

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

Meeting Date: 12/7/10 [X] Consent [] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

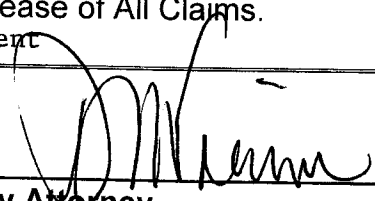
Motion and Title: Staff recommends motion to: approve a Settlement Agreement, inclusive of attorney's fees and costs, in the total amount of \$65,000, in the personal injury action styled Shacorie Walker vs. Palm Beach County, Case No. 502010CA016578XXXXMB AN.

Summary: Plaintiff was in a motor vehicle accident on June 10, 2008. He was a restrained driver in a car which was rear-ended by a County driver while it was stopped at a red light at the intersection of Jog Road and Southern Boulevard. Plaintiff was taken to the emergency room. He sustained injuries to his neck and back which necessitated surgery, and was treated by several health care providers. Staff, including the Risk Management Roundtable Committee, concur that this settlement is in the best interest of Palm Beach County. Countywide (SCL)

Background and Justification: Plaintiff, Shacorie Walker, was the driver in a Cadillac that was rear ended by a County dump truck. As a result of the impact, the Cadillac was totaled. Mr. Walker sustained soft tissue injuries including herniated and bulging discs and has approximately \$55,688.05 in medical bills. He underwent extensive physical therapy, neck discograms, and neck surgery. He also lost time from work as a result of this accident. The County driver was cited for driving too fast for conditions. The accident was classified as a major accident and the County driver received four points as well as a written reprimand. It is recommended that the County approve the Settlement Agreement in the amount of \$65,000.

Attachments:

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

Recommended by:  Date 11/10/10
County Attorney

Approved by: N/A Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$65,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$65,000	_____	_____	_____	_____
# 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 Development and Control Comments:

[Signature] 11/16/2010 [Signature] 11/16/10
 OFMB Contract Development and Control

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 5 day of November, 2010, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and SHACORIE WALKER.

WHEREAS, Shacorie Walker sued the COUNTY in a lawsuit presently styled Shacorie Walker v. Palm Beach County, Case No. 502010CA016578XXXXMB AN, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on June 10, 2008, at or near the intersection of Jog Road and Southern Boulevard in Royal 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 a reasonable time, Cathy Bierman, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims, and 3) the Stipulation and Final Order of Dismissal with Prejudice, attached hereto.
3. Within thirty (30) days of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Shacorie Walker the amount of Sixty Five Thousand Dollars (**\$65,000**), by a check made payable to Shacorie Walker and Topkin, Egner & Pertlow, P.A., Trust Account.
4. Cathy Bierman, Esq. shall not disburse, and Shacorie Walker shall not accept, any proceeds from the settlement check described in paragraph 3 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 2 above.
5. Shacorie Walker 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. Shacorie Walker, 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,

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. Shacorie Walker 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:

Shacorie Walker
Print Name: SHACORIE

PLAINITFF:

Shacorie Walker
Shacorie Walker

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By:

Lawrence J. Anderson
Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **Shacorie Walker**, being of lawful age, for the sole consideration of **SIXTY FIVE THOUSAND DOLLARS (\$65,000.00)**, 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 June 10, 2008, at or near the intersection of Jog Road and Southern Boulevard in Royal Palm Beach, 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 that 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 his representatives or by any physician or surgeon employed by him. The Undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the Undersigned, and that this Agreement 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 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 is entitled.

FURTHERMORE, the undersigned Plaintiff, Shacorie Walker, being of lawful age, agree to hold harmless and indemnify the Defendant, Palm Beach County, for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

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 HEREOF, I, Shacorie Walker, have hereunto set my hand and seal this 5 day of November, 2010.

IN THE PRESENCE OF:

WALKER SHACORIE
WITNESS (

PLAINTIFF:

Shacorie Walker

STATE OF FLORIDA)
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 5 day of November, 2010, by Shacorie Walker, who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

Cathy R. Bierman
Notary Public
My Commission Expires:

NOTARY PUBLIC-STATE OF FLORIDA
Cathy R. Bierman
Commission # DD854101
Expires: JAN. 25, 2013
ATLANTIC BONDING CO., I

STATEMENT OF ATTORNEY FOR RELEASOR

I, Cathy Bierman, Esq., of the Law Office of Topkin, Egner & Pertlow, P.A., state that I am the attorney for Shacorie Walker, the above-signed Releasor, that I have explained to Shacorie Walker all the terms of this Release and the Settlement Agreement upon which it is based and that Shacorie Walker has represented to me that he understands all those terms and their significance. Shacorie Walker has signed this Release knowingly, voluntarily, and on my advice.

Further, as Plaintiff's counsel, I agree on behalf of myself and as representative of the law firm of Topkin, Egner & Pertlow, P.A, to hold harmless and indemnify the Defendant, Palm Beach County, for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

Dated 11/5/16



Cathy R. Bierman, Esq.
Attorney for Shacorie Walker
Florida Bar No. 0008151

**RISK MANAGEMENT
BUDGET AVAILABILITY STATEMENT
FY 2010**

REQUEST DATE: 11/16/2010 REQUESTED BY OFMB PHONE: 355-4217

AMOUNT: \$65,000 AGENDA DATE: 12/07/2010

SETTLEMENT: Shacorie Walker vs. Palm Beach County, Case No. 502010CA016578XXXXMB AN.

BUDGET ACCOUNT NUMBER (IF KNOWN)

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

FUNDING SOURCE: Casualty and Property Self-Insurance Fund

BAS APPROVED BY:  DATE: 11/16/10

Attachment # 2