

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 4, 2013

Consent Regular
 Public Hearing

Department:

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: a) approve Settlement Agreement in Kenneth Kegel v. Palm Tran, Inc., Case No.: 502012CA017993XXXXMB AD (Fifteenth Judicial Circuit Court) for Fifty Five Thousand Dollars and No Cents (\$55,000.00), inclusive of attorney's fees and costs.

Summary: Plaintiff Kenneth Kegel ("Kegel") sued Palm Tran Inc. for injuries allegedly sustained when the bus upon which he was traveling started moving before he could take a seat and then made a sudden stop. The event allegedly occurred in Palm Beach Gardens, Florida. Palm Tran has no independent record of the event, although Kegel did report the claim in a telephone call placed to Palm Tran's customer service on the date the incident allegedly took place.

The case is currently set on a trial docket that runs from May 13, 2013, to July 5, 2013. The parties have drafted a proposed settlement agreement that would compensate Kegel for his alleged injuries in the amount of Fifty Five Thousand Dollars and No Cents (\$55,000.00), inclusive of attorney's fees and costs.

Background and Justification: Plaintiff Kenneth Kegel ("Kegel") sued Palm Tran Inc. for injuries allegedly sustained when the bus upon which he was traveling started moving before he could take a seat and then made a sudden stop. The event allegedly occurred in Palm Beach Gardens, Florida near the intersection of Burns Road and Gardens East Drive. Palm Tran has no independent record of the alleged event, although Kegel did report the claim in a telephone call placed to Palm Tran's customer service on the date the incident allegedly took place. (continued)

Attachments:

1. Settlement Agreement
2. ~~Budget Availability Statement~~

Recommended by:


County Attorney

5/24/13

Date

Approved by:

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$55,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____

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
5/28/13	5/30/13
DM 5-24-13	5-29-13 Bid Keeler

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: Kegel suffered a knee injury as a result of the alleged incident and required surgery. Kegel also complains of back pain, which he attributes to the fall. Kegel incurred \$54,866.00 in medical expenses as a result of the knee injury. Kegel has been given a 3-4% permanent impairment rating as a result of his knee injury. His treating doctor opines that occasional palliative care may be required in the future.

Staff, including Risk Management and Palm Tran, recommend that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Kegel. Countywide (ATP)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2013, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and Kenneth Kegel.

WHEREAS, Kenneth Kegel sued the COUNTY in a lawsuit presently styled Kenneth Kegel v. Palm Beach County, Case No.: 502012CA017993XXXXMB AD, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident he alleges occurred on September 26, 2011, while he was riding on a Palm Tran bus at or near the intersection of Burns Road and Gardens East Drive, Palm Beach Gardens, 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, Robert E. Gordon, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims (attached hereto as Exhibit A and incorporated herein by reference), and 3) the Stipulation and Final Order of Dismissal with Prejudice (attached hereto as Exhibit B and incorporated herein by reference).

3. Within a reasonable time of full execution and receipt hereof, and subject to final approval by the Palm Beach County Board of County Commissioners, the COUNTY shall pay to Kenneth Kegel the amount of **Fifty-five Thousand Dollars and No Cents (\$55,000.00)**, by a check made payable to Gordon and Doner, P.A.

4. Robert E. Gordon, Esq. shall not disburse, and Kenneth Kegel 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. Kenneth Kegel 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.

6. **FURTHERMORE**, the undersigned Plaintiff, Kenneth Kegel, 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.

7. **FURTHERMORE**, the undersigned Plaintiff, Kenneth Kegel, being of lawful age, agrees to be responsible for any claims or liens by Medicare and agrees that he will defend and hold harmless the Defendant, Palm Beach County, from any liens, suits, or actions arising under the Medicare Secondary Payer Statute (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

8. Each party shall bear its respective attorneys fees and costs.

9. This Settlement Agreement does not constitute an admission of liability by any party.

10. 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.

11. Kenneth Kegel 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.

12. This Settlement Agreement shall be binding on the parties hereto, his assigns, transferees, heirs, and other successors in interest.

