

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 14, 2012 Consent Regular
 Public Hearing
 Department: County Attorney
 Submitted By:
 Submitted For:

I. EXECUTIVE BRIEF

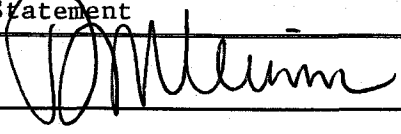
Motion and Title: Staff recommends motion to approve: Settlement Agreement in Paul Albores v. Palm Beach County for \$400,000, inclusive of attorney’s fees and costs.

Summary: Mr. Albores, a former Palm Beach County Fire Rescue employee, filed a three count lawsuit against the County and alleged the following claims: Count I: workers’ compensation retaliation in violation of §440.205, Florida Statute; Count II: FMLA interference with protected leave; and Count III: FMLA retaliation. The parties attended court ordered mediation on July 18, 2012 and reached a tentative settlement agreement with the following terms and conditions: 1. The agreement is subject to Board of County Commission review and approval; 2. The County shall pay Mr. Albores \$400,000, inclusive of attorney’s fees and costs; 3. Mr. Albores shall dismiss the lawsuit with prejudice and provide the County with a full release of liability. Countywide (AP)

Background and Policy Issues: Plaintiff is a former Palm Beach County Fire Rescue employee. In 2011 he filed a three count lawsuit against the County and alleged the following claims: Count I: workers’ compensation retaliation in violation of §440.205, Florida Statute; Count II: FMLA interference with protected leave; and Count III: FMLA retaliation. With respect to Count I, Plaintiff alleges that he was in the process of completing all of the required terms and conditions of his written Pre-Employment Understanding when, on April 5, 2010, he was injured on the job. As a result of that injury, he sought medical treatment and worker’s compensation benefits. He contends that the County wrongfully denied him workers’ compensation benefits as of May 27, 2010 and wrongfully terminated him on June 22, 2010 in retaliation for having filed this workers’ compensation claim as well as a previous one arising out of an October 15, 2008 injury on the job. He is seeking lost wages in the past and the future as well as compensatory damages for pain and suffering. (continued on page 3)

Attachments:

- 1. Settlement Agreement
- 2. Budget Availability Statement

Recommended by:  7/31/12
Date

Approved by: _____ Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>\$400,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$400,000</u>	_____	_____	_____	_____
# 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] 8/2/12
OFMB
ok 8/15/12
8/15/12

[Signature] 8/13/12
Contract Development and Control
8-2-12 Article

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Policy Issues: (continued from page 1):

With respect to Counts II and III, Plaintiff alleges that the County failed to comply with all mandatory notice requirements of the FMLA regarding the protected FMLA leave he requested and took during his tenure at Fire Rescue; interfered with his attempt to take protected FMLA leave; unlawfully refused to reinstate him to the position of employment he enjoyed prior to taking protected FMLA leave in December 2009; unlawfully refused to provide him additional time to complete all of his Pre-Employment Understanding requirements upon returning to work in March 2010; and unlawfully terminated his employment in retaliation for taking protected FMLA leave. Plaintiff is seeking statutory damages including past lost wages, interest, liquidated damages, attorney's fees and costs, and front pay in lieu of reinstatement. Plaintiff submitted a settlement demand to the County for \$855,000.

The County has exposure to liability on all three claims Plaintiff is pursuing.

With respect to damages, under the FMLA, Plaintiff can seek to recover lost wages. The County has estimated that Plaintiff's lost wages and benefits for three years is approximately \$320,000. Whatever lost wages and benefits a jury awarded Plaintiff, he would be entitled under the FMLA to an equal amount in the form of liquidated damages. Therefore, if the jury awarded Plaintiff \$200,000 in lost wages and benefits, he would receive an additional \$200,000 as liquidated damages. In addition, Plaintiff is authorized to request under the FMLA his attorney's fees and costs, as well as the equitable remedy of front pay for a period of time (for example, three to five years) in lieu of reinstatement. Consequently, a total damage award under the FMLA has the potential of being very significant.

With respect to his workers' compensation retaliation claim, Plaintiff has the ability to recover pain and suffering type damages.

After having engaged in discovery, the parties attended court ordered mediation on July 18, 2012 and reached a tentative settlement agreement with the following terms and conditions: 1. The agreement is subject to Board of County Commission review and approval; 2. The County shall pay Mr. Albores \$400,000, inclusive of attorney's fees and costs; 3. Mr. Albores shall dismiss the lawsuit with prejudice and provide the County with a full release of liability.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as "Agreement") stems from a lawsuit Plaintiff, PAUL ALBORES, (hereinafter referred to as "FIRST PARTY"), filed against Defendant PALM BEACH COUNTY, (hereinafter referred to as "SECOND PARTY"), in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 502011CA011249XXXXMB AA (hereinafter referred to as the "LAWSUIT"). FIRST PARTY and SECOND PARTY, as more specifically set forth below, have agreed to settle the LAWSUIT, as well as any and all other claims FIRST PARTY has against SECOND PARTY arising out of, relating or pertaining to the LAWSUIT, or which could have, and should have, been raised in the LAWSUIT.

