

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: October 4, 2011

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 \$70,000 in the personal injury action styled Inmar Cruz vs. Palm Beach County, Case No. 502011CA002171XXXXMB Al.

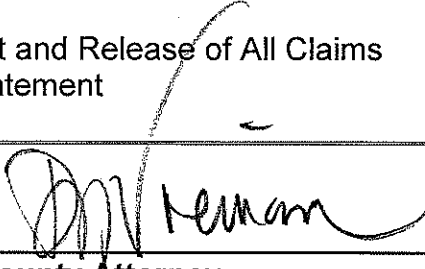
**Summary:** On May 4, 2007, Mr. Cruz was rear-ended by a Palm Beach County Fire Rescue truck while eastbound on Southern Boulevard in Belle Glade. He was evaluated for neck, back, right knee, right ankle, right foot and right upper extremity pain and he was discharged to sedentary work. He was referred to the workers' compensation care clinic and later to a spinal orthopedic surgeon for evaluation. Due to his knee pain, he ultimately underwent right knee surgery and followed up with extensive physical therapy. He was also referred to and treated by a physiatrist, a foot and ankle specialist, and a spinal surgeon for his various complaints and injuries. Extensive neck surgery was recommended. Staff, including the Risk Management Roundtable, concurs that this settlement is in the best interest of Palm Beach County. **Countywide** (SCL)

**Background and Justification:** Plaintiff, Inmar Cruz, 49 years old, was driving a truck when he was rear-ended by a Palm Beach County Fire Rescue engine that was allegedly traveling at 65 miles per hour. As a result, he followed up with several health care providers and underwent extensive physical therapy and injections to the various affected areas of his body. He underwent knee surgery for a torn meniscus for which he was assigned an 8% permanent impairment. His spinal surgeon has recommended neck fusion surgery with hardware at a cost of \$91,000 plus \$50,000 in future medical care. There is a workers' compensation claim of \$57,181 and a lost wage claim of \$65,000. The County driver was assessed two points for following too closely.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$70,000.

**Attachments:**

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

Recommended by:  9/22/11  
County Attorney Date

Approved by: N/A Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2011	2012	2013	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$70,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$70,000</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

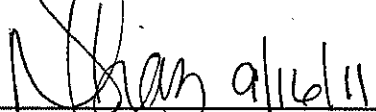

Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

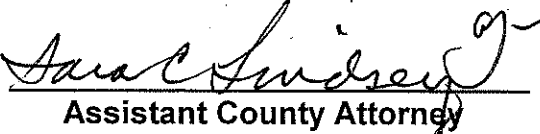
**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**


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

 _____ OFMB	 _____ Contract Development and Control
9/16/11 9/14/11 9/14/11	9/30/11 9-29-11

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

  
 \_\_\_\_\_  
 Department Director  
 Fire Rescue

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

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** made and entered into this 28<sup>th</sup> day of September, 2011, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and INMAR CRUZ.

WHEREAS, INMAR CRUZ sued the COUNTY in a lawsuit presently styled Inmar Cruz v. Palm Beach County, Case No. 502011CA002171XXXXMB Al, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on May 4, 2007, at or near State Road 80 in Belle Glade, 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, Mark Luttier, 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 a reasonable time of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Inmar Cruz the amount of Seventy Thousand Dollars (\$70,000), by a check made payable to Inmar Cruz and Burman, Critton, Luttier, & Coleman, LLC.

4. Mark Luttier, Esq. shall not disburse, and Inmar Cruz 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. Inmar Cruz acknowledges and agrees that he/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. Inmar Cruz, 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. However, Palm Beach County shall pay all mediation 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.

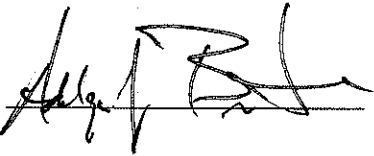
9. Inmar Cruz declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY.

10. This Settlement Agreement shall be binding on the parties hereto, his/her 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.

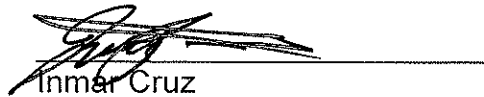
IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.

WITNESS:



Adolfo J. Benavente  
Print Name

PLAINTIFF:

  
Inmar Cruz

ATTEST:  
Sharon R. Bock  
Clerk & Comptroller

By: \_\_\_\_\_

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

By: \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: *Ara C Lindsey*  
Assistant County Attorney

## RELEASE OF ALL CLAIMS

### KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **INMAR CRUZ**, being of lawful age, for the sole consideration of **SEVENTY THOUSAND DOLLARS (\$70,000)**, 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 **May 4, 2007**, on Southern Boulevard in Belle Glade, 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/his representatives or by any physician or surgeon employed by him/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 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 Releasees is entitled.

FURTHERMORE, the undersigned Plaintiff, Inmar Cruz, being of lawful age, agrees 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 WHEREOF, I, INMAR CRUZ, have hereunto set my hand and seal this 28<sup>th</sup> day of SEPTEMBER, 2011.

IN THE PRESENCE OF:

PLAINTIFF:

[Signature]  
WITNESS

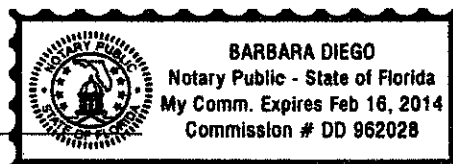
[Signature]  
INMAR CRUZ

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 28<sup>th</sup> day of SEPTEMBER, 2011, by INMAR OVIDIO CRUZ, who [ ] is personally known to me; OR [] has produced FLORIDA DRIVER LICENSE as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

[Signature]  
Notary Public  
My Commission Expires: 2/16/2014

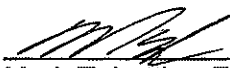


**STATEMENT OF ATTORNEY FOR RELEASOR**

I, Mark T. Luttier, Esq., of the Law Office of Burman, Critton, Luttier, & Coleman, LLC, state that I am the attorney for Inmar Cruz, the above-signed Releasor, that I have explained to Mr. Cruz all the terms of this Release and the Settlement Agreement upon which it is based and that Mr. Cruz has represented to me that he understands all those terms and their significance. Inmar Cruz 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 Burman, Critton, Luttier, & Coleman, LLC, 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 8/25/11

  
for Mark T. Luttier, Esq. 33640  
Attorney for Inmar Cruz  
Florida Bar No. 302864



**BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT**

REQUEST DATE: 9/9/2011 REQUESTED BY: County Attorney's Office

AMOUNT: \$ 70,000

AGENDA DATE: 10/4/2011

**BUDGET ACCOUNT NUMBER (IF KNOWN)**

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

FUNDING SOURCE:

BAS APPROVED BY: \_\_\_\_\_



Scott Marting

DATE: \_\_\_\_\_

9/9/11