

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 11, 2014 [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 \$85,000 in the personal injury action styled Christine Lewis v. Palm Beach County, Case No. 502013CA008047XXXXMB(AA).

Summary: On July 23, 2012, the Plaintiff, Christine Lewis, was picking up her grandson at Dyer Park, located at 7301 Haverhill Road, in West Palm Beach. Ms. Lewis slipped and fell on an asphalt walking path where water was ponding. Ms. Lewis fractured her ankle and has two, seven-hole plates with screws in the bone to support her ankle. An Independent Medical Exam found there was a 5% permanent impairment rating and future medical treatment required. Ms. Lewis, through her attorney, filed an Offer of Judgment in the amount of \$130,000 and the offer was rejected by the County. A settlement was reached subject to the approval of the Board of County Commissioners for \$85,000, 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)

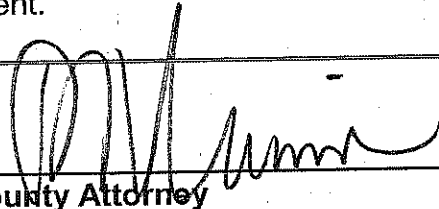
Background and Justification: On July 23, 2012, the Plaintiff, Christine Lewis was picking up her grandson at Dyer Park, located at 7301 Haverhill Road, in West Palm Beach. Ms. Lewis slipped and fell on an asphalt