center Road, Boca Raton, 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 Janos Varga the amount of **SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$75,000.00)**, by a check made payable to Leslie Duberstein Glenn, Esq. Trust Account and Janos Varga.
3. Within ten (10) days of receipt of the COUNTY's payment, Janos Varga (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. Leslie Duberstein Glenn, Esq. shall not disburse, and Janos Varga 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. Janos Varga acknowledges and agrees that he is responsible for the payment of any liens against this settlement and that the COUNTY shall not be responsible for any portion of said liens. Janos Varga, on behalf of himself and his 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. Janos Varga 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 he 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:

Plaintiff

Print Name:

JANOS VARGA

ATTEST:

Sharon R. Bock, Clerk and Comptroller

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

By: _____
Deputy Clerk

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

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, JANOS VARGA, being of lawful age, for the sole consideration of **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for his 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 event or incident that occurred on or about **February 17, 2004**, at or near 5295 Town Center Road in Boca Raton, Palm Beach County, 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 Undersigneds' 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 he hereby releases 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, Janos Varga, have hereunto set my hand and seal this ____ day of _____, 2007.

IN THE PRESENCE OF:

WITNESS

Janos Varga

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 _____ day of _____, 2007, by _____, 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]

Notary Public in and for Palm Beach County, Florida

My commission expires: _____

STATEMENT OF ATTORNEY FOR RELEASOR

I, Leslie Duberstein Glenn, Esq., state that I am the attorney for Janos Varga, the above-signed Releasor; that I have explained to Janos Varga all the terms of this Release and the Settlement Agreement upon which it is based; and that Janos Varga has represented to me that he understands all those terms and their significance. Janos Varga has signed this Release knowingly, voluntarily and on my advice.

DATED _____, 2007.

Leslie Duberstein Glenn, Esq.
Attorney for Janos Varga
Florida Bar No. 0957658