13. 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.

Kenneth L. Kegel

Plaintiff, Kenneth Kegel

Chuck D. Cohen
Director of Palm Tran, Inc.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

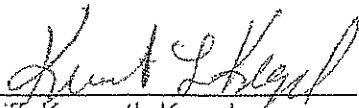
PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

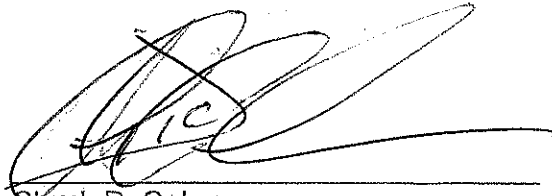
By: _____

By: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *Amy Taylor Petrick*
Sr. Assistant County Attorney


Plaintiff, Kenneth Kegel


Chuck D. Cohen
Director of Palm Tran, Inc.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____

By: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Sr. Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, (**KENNETH KEGEL**), being of lawful age, for the sole consideration of **FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00)**, 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 **September 26, 2011**, at or near the intersection of Burns Road and Gardens East Drive in Palm Beach Gardens, 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 agree(s) 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 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

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 Plaintiff, Kenneth Kegel, being of lawful age, agree(s) be 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.

17th IN WITNESS HEREOF, I, Kenneth Kegel, have hereunto set my hand and seal this day of May, 2013.

IN THE PRESENCE OF:

PLAINTIFF:

Waleska Sanchez
WITNESS Waleska Sanchez

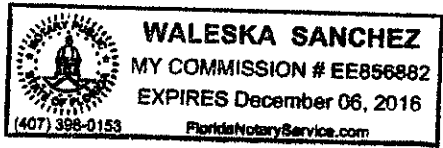
Kenneth Kegel
KENNETH KEGEL

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 17th day of May, 2013, by Kenneth Kegel, 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]

Waleska Sanchez
Notary Public
My Commission Expires:



IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

CASE NO.: 502012CA017993XXXXMB AD

KENNETH KEGEL,

Plaintiff,

v.

PALM TRAN, INC., a Florida Non Profit
Corporation,

Defendant.

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, KENNETH KEGEL, with his attorney, joined by the Defendant, PALM BEACH COUNTY, by and through its attorney, and shows 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, 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.

Dated: _____

Dated: _____

By: _____
Amy Taylor Petrick
Fl. Bar No.: 0315590
Assistant County Attorney
300 N. Dixie Hwy., Ste. 359
West Palm Beach, FL 33401

By: _____
Robert E. Gordon, Esq.
Fl. Bar No.: _____
Counsel for Plaintiff
4114 Northlake Boulevard
Palm Beach Gardens, FL 33410

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

CASE NO.: 502012CA017993XXXXMB AD

KENNETH KEGEL,

Plaintiff,

v.

PALM TRAN, INC., a Florida Non Profit
Corporation,

Defendant.

FINAL ORDER OF DISMISSAL WITH PREJUDICE

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 cause is hereby Dismissed with Prejudice. Each party shall bear its own costs and attorney's fees, and the Plaintiff, KENNETH KEGEL, shall hold the Defendant, PALM BEACH COUNTY, harmless from all subrogation and other liens that are or may be claimed by any party as a result of the matters giving rise to Plaintiff's claims against Defendant PALM BEACH COUNTY.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 2013.

Honorable Gregory Keyser
Circuit Court Judge

Copies Furnished:

Amy Taylor Petrick, Esq., Sr. Assistant County Attorney (via interoffice mail)

Robert E. Gordon, Esq., Gordon & Doner, P.A., 4114 Northlake Blvd, Palm Beach Gardens, FL 33410

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 5/24/13 REQUESTED BY: County Attorney's Office

REQUESTED FOR: Kenneth Kegal Claim # 000103-009464-AB-01

REQUESTED AMOUNT: \$55,000 AGENDA DATE: 6/4/13

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:  DATE: 5/28/13
Jessica Kolb