

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

Meeting Date: December 1, 2009       Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

**I. EXECUTIVE BRIEF**

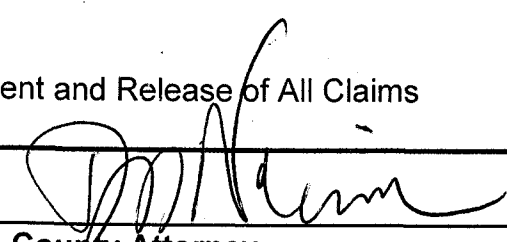
**Motion and Title:** Staff recommends motion to: approve a Settlement Agreement, inclusive of attorney's fees and costs, in the total amount of \$80,000 in the personal injury action styled Maria Maldonado vs. Palm Beach County Board of County Commissioners, Case No. 502008CA006263XXXXMB.

**Summary:** The Plaintiff, Maria Maldonado, was injured after falling while riding as a passenger on a Palm Tran bus. Plaintiff was transported to an emergency room, treated and released. She complained of pain in her neck, back, shoulders, arms, with pain radiating to the legs. Subsequently, Plaintiff was treated by a chiropractor, a pain management specialist, and a neurosurgeon who performed neck surgery for a herniated disc. Plaintiff's medical bills totaled \$97,177.27. Staff, including the Risk Management Roundtable Committee concur that this settlement is in the best interest of Palm Beach County. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$80,000. Countywide (SCL)

**Background and Justification:** Plaintiff is alleging negligent driving and negligent retention of the bus driver based on his personnel file, which contained numerous complaints by patrons and direct observations by County personnel of poor driving habits. The driver resigned after this incident. Plaintiff's doctors opined that she sustained a permanent impairment of 13% to 15%. The County's examining physician assigned a 2%-3% permanent impairment. Plaintiff had no insurance.

**Attachments:**

1. Settlement Agreement and Release of All Claims

Recommended by:       11/19/09  
 County Attorney      Date

Approved by: N/A      Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$80,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$80,000</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:**

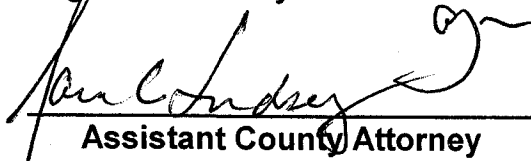
**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 _____ OFMB <small>SN 11/14/09 CN 11/12/09</small>	 _____ Contract Development and Control
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 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 \_\_\_\_ day of \_\_\_\_\_, 2009, by and between PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS (the "COUNTY"), a political subdivision of the State of Florida, and MARIA MALDONADO.

WHEREAS, Maria Maldonado sued the COUNTY in a lawsuit presently styled Maria Maldonado v. Palm Beach County, Case No. 502008CA006263XXXMB AG, in the Circuit Court of Palm Beach County, Florida, (the "Pending Lawsuit"), for damages arising from an incident that occurred on a Palm Tran bus on December 20, 2005, at or near Lake Worth Road and Jog Road in Lake Worth, 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 and after final administrative approval, the COUNTY shall pay to Maria Maldonado the amount of **EIGHTY THOUSAND DOLLARS AND NO CENTS (\$80,000)**, by a check made payable to Maria Maldonado and The Trust Account of Schwed, Cartwright & Knight, P.A.
3. Within ten (10) days of receipt of the COUNTY's payment, Charles Cartwright, 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. Charles Cartwright, Esq. shall not disburse, and Maria Maldonado 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. Maria Maldonado 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. Maria Maldonado, 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,

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. Maria Maldonado 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: \_\_\_\_\_

Maria Maldonado  
Maria Maldonado

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:   
Assistant County Attorney

**RELEASE OF ALL CLAIMS****KNOW ALL MEN BY THESE PRESENTS:**

That the Undersigned, **MARIA MALDONADO**, being of lawful age, for the sole consideration of **EIGHTY THOUSAND DOLLARS (\$80,000)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her/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 **December 20, 2005**, on a Palm Tran bus at or near the intersection of Lake Worth Road and Jog Road in Lake Worth, 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 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 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/his 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 Releasor(s) may be 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, MARIA MALDONADO, have hereunto set my hand and seal this 3<sup>rd</sup> day of NOVEMBER, 2009.

IN THE PRESENCE OF:

PLAINTIFF:

[Signature]  
WITNESS JULIA OLIVERA

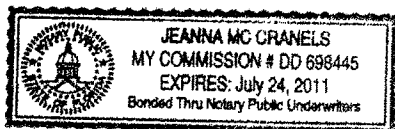
Maria Maldonado  
MARIA MALDONADO

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State of Florida to take acknowledgments, this 3<sup>rd</sup> day of NOVEMBER, 2009, by MARIA MALDONADO, who is personally known to me or produced DRIVERS LICENSE as identification; and who did / did not take an oath and who acknowledged and executed the within Release of All Claims to be freely and voluntarily executed for the purposes herein recited.

[seal]

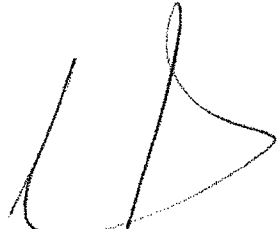
[Signature]  
Notary Public  
My Commission Expires:



**STATEMENT OF ATTORNEY FOR RELEASOR**

I, Charles Cartwright, Esq., of the Law Office of Schwed, Cartwright & Knight, P.A., state that I am the attorney for Maria Maldonado, the above-signed Releasor, that I have explained to Maria Maldonado all the terms of this Release and the Settlement Agreement upon which it is based and that Maria Maldonado has represented to me that she understands all those terms and their significance. Maria Maldonado has signed this Release knowingly, voluntarily, and on my advice.

Dated 11/4/09

  
\_\_\_\_\_  
Charles Cartwright  
Attorney for Maria Maldonado  
Florida Bar No. 983853