

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 20, 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 \$60,000 in the personal injury action styled James E. Danni and Paulette Danni, his wife v. Palm Beach County, Case No. 502011CA000801XXXXMB(AH).

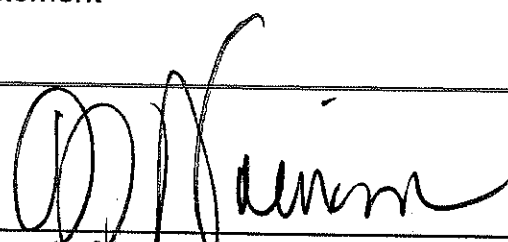
Summary: On May 7, 2009, the driver of a County vehicle ran a red light at the intersection of South Quadrille and Okeechobee Boulevards, and was broadsided by a vehicle being driven by James E. Danni. After seeing a chiropractor, physical therapist, M.D., and having the latest MRI on March 31, 2011, Mr. Danni was diagnosed with significant permanent injuries. Mr. Danni's vehicle was damaged in the amount of \$4,700. Mrs. Danni has a loss of consortium claim. This settlement, reached at Mediation and subject to the approval of the Palm Beach County Board of County Commissioners, is for \$60,000, inclusive of attorney's fees and costs. Staff, including the Risk Management Roundtable, concurs that this settlement is in the best interest of Palm Beach County. Countywide (PM)

Background and Justification: Plaintiff, James E. Danni was driving his vehicle at approximately 3:10 p.m., westbound on Okeechobee Boulevard when he collided with a County vehicle, a 24,000 lb. bucket truck that was traveling southbound on Quadrille Boulevard. The County vehicle ran a red light, causing Mr. Danni to collide with the County vehicle close to the middle of the intersection. Mr. Danni's permanent injuries consist of three herniated disks with continued pain radiating from his neck down into his fingers and occasionally into his legs. He has lost much manual dexterity and has trouble working. Mr. Danni has incurred \$29,000 in medical bills with future surgery listed as probable. Mrs. Danni, his wife, has brought a loss of consortium claim. The statutory cap for these claims is \$200,000. The County driver was assessed one (1) point. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$60,000.

Attachments:

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

Recommended by: _____


County Attorney

12/7/11
Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$60,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$60,000</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] 12/8/11
 OFMB VA 12/7/11
[Signature] 12/9/11
 Contract Development and Control

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

[Signature]
 Department Director

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

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 20th day of December, 2011, by and between **PALM BEACH COUNTY** (the "COUNTY"), a political subdivision of the State of Florida, and **JAMES E. DANNI and PAULETTE DANNI, his wife.**

WHEREAS, JAMES E. DANNI and PAULETTE DANNI sued the COUNTY in a lawsuit presently styled James E. Danni and Paulette Danni, his wife v. Palm Beach County, Case No. 502011CA000801XXXXMB(AH), in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on May 7, 2009, at or near the intersection of Okeechobee Boulevard and Quadrille Boulevard, in West 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 five (5) days Bill Bone, 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. The COUNTY shall pay to James E. Danni and Paulette Danni, his wife, the amount of **SIXTY THOUSAND DOLLARS AND 00/100 (\$60,000.00)**, by a check made payable to **LARMOYEUX & BONE, P.L., TRUST ACCOUNT**, within thirty (30) days of approval of this Settlement Agreement by the Palm Beach County Board of County Commissioners.

4. Bill Bone, Esq. shall not disburse, and James E. Danni and Paulette Danni, his wife, 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 served on the County in accordance with paragraph 2 above.

5. James E. Danni and Paulette Danni, his wife, acknowledge and agrees that they are responsible for the payment of any liens against this settlement and that the COUNTY shall not be responsible for any portion of said liens, if any.

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. James E. Danni and Paulette Danni, his wife, declare and acknowledge 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:

Bill Bone
Signature
Bill Bone
Print Name

PLAINTIFF:

[Signature]
JAMES E. DANNI

WITNESS:

Bill Bone
Signature
Bill Bone
Print Name

PLAINTIFF:

[Signature]
PAULETTE DANNI

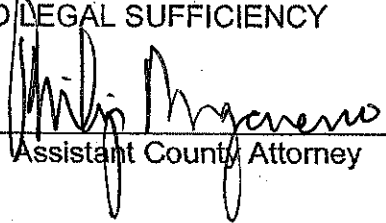
ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____

By: _____
Shelley Vana, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **JAMES E. DANNI and PAULETTE DANNI, his wife**, being of lawful age, for the sole consideration of **SIXTY THOUSAND DOLLARS (\$60,000.00)**, to the Undersigned in hand paid, 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 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 7, 2009**, at or near the intersection of Okeechobee Boulevard and Quadrille Boulevard in West 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 as a result of, or arising out of the aforementioned incident on May 7, 2009.

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 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/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) is/are entitled.

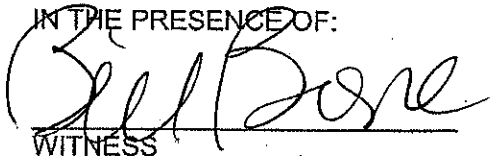
FURTHERMORE, the undersigned Plaintiffs, James E. Danni and Paulette Danni, his wife, being of lawful age, agree(s) to be solely responsible for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, 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, WE, JAMES E. DANNI and PAULETTE DANNI, HIS WIFE, have hereunto set my hand and seal this 2nd day of December, 2011.

IN THE PRESENCE OF:


WITNESS

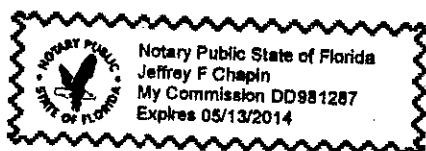
PLAINTIFF:

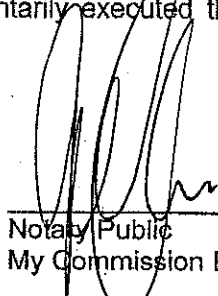

JAMES E. DANNI

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 2nd day of December, 2011, by JAMES E. DANNI, 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]




Notary Public
My Commission Expires:

IN THE PRESENCE OF:

Bill Bone
WITNESS

PLAINTIFF:

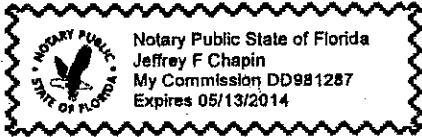
Paulette Danni
PAULETTE DANNI

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 2nd day of December, 2011, by PAULETTE DANNI, 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]

Jeffrey F. Chapin
Notary Public
My Commission Expires:



COUNTY ATTORNEY'S OFFICE
BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 11/30/2011 REQUESTED BY: Philip Mugavero PHONE: 355-6717

ORIGINAL CONTRACT AMOUNT: \$60,000

BCC RESOLUTION#/AGENDA ITEM#: 3D-2 for 12/20/2011

REQUESTED AMOUNT: \$60,000

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES:

Settlement for Case No. 502011CA000801XXXXMB(AH) James E. Danni v. Palm Beach County

TOTAL \$60,000

BUDGET ACCOUNT NUMBER

FUND: 5010 DEPT: 200 UNIT: 7130 OBJ: 4511

FUNDING SOURCE (CHECK ALL THAT APPLY): AD VALOREM _____ OTHER _____

BAS APPROVED BY: Jessica Kolls

DATE:

ENCUMBRANCE NUMBER: