

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 11/18/08

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 Global Settlement Agreement, inclusive of attorneys fees and costs, in the total amount of \$95,000.00 in the following three cases: Confesor (Tony) Ramirez v. Palm Tran, Case No. 07-81039 CIV-Ryskamp; Confesor (Tony) Ramirez v. Palm Tran, Case No. 08-80536 CIV-Ryskamp; and EEOC Charge No. 15M-2007-00194.

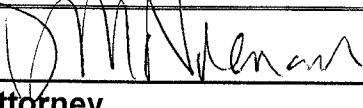
Summary: This global settlement arises from two cases consolidated in federal court requesting damages and equitable relief under the Family Medical Leave Act and a breach of contract claim, as well as a third matter involving a pending charge of discrimination which Plaintiff filed with the EEOC alleging violations under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII). Countywide (PGE)

Background and Justification: This is an employment discrimination case involving a Palm Tran bus driver who was terminated in July 2007 for excess absenteeism. At the time Plaintiff was terminated he was a probationary employee working under the terms of a "Reinstatement Agreement and General Release," which modified certain provisions of the Labor Management Agreement (LMA) governing non-probationary employees. In addition, he requested medical leave under the FMLA three weeks before the termination. The primary dispute concerns the calculation of the number of non-FMLA sick day occurrences and whether the missed days permitted under his return to work agreement can be calculated retroactively using a "rolling calendar year" as referenced in the LMA, as was intended. The Court has already determined the disputed language is susceptible to multiple interpretations. If Plaintiff prevails under the FMLA claim, the jury may award back pay, liquidated damages (back pay x 2), and attorney's fees. In addition, the Court could order reinstatement or front pay. A conservative estimate of the County's exposure is approximately \$230,000.

This Global Settlement Agreement, which includes Plaintiff's agreement not to reapply for employment with Palm Tran or the County in the future, is reasonable and is in the County's best interest.

Attachments:

1. Settlement Agreement and Release of All Claims.
2. Budget Availability Statement

Recommended by:  10/29/08
County Attorney Date

Approved by: N/A _____
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$95,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$ 95,000	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	0	_____	_____	_____	_____

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:

Atwillhite 11-4-08
 88 11/4/08  OFMB 11/3/08 CN 10/30/08

John J. Jacob (11/5/08)
 Contract Development and Control
 11/4/08

B. Legal Sufficiency:

Paul J. Edelberg
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

GLOBAL SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT dated this 27th day of October, 2008, is entered into by and between CONFESOR ("TONY") RAMIREZ (hereinafter "CONFESSOR RAMIREZ") and PALM TRAN, INC., a public not-for-profit Corporation of Palm Beach County, and PALM BEACH COUNTY, a political subdivision of the State of Florida.

WHEREAS, CONFESOR RAMIREZ made claims against PALM TRAN, INC. for damages and other equitable relief arising out of his employment as a bus operator commencing in February 2006, and his subsequent termination from employment in July 2007, with Palm Tran, Inc., and/or Palm Beach County, as outlined in two lawsuits entitled Confesor ("Tony") Ramirez, on behalf of himself and all other similarly situated employees v. Palm Tran, a Florida not for profit corporation, Case No. 07-81039 CIV- Ryskamp, and Confesor ("Tony") Ramirez v. Palm Tran, Inc. a Florida not for profit corporation, Case No. 08-80536 CIV (consolidated with Case No. 07-81039 CIV- Ryskamp), and a Charge of Discrimination dated September 6, 2007, alleging a violation under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII), assigned EEOC Charge No. 15M-2007-00194.

WHEREAS, the parties hereto wish to amicably resolve any and all claims that involve PALM TRAN, INC. and PALM BEACH COUNTY (hereinafter collectively referred to as "COUNTY"), without further litigation of the claims made or further investigation by the EEOC in Charge No. 15M-2007-00194,

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 by the Board of County Commissioners, the COUNTY shall pay to CONFESOR RAMIREZ **Ninety Five Thousand Dollars (\$95,000)**, payable as follows: 1) A check in the amount of **Sixty Thousand Dollars (\$60,000.00)** made payable to Confesor T. Ramirez; and 2) a check in the amount of **Thirty-five Thousand Dollars (\$35,000)**, made payable to Garcia Law Firm, P.A., (Tax I.D. # 20-1519391).
3. As part of this Global Settlement Agreement, CONFESOR RAMIREZ shall execute and deliver to Palm Beach County the Release of All Claims attached hereto as Exhibit "A."
4. As part of this Global Settlement Agreement, CONFESOR RAMIREZ shall execute a "Request For Withdrawal of Charge of Discrimination" EEOC form, and deliver a copy of same to the COUNTY as part of this global settlement.

6. Isidro Garcia, Esq., shall not disburse, and Confesor Ramirez shall not accept, any proceeds from the settlement check described in paragraph 2 unless and until the Request For Withdrawal of Charge of Discrimination, Release and Stipulation and Order of Dismissal have been delivered to the COUNTY.

7. CONFESOR RAMIREZ 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.

8. Each party shall bear its respective attorney's fees and costs unless otherwise provided for herein.

9. This Global Settlement Agreement does not constitute an admission of liability by either party.

10. 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.

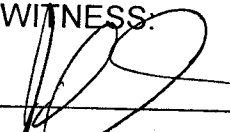
11. CONFESOR RAMIREZ declares and acknowledges that the terms of this Global Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims against PALM TRAN, INC., and the COUNTY.

12. This Global Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

13. 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.

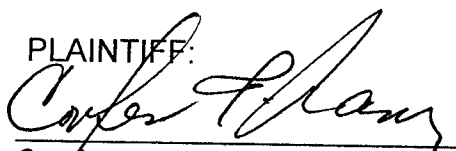
IN WITNESS WHEREOF, the parties have caused this Global Settlement Agreement to be executed as of the date first set forth above.

WITNESS:



Isidro M. Garcia
Print Name

PLAINTIFF:



Confesor T. Ramirez

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Pamela G. Eidelberg, Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **CONFESOR T. RAMIREZ**, being of lawful age, for the sole consideration of **Ninety Five Thousand Dollars (\$95,000)** 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 TRAN, INC., a public not-for-profit Corporation of Palm Beach County, and/or PALM BEACH COUNTY, a political subdivision of the State of Florida**, (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, 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, employment or termination of employment 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 lawsuits entitled Confesor Ramirez v. Palm Tran, Inc., Case No. 07-81039 CIV-Ryskamp, and Confesor Ramirez v. Palm Tran, Inc., Case No. 08-80536 CIV-Ryskamp, or in the Charge of Discrimination dated September 6, 2007, alleging a violation under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII), assigned EEOC Charge No. 15M-2007-00194.

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 Releasees, and that the Releasees deny any liability therefore and merely intend to avoid further litigation.

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

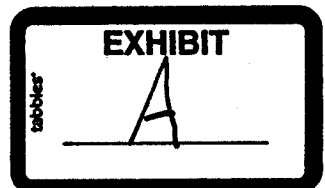
The Undersigned hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, CONFESOR T. RAMIREZ, have hereunto set my hand and seal this 27th day of October, 2008.

IN THE PRESENCE OF

WITNESS

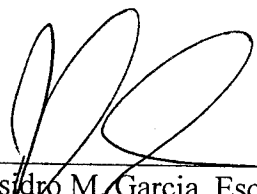

CONFESOR T. RAMIREZ



STATEMENT OF ATTORNEY FOR RELEASOR

I, Isidro M. Garcia, Esquire, state that I am the attorney for Confessor T. Ramirez, the above-signed Releasor; that I have explained to her all the terms of this Release and the Settlement Agreement upon which it is based; and that she has represented to me that she understands all those terms and their significance. Confessor T. Ramirez has signed this Release knowingly, voluntarily and on my advice.

DATED this 27th day of October, 2008.



Isidro M. Garcia, Esquire
Attorney for Confessor T. Ramirez
Florida Bar No. 437883

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

Instructions to the person requesting withdrawal: You recently indicated a desire to withdraw your charge. In order to begin such action, please furnish the information below and return this form in the enclosed envelope. As a request for withdrawal of charge is subject to the approval of the Commission, your request will be considered and acted upon when received by this office. Please note that at this time the Commission is still prepared to proceed with your case if you so desire.

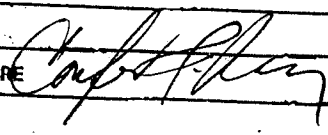
CHARGE NUMBER 15 M-2007-00194	DATE October 24, 2008
AGGRIEVED PARTY Confesor T. Ramirez	RESPONDENT(S) Palm Beach County Surface & Transportation/Palm Tran, Inc.

AGGRIEVED PARTY -- COMPLETE INFORMATION BELOW
(Continue on reverse if necessary)

I am aware that the Federal Government protects my right to file a charge and have been advised that it is unlawful for any person covered by the statutes enforced by EEOC to threaten, intimidate, harass or otherwise retaliate against me because I have filed a charge. I have not been coerced into requesting this withdrawal.

I request the withdrawal of my charge because:

SETTLEMENT AGREEMENT

DATE 10/27/08	SIGNATURE 	FOR EEOC USE ONLY
SEND TO U.S. Equal Employment Opportunity Commission Miami District Office One Biscayne Tower, Suite 2700 2 South Biscayne Boulevard Miami, FL 33131-1805		<input type="checkbox"/> Withdrawal with Settlement <input type="checkbox"/> Withdrawal without Settlement <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
		DATE
		APPROVING OFFICIAL

EEOC Form 154 (Text 10/84)

Exhibit 7-A

RISK MANAGEMENT
BUDGET AVAILABILITY STATEMENT

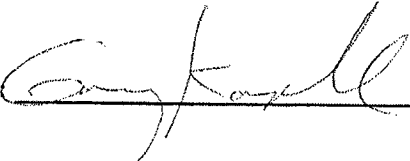
REQUEST DATE: 11/04/2008 REQUESTED BY: Budget PHONE: _____

AMOUNT: \$ S95,000 AGENDA DATE: 11/18/08

BUDGET ACCOUNT NUMBER (IF KNOWN)

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

FUNDING SOURCE: Casualty and Property Self-Insurance Charges

BAS APPROVED BY:  DATE: 11/14/08