

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

**Meeting Date:** September 1, 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 \$75,000 in the personal injury action styled Jo Ann Cremata vs. Palm Beach County, Case No. 502008CA026752XXXMB.

**Summary:** Plaintiff, a 76 year old female, fell down the steps as she exited Morikami Museum at night. She alleges the lack of hand rails, inadequate lighting, and negligently designed steps caused her to fall. She was transported to Delray Medical Center where she underwent extensive emergency surgery for severe fractures to her left ankle. After surgery, she was admitted to the Intensive Care Unit for complications that necessitated the administration of blood transfusions. Following discharge, she was in a rehabilitation facility for nearly 8 weeks, followed by home health care and more physical therapy. She received a 25% impairment rating to her left lower extremity. Medical bills exceeded \$107,000 and future medical care is estimated at approximately \$55,000. Staff, including the Risk Management Director concur that this settlement is in the best interest of Palm Beach County. **Countywide** (SCL)

**Background and Justification:** Plaintiff fell down the steps at the Morikami Museum at night following attendance of an exhibition. She was transported to the hospital and underwent open reduction internal fixation of her left ankle secondary to a complex comminuted fracture/dislocation of the tibia and fibula. After surgery, she suffered medical complications which necessitated admission to the Intensive Care Unit. Following discharge from the rehabilitation center, home health care and physical therapy were scheduled. Medical bills exceeded \$107,000. Future medical care, which includes additional physical therapy and may include additional surgery is estimated to be \$55,000. This settlement is reasonable and is in the County's best interest because it avoids the uncertainty of a jury trial. Accordingly, it is recommended that the County approve the Settlement in the amount of \$75,000.

**Attachments:**

- 1. Settlement Agreement and Proposal for Settlement

**Recommended by:** Maureen Loulla For Denise Norman      8/6/09  
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>\$75,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$75,000</u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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:**

MO Sll 8/12/09  
 OFMB 8/10/09 8/6/09

Dr. J. Javel 8/13/09  
 Contract Development and Control

**B. Legal Sufficiency:**

Sara Lindsey  
 Assistant County Attorney

At the time of our review, the Settlement Agreement was not executed.

**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 \_\_\_\_\_ day of August, 2009, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and JO ANN CREMATA.

WHEREAS, Jo Ann Cremata sued the COUNTY in a lawsuit presently styled Jo Ann Cremata v. Palm Beach County, Case No. 502008CA026752XXXMB, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on January 10, 2007, at the Morikami Museum in Delray 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 Jo Ann Cremata the amount of **SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$75,000)**, by a check made payable to Jo Ann Cremata and Deutsch & Blumberg, P.A.
3. Within ten (10) days of receipt of the COUNTY's payment, Edward R. Blumberg, Esq., shall execute and deliver to the Palm Beach County Attorney's Office 1) the Release of All Claims attached hereto, and 2) the Stipulation and Final Order of Dismissal with Prejudice, attached hereto. The Palm Beach County Attorney's Office will then execute and forward to the Court for execution, service by mail, and filing.
4. Edward R. Blumberg, Esq., shall not disburse, and Jo Ann Cremata shall not accept, any proceeds from the settlement check described in paragraph 2 unless and until the Release of All Claims 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. Jo Ann Cremata 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. Jo Ann Cremata, on behalf of herself and her officers, agents, employees, heirs, executors, administrators and assigns, further agree to indemnify, defend, and hold the COUNTY, its officers, agents, elected officials, employees, their heirs,

*1st party case*

*1st party case 6/00*

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 attorneys fees and costs.

7. This Settlement Agreement does not constitute an admission of liability by any 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. Jo Ann Cremata 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 they 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:

PLAINITFF:

Print Name:

*As this is a consensual document*  
JO ANN CREMATA  
*Edward Blumberg as counsel for Jo Ann Cremata 11/08*

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:

*Sara C Lindsey*  
Assistant County Attorney

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 50 2008 CA 026752 XXXX MB  
DIV.: AN

**JO ANN CREMATA,**

Plaintiff,

vs.

**THE MORIKAMI, INC. d/b/a  
THE MORIKAMI MUSEUM AND  
JAPANESE GARDENS and PALM BEACH  
COUNTY,**

Defendants.

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**PROPOSAL FOR SETTLEMENT**

COMES NOW the Plaintiff, JO ANN CREMATA, by and through her undersigned attorneys, and pursuant to Florida Rule of Civil Procedure 1.442 and Florida Statute 768.79, serves the following proposal for settlement/demand for judgment upon Defendant, PALM BEACH COUNTY:

1. The party making this proposal/demand is Plaintiff, JO ANN CREMATA, and it is being made to Defendant, PALM BEACH COUNTY.
2. This Proposal for Settlement is made to attempt to resolve all claims between Plaintiff, JO ANN CREMATA and Defendant, PALM BEACH COUNTY, arising out of an incident which occurred on January 10, 2007 at Morikami Museum and Japanese Gardens and resulted in injuries to JO ANN CREMATA.
3. If this Proposal is accepted, the Plaintiff's claims against Defendant PALM BEACH COUNTY will be resolved and Plaintiff will voluntarily dismiss this case

*Deutsch & Blumberg, P.A.*

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with prejudice as to Defendant PALM BEACH COUNTY.

4. The total amount of the Proposal for Settlement is the payment of Seventy Five Thousand Dollars (\$75,000.00) to be paid by Defendant, PALM BEACH COUNTY to Plaintiff, JO ANN CREMATA.
5. There is no claim by JO ANN CREMATA for punitive damages and attorneys' fees against Defendant, PALM BEACH COUNTY.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been faxed and mailed this 5<sup>th</sup> day of August, 2009 to: **Sara C. Lindsey, Esq.**, Assistant County Attorney, 301 North Olive Avenue, 6<sup>th</sup> Floor, West Palm Beach, FL 33401.

**DEUTSCH & BLUMBERG, P.A.**  
Attorneys for Plaintiff  
New World Tower, Suite 2802  
100 North Biscayne Boulevard  
Miami, Florida 33132  
Dade: (305) 358-6329

BY: \_\_\_\_\_

  
EDWARD R. BLUMBERG, ESQ.  
FLORIDA BAR NO. 190870

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