

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: March 6, 2012 [X] 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 \$100,000 in the wrongful death action styled Seymour Reiner, as Personal Representative of the Estate of Sidell Reiner, deceased, vs. Comcast IP Phone, LLC; Deltacom Information Systems, Inc.; Interstate Fibernet, Inc.; City Of Boynton Beach; Boynton Beach Fire Rescue; Palm Beach County a/k/a Palm Beach County Board of County Commissioners, Case No. 502010CA026764XXXMB AG.

**Summary:** On Thanksgiving Day in 2009, decedent, 81, was preparing for her family's arrival at home. Her husband left their home in unincorporated Boynton Beach at approximately 9:00 a.m. to pick up their grandson at the Ft. Lauderdale airport. After he left, Plaintiff was retrieving some glassware from a china cabinet. She dropped a glass which struck her left foot, causing a laceration in her artery. She attempted to contact Emergency personnel by dialing "0". Despite the numerous calls for help to various agencies, including Palm Beach County Fire Rescue, help did not arrive in time to save her and she bled to death. Her husband found her deceased when he returned home.

Staff, including the Risk Management Roundtable Committee, concurs that this settlement is in the best interest of Palm Beach County. Countywide (SCL)

**Background and Justification:** On Thanksgiving Day, 2009, the decedent's husband left their home in unincorporated Boynton Beach to pick up their grandson at the Ft. Lauderdale airport. Plaintiff was preparing for the Thanksgiving festivities when she dropped a glass on her foot, lacerating an artery. She dialed "0" for help and was connected to the Comcast/Deltacom operator who transferred her to the Boynton Beach Police and Fire Rescue Department. (Continued on Page 3)

**Attachments:**

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

Recommended by: \_\_\_\_\_

County Attorney

Date

2/17/12

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>\$100,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$100,000</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

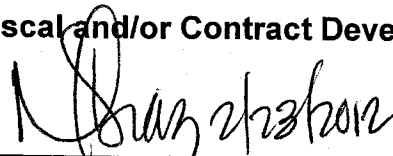
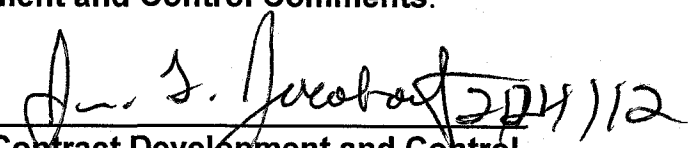
Reporting Category \_\_\_\_\_

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

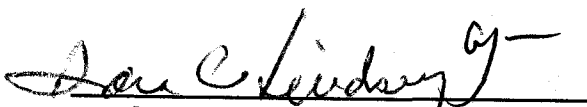
**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

 _____ OFMB # 102112 SN 12/12/12 VA 2/21/12 2/21/12	 _____ Contract Development and Control 2-24-12 Buchholz
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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.**

## **Background and Justification (Continued from Page 1)**

After several minutes and multiple calls and without having an accurate address, Boynton Beach Fire Rescue dispatch transferred the call to Palm Beach County Fire Rescue. Palm Beach County Fire Rescue dispatched EMS on an "unknown medical" call to an incorrect address. Upon learning the correct address from Boynton Beach dispatch, Palm Beach County Fire Rescue proceeded to the decedent's home. They found the door locked, blinds closed, and no car in the garage. After walking around the premises and believing that the call was "unfounded," they departed the scene after five minutes without ever making any contact with the decedent. Phone records prove that the decedent was still alive and making calls during the time EMS was on scene.

Plaintiff alleges that had EMS looked through a gap in the window by the front door, they would have seen blood, glass, and a shoe on the floor and would have broken down the door. (Pictures taken during the subsequent investigation verify that the blood, glass, and a shoe were visible from the outside looking in through the gap in the window.) The decedent bled to death and was discovered by her husband and grandson upon their return from Ft. Lauderdale.

As a result of this incident, Palm Beach County Fire Rescue changed its policy and procedure to require that Fire Rescue make actual contact with a patient on every call. This change in policy has since resulted in saved lives.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$100,000.

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of January, 2012, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and Seymour Reiner, as Personal Representative of the Estate of Sidell Reiner, deceased.

WHEREAS, Seymour Reiner sued the COUNTY in a lawsuit presently styled Seymour Reiner, as Personal Representative of the Estate of Sidell Reiner, deceased, vs. Comcast IP Phone, LLC; Deltacom Information Systems, Inc.; Interstate Fibernet, Inc.; City Of Boynton Beach; Boynton Beach Fire Rescue; Palm Beach County a/k/a Palm Beach County Board of County Commissioners, v. Palm Beach County, Case No. 502010CA026764XXXMB AG, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on November 26, 2009, at 9783 Lemonwood Way in unincorporated Boynton Beach, in 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, Gary M. Cohen, 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 Seymour Reiner the amount of One Hundred Thousand Dollars (\$100,000), by a check made payable to Seymour Reiner as Personal Representative of the Estate of Sidell Reiner and Grossman Roth, P.A. Trust Account.

4. Gary M. Cohen, Esq. shall not disburse, and Seymour Reiner 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. Seymour Reiner 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. Seymour Reiner, 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. Seymour Reiner 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 he 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.