In consideration of these premises, and the payment of \$400,000.00 by SECOND PARTY to FIRST PARTY, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby conclusively deemed acknowledged by the parties to this Agreement, FIRST PARTY and SECOND PARTY hereby stipulate and agree as follows:

1. The AGREEMENT is subject to the review and approval of the Palm Beach County Board of County Commissioners.
2. SECOND PARTY shall pay FIRST PARTY the sum of four hundred thousand dollars (\$400,000.00) within forty five days (45) of approval of this AGREEMENT by the Palm Beach County Board of County Commissioners. Said payment shall be directed to counsel for FIRST PARTY and made payable to "Christopher C Copeland P.A. Trust Account and Paul Albores".
3. FIRST PARTY and SECOND PARTY have amicably resolved the LAWSUIT, as well as any and all claims FIRST PARTY has against SECOND PARTY arising out of, relating or pertaining to the LAWSUIT and/or which could or should have been raised in the LAWSUIT.
4. Upon the execution of this AGREEMENT and approval of this agreement by the Palm Beach County Board of County Commissions, FIRST PARTY shall dismiss the LAWSUIT with prejudice, each side to bear their own attorneys' fees and costs.
5. FIRST PARTY shall execute a release in favor of SECOND PARTY.

FIRST PARTY and SECOND PARTY hereby declare and represent to each other that FIRST PARTY and SECOND PARTY have relied wholly upon their own judgment, and judgment of their agents in entering into this AGREEMENT, and they further represent that they have not been influenced to any extent whatsoever in entering into this AGREEMENT by any representations or statements regarding the value of their respective claims, or the legal liability therefore, or regarding any other matters made by the other party or by any person or persons representing or employed by such other party. Each party further represents to the other that each party giving a release herein set forth knows, has examined, and has investigated to their full satisfaction all matters concerning the incidents and claims between or among them or at issue in the LAWSUIT, and that the settlement of their differences and the execution of this AGREEMENT is not based upon, or induced by, any representations made by the other party,

their respective counsel, or by any person or persons representing or employed by such other party concerning the subject matter of the LAWSUIT.

FIRST PARTY does hereby demise, acquit, satisfy and forever discharge SECOND PARTY including any and all of SECOND PARTY's respective agents, employees, County Commissioners, affiliates, members, heirs, legal representatives and assigns, jointly and severally, of and from all action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the FIRST PARTY ever had, now has, or which any personal representative, successor, heir or assign of said FIRST PARTY had, hereafter can, shall or may have, against the SECOND PARTY, for any and all manner of actions, claims, cause or causes of action or damages arising out of, relating or pertaining to the LAWSUIT, or which should have or could have been raised or asserted in the LAWSUIT.

FIRST PARTY agrees to pay and resolve any and all medical bills and/or health insurance and/or third party liens from the proceeds of the settlement.

Each party to this AGREEMENT hereby declares and represents to each other party to this AGREEMENT that no promise or agreement not herein expressed has been made to the other; that this AGREEMENT contains the entire agreement between FIRST PARTY and SECOND PARTY and that the terms of the AGREEMENT are contractual and not a mere recital; and that this AGREEMENT may only be modified by a subsequent written agreement executed by all parties.

FIRST PARTY and SECOND PARTY hereby declare to one another that they have carefully read the foregoing AGREEMENT, that the contents have been explained to them by their respective attorneys, that they understand the contents thereof, and that they have signed this AGREEMENT voluntarily and of their own free will.

Whenever and wherever the context of this AGREEMENT requires, any references to the singular shall read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed, and interpreted to mean the feminine gender and vice-versa; any reference to the natural gender shall be read, construed, and interpreted to mean the masculine or feminine gender, whichever is applicable.

IN WITNESS HEREOF:

**FIRST PARTY –
PAUL ALBORES**

Paul Albores, Plaintiff

Date

Witness

Witness

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Christopher C. Copeland
Attorney for Plaintiff

Date

SECOND PARTY - PALM BEACH COUNTY, FLORIDA

By: Shelley Vana, Chair
Board of County Commissioners

Date

Witness

Witness

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Andrew M. Pelino
Assistant County Attorney,
Palm Beach County, Florida

Date

**APPROVED AS TO TERMS
AND CONDITIONS**

Chief Steve Jerauld
Fire Administrator

Date

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 8/11/12 REQUESTED BY: County Attorney's Office

REQUESTED FOR: Paul Albores v. PBC

REQUESTED AMOUNT: \$400,000 AGENDA DATE: 8/14/12

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: Jessica Kolb DATE: 8/1/12
Jessica Kolb