

Agenda Item #: **3D-2**

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

Meeting Date: August 18, 2009 **Consent** **Regular**
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve a Settlement Agreement, inclusive of attorney's fees and costs, in the total amount of \$80,000 in the personal injury action styled Edith Tucker vs. Palm Beach County, Case No. 502008CA014530XXXMBAO.

Summary: Plaintiff, Edith Tucker, is one of thirteen passengers who were allegedly injured on a Palm Tran bus on SR 80 in Belle Glade on May 8, 2006. There was heavy fog and the bus operator swerved to the right to avoid a disabled Solid Waste Authority tractor-trailer that was on the roadway. The mirror on the driver's side of the bus struck the right rear of the tractor-trailer. The bus driver was cited for driving too fast for conditions after leaving approximately 35 feet of skid marks. Countywide (SCL)

Background and Justification: Plaintiff, a passenger on a Palm Tran bus heading eastbound on State Road 80 from Belle Glade alleges that when the mirror of the bus struck a Solid Waste Authority truck, she sustained permanent injuries to her neck. Plaintiff claims that at the time of the accident she grabbed the handrail in front of her and was swung back and forth which caused pain to her shoulders and hands. She did not go to the hospital immediately, but went the next morning. At the Emergency Room she was treated and released with a cervical collar and pain medication. She later followed up with a neurosurgeon. An MRI taken on August 15, 2006, showed three cervical herniations. The doctor performed a disc decompression on December 1, 2006. The Plaintiff underwent physical therapy for more than a year. She was given an impairment rating of 15% of the whole person. Her medical bills are \$88,000 and she has no insurance. Considering the foregoing circumstances, the Settlement Agreement is reasonable and in the County's best interest. It is recommended that the County approve the Settlement Agreement in the amount of \$80,000.

Attachments:

1. Settlement Agreement and Release of All Claims
- 2.

Recommended by:  7/15/09
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	<u>\$80,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$80,000</u>	_____	_____	_____	_____
# 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:

[Signature]

 OFMB
 7/12/09
 7/17/09 7/16/09

[Signature]

 Contract Development and Control
 7/23/09

B. Legal Sufficiency:

[Signature]

 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 7th day of July, 2009, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and EDITH TUCKER.

WHEREAS, Edith Tucker sued the COUNTY in a lawsuit presently styled Edith Tucker v. Palm Beach County, Case No. 502008CA014530XXXXMB AO, 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 May 8, 2006, on State Road 80 approximately 3 miles east of the intersection of Sugar House Road at or near the City of Belle Glade, in 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 Edith Tucker the amount of **EIGHTY THOUSAND DOLLARS AND NO CENTS (\$80,000)**, by a check made payable to Michael H. Stauder, Esquire Trust Account and Edith Tucker.
3. Within ten (10) days of receipt of the COUNTY's payment, Michael H. Stauder, Esq. 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. Michael H. Stauder, Esq. shall not disburse, and Edith Tucker 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. Edith Tucker 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. Edith Tucker, on behalf of herself and her officers, agents, employees, heirs, executors, administrators and assigns, further agrees 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. Edith Tucker 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 she 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.

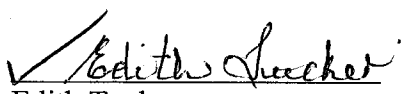
11. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

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

WITNESS:

PLAINTIFF:

EDITH TUCKER
Print Name:


Edith Tucker

ATTEST:
Sharon R. Bock, Clerk and Comptroller

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

By: _____

By: _____
Jeff Koons, Chairman
Board of County Commissioners

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Jana C. Lindsey
Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **EDITH TUCKER**, being of lawful age, for the sole consideration of **EIGHTY THOUSAND DOLLARS (\$80,000.00)** 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 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 **May 8, 2006**, on State Road 80 near the intersection of Sugar House Road at or near the City of Belle Glade, in Palm Beach County, Florida;

FURTHERMORE, the Undersigned agrees that each party shall bear its 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 agrees 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 agrees 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 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 and buy their peace.

FURTHERMORE, the Undersigned hereby declares and represents 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 relies 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 her representatives or by any physician or surgeon employed by her. The Undersigned further declares and represents 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 she 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 reserves 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 Releasees are entitled.

THE UNDERSIGNED hereby declares that the Undersigned has 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 accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS WHEREOF, I, Edith Tucker, have hereunto set my hand and seal this 21st day of July, 2009.

IN THE PRESENCE OF:

WITNESS
STATE OF FLORIDA)
COUNTY OF PALM BEACH)

PLAINTIFF:
Edith Tucker
EDITH TUCKER

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 21st day of July, 2009, by Edith Tucker, 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]

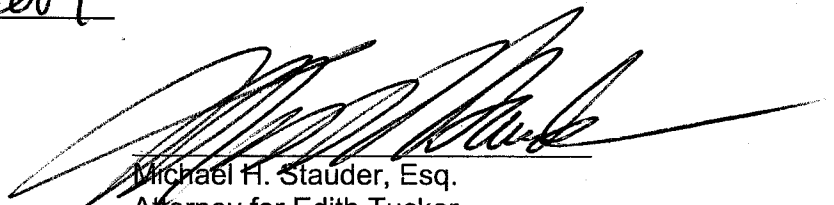
Alan L. Weaver
Notary Public in and for Palm Beach County, Florida
My Commission Expires:

NOTARY PUBLIC - STATE OF FLORIDA
Alan L. Weaver
Commission #DD631589
Expires: JAN. 21, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

STATEMENT OF ATTORNEY FOR RELEASOR

I, Michael H. Stauder, Esq., state that I am the attorney for Edith Tucker, the above-signed Releasor, that I have explained to Edith Tucker all the terms of this Release and the Settlement Agreement upon which it is based, and that Edith Tucker has represented to me that she understands all those terms and their significance. Edith Tucker has signed this Release knowingly, voluntarily, and on my advice.

Dated July 7, 2009



Michael H. Stauder, Esq.
Attorney for Edith Tucker
Florida Bar No. 149316