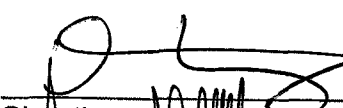

11. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.


12. This cause shall remain in full force and effect against Defendants, Comcast IP Phone, LLC, Deltacom, Inc., Deltacom Information Systems, Inc., Interstate Fibernet, Inc., and the City of Boynton Beach.

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

WITNESS:

PLAINTIFF:

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Seymour Reiner

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, **SEYMOUR REINER**, being of lawful age, for the sole consideration of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**, 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 November 26, 2009, at 9783 Lemonwood Way in unincorporated Boynton 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, funeral, 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 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 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 Releasor is entitled.

FURTHERMORE, the undersigned Plaintiff, Seymour Reiner as Personal Representative of the Estate of Sidell Reiner, 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.

FURTHERMORE, this cause shall remain in full force and effect against Defendants, Comcast IP Phone, LLC, Deltacom, Inc., Deltacom Information Systems, Inc., Interstate Fibernet, Inc. and the City of Boynton Beach.

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, Seymour Reiner, have hereunto set my hand and seal this 14<sup>th</sup> day of Feb, 2012.

IN THE PRESENCE OF:

[Signature]  
WITNESS

PLAINTIFF:  
[Signature]  
Seymour Reiner

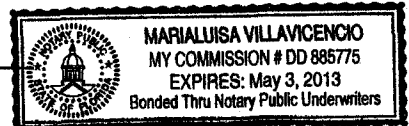
STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 14 day of February, 2012, by Seymour Reiner, 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]

[Signature]

Notary Public  
My Commission Expires:





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

CASE NO. 502010CA026764XXXXMB AG

SEYMOUR REINER, as Personal  
Representative of the Estate of  
SIDELL REINER, deceased,  
Plaintiff,

v.

COMCAST IP PHONE, LLC;  
DELTACOM INFORMATION  
SYSTEMS, INC.; DELTACOM,  
INC.; INTERSTATE FIBERNET,  
INC.; CITY OF BOYNTON BEACH;  
PALM BEACH COUNTY a/k/a  
PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS,  
Defendants.

**STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT, PALM BEACH COUNTY, ONLY**

COMES NOW the Plaintiff, Seymour Reiner, as Personal Representative of the Estate of Sidell Reiner, deceased, with his attorney, joined by the Defendant, Palm Beach County, by and through its attorney, and show unto the Court that all matters in controversy have been compromised and settled to the satisfaction of the parties. It is agreed that the action of the Plaintiff against Defendant, PALM BEACH COUNTY, only, be dismissed with prejudice, each party to bear its own costs and attorney's fees. The Plaintiff shall hold Defendant, PALM BEACH COUNTY, harmless from all subrogation claims and other liens that are or may be claimed by any party as a result of the matters giving rise to the Plaintiff's claim against Defendant, PALM BEACH COUNTY. This cause shall remain in full force and effect against Defendants, Comcast IP Phone, LLC, Deltacom, Inc., Deltacom Information Systems, Inc., Interstate Fibernet, Inc. and the City of Boynton Beach.

Dated: \_\_\_\_\_

Dated: 2/14/12

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

Sara C. Lindsey  
Fl. Bar No.: 435880  
Assistant County Attorney  
300 N. Dixie Hwy., Ste. 359  
West Palm Beach, FL 33401

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

Gary M. Cohen, Esq.  
Fl. Bar No.: 310433  
Counsel for Plaintiff  
925 S. Federal Hwy., Ste. 350  
Boca Raton, FL 33432

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 2010 CA 02 6764XXXXMB

SEYMOUR REINER, as Personal  
Representative of the Estate of  
SIDELL REINER, deceased,  
Plaintiff,

vs.

COMCAST IP PHONE, LLC;  
DELTACOM INFORMATION  
SYSTEMS, INC.; DELTACOM,  
INC.; INTERSTATE FIBERNET,  
INC.; CITY OF BOYNTON BEACH;  
PALM BEACH COUNTY a/k/a  
PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS,  
Defendants.

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**FINAL ORDER OF DISMISSAL WITH PREJUDICE AS TO DEFENDANT  
PALM BEACH COUNTY ONLY**

THIS CAUSE, having come before the Court upon the foregoing Stipulation, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the above-styled case is hereby Dismissed with Prejudice as to Defendant Palm Beach County ONLY. Each party shall bear its own costs and attorney's fees, and the Plaintiff, Seymour Reiner, As Personal Representative of the Estate of Sidell Reiner, shall hold the Defendant Palm Beach County, harmless from all subrogation and other liens that are or may be claimed by and party as a result of the matters giving rise to Plaintiff's claims against Defendant, Palm Beach County. This cause shall remain in full force and effect against Defendants, Comcast IP Phone, LLC, Deltacom, Inc., Deltacom Information Systems, Inc., Interstate Fibernet, Inc. and the City of Boynton Beach.

DONE AND ORDERED, in West Palm Beach, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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DAVID F. CROW  
CIRCUIT COURT JUDGE

Copies Furnished to all Counsel on the attached service list