

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 15, 2008

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 attorney's fees and costs, in the total amount of \$60,000 in the personal injury action styled Mitchell Carlin vs. Palm Beach County, Case No. 2007CA003249 MB AG.

Summary: Plaintiff was in a motor vehicle accident on October 15, 2005. He was stopped at a red light at the intersection of Haverhill Road and Okeechobee Boulevard and was rear-ended by another motor vehicle which was rear-ended by the Defendant Fire Rescue vehicle en route to a call. His vehicle did not strike anything else. Upon impact, his right knee hit the dashboard. He developed increasing pain over the next 24 to 48 hours which included right knee pain and neck and back spasms. The County driver received two points and a written warning was issued. Staff, including the Risk Management Roundtable Committee and the Fire Rescue Department, concur that this settlement is in the best interest of Palm Beach County. Countywide (SCL)

Background and Justification: Plaintiff was in a motor vehicle accident on October 15, 2005. He was stopped at a red light and was rear-ended by another motor vehicle which was rear-ended by the Defendant Fire Rescue vehicle en route to a call. Following the accident, Plaintiff saw an orthopedic surgeon. He initially received an injection into the right knee. He also started treatment with a chiropractor for his neck and back. Mr. Carlin was referred for an MRI scan and was told that he had a meniscus tear. It was recommended that he have surgery and he underwent surgery on his right knee in April, 2006. Thereafter, he underwent physical therapy for his right knee, and although his neck and back improved after treatment, he had ongoing knee pain. His doctor opined that he sustained a permanent impairment of 4% to the body as a whole based on the knee injury and estimated an approximate cost of thirty thousand dollars for future medical care.

To date, Plaintiff's medical bills total \$28,127.97.

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 \$60,000.00.

Attachments:

- 1. Settlement Agreement with Exhibits

Recommended by: Tom Niekema 12/27/07
Department Director Date

Approved by: N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	\$ <u>60,000</u>	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	\$ <u>60,000</u>	—	—	—	—
# 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:

B. Legal Sufficiency:

Ad 1/2/08
Jan-Dan 1-4-08
OFMB
adv 12/20
1-2-08
1/7/08
Contract Dev. and Control
1/7/08

Spca C. Lindsey
 Assistant County Attorney

C. Other Department Review:

John E. Smith
 Department Director

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

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 MITCHELL CARLIN.

WHEREAS, MITCHELL CARLIN sued the COUNTY in a lawsuit presently styled Mitchell Carlin v. Palm Beach County, Case No. 2007CA003249 AG, 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 October 5, 2005, at or near the intersection of Haverhill Road and Okeechobee Boulevard in West Palm Beach, 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 Mitchell Carlin the amount of **SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00)**, by a check made payable to Steinger & Iscoe, P.A. Trust Account and Mitchell Carlin.
3. Within ten (10) days of receipt of the COUNTY's payment, Mitchell Carlin (i) shall 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. Robert Reynolds, IV, Esq. and/or Steinger & Iscoe, P.A. shall not disburse, and Mitchell Carlin 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. Mitchell Carlin 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. Mitchell Carlin, 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. Mitchell Carlin 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.

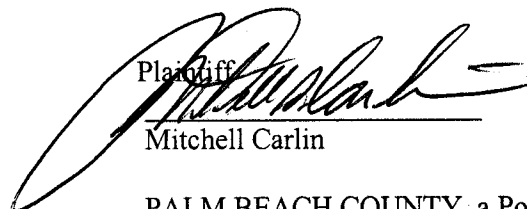

WITNESS:
Ellen Jaret
Print Name:

ATTEST:
Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney


Plaintiff

Mitchell Carlin

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

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

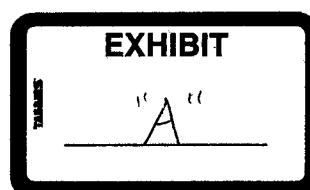
RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **MITCHELL CARLIN**, being of lawful age and 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 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 **October 15, 2005**, at or near the intersection of Haverhill Road and Okeechobee Boulevard in West Palm Beach, 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 states 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, Mitchell Carlin, have hereunto set my hand and seal this 20 day of DECEMBER, 2007.

IN THE PRESENCE OF:

[Signature]
WITNESS

[Signature]
Mitchell Carlin

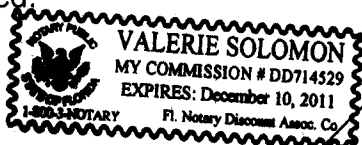
STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 20th day of DECEMBER, 2007, by Mitchell Carlin, who:

- is personally known to me; OR
- has produced FLORIDA DIVERS License, 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]
Notary Public in and for Palm Beach

County, Florida

My commission expires: 12/10/2011