

Agenda Item #:

3-D-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 12/18/07

☒ 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 Settlement Agreement, inclusive of attorneys fees and costs, in the total amount of \$60,000.00 in the personal injury case of Miriam Simms, et al. v. Palm Beach County, et.al., Case No. 50CA2005004745XXXXMB.

Summary: This is a personal injury case arising from an incident on a Palm Tran bus on October 7, 2003. The plaintiff sustained back injuries while a passenger aboard the bus. Countywide (PGE)

Background and Policy Issues: This is a personal injury case arising from an accident on a Palm Tran bus on October 7, 2003. The plaintiff, a passenger on the bus, sustained back injuries after being thrown from her seat. The bus driver was cited for careless driving when she lost control of the bus and drove into the median strip on S.R. #80 by Palm Beach Aggregates. Although the bus driver said the accident occurred when a slow moving dump truck made a left turn into her lane of traffic (basically cutting the bus off), an independent eye witness testified in deposition that the accident was 100% the bus driver's fault because the dump truck had already safely maneuvered the turn when the bus approached at a high rate of speed. The physical damage to the bus and the truck was consistent with the eye witness's version of events, and not the bus driver's account. The Plaintiff underwent back surgery and has unpaid medical bills in the amount of \$73,000.

Considering the foregoing, the Settlement Agreement is reasonable and it is in the County's best interest to approve the Settlement Agreement in the amount of \$60,000.00.

Attachments:

1. Settlement Agreement
2. Release

Recommended by: _____

County Attorney

Date

11/19/07

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	60,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	60,000				
# 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 Development and Control Comments:

11-21-07
 OFMB
 11-21-07
 Contract Development and Control
 11-20-07

B. Legal Sufficiency:

B. Legal Sufficiency:

Benjamin G. Edelberg
Assistant County Attorney

C. Other Department Review:

Department Director

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

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 5th day of November, 2007, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and MIRIAM SIMMS.

WHEREAS, MIRIAM SIMMS made a claim against the COUNTY for damages arising from a personal injury incident that occurred on a Palm Tran bus on **October 7, 2003**, as outlined in Miriam Simms v. Palm Beach County, Allen Trucking, Inc., and Leonard Allen, Jr., Case No. 50CA2005004745XXXXMB;

WHEREAS, the parties hereto wish to amicably resolve that portion of the claim that involves PALM BEACH COUNTY without litigation of the claims made.

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 MIRIAM SIMMS the amount of **SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00)**, by a check made payable to "The Thomas Law Group, P.A., Trust Account " with tax ID# 65-0807709.
3. As part of this Settlement Agreement, MIRIAM SIMMS, shall execute and deliver to Palm Beach County the Release of All Claims attached hereto as Exhibit "A."
4. Carter & Thomas, LLP, shall not disburse, and MIRIAM SIMMS shall not accept, any proceeds from the settlement checks described in paragraph 2 unless and until the Release and Stipulation and Order of Dismissal have been delivered to the COUNTY.
5. MIRIAM SIMMS acknowledges and agrees that she 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.
6. Each party shall bear its respective attorney's fees and costs unless otherwise provided for herein.
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.

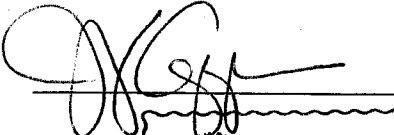
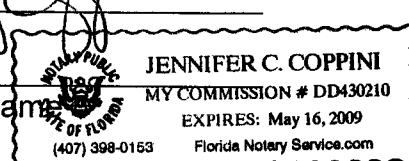
9. MIRIAM SIMMS declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims against the COUNTY.

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 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: 

PLAINTIFF:


MIRIAM SIMMS

ATTEST:

Sharon R. Bock, Clerk

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

By: _____

By: _____
Addie Greene, Chairperson
Board of County Commissioners

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 

Attachment #1

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **MIRIAM SIMMS**, being of lawful age, for the sole consideration of **SIXTY THOUSAND DOLLARS (\$60,000.00)** to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY**, (hereinafter referred to as "the Releasee"), 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, liens, 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 related to any and all known and unknown, foreseen and unforeseen, issues or damages, and any and all consequences thereof, including but not limited to all matters brought or asserted, or which could have been brought or asserted, in the consolidated lawsuit entitled Miriam Simms and Janice Johnson v. Palm Beach County, Allen Trucking, Inc., and Leonard Allen, Jr., Case No. 50CA2005004745XXXXMB.

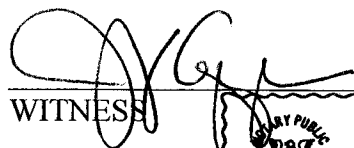
FURTHERMORE, the Undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasee, and that the Releasee denies any liability therefore and merely intends to avoid further litigation.

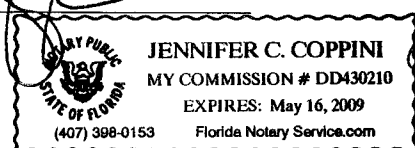
The undersigned has read this Release, understands all of its terms, and executes it with full knowledge of its significance.

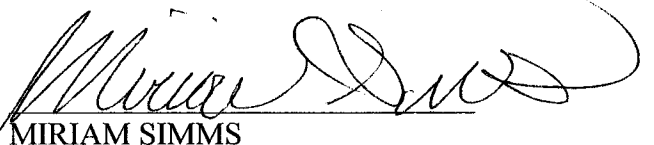
The Undersigned hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, Miriam Simms, have hereunto set my hand and seal this 5th day of November, 2007.

IN THE PRESENCE OF:


WITNESS




MIRIAM SIMMS

Attachment #2

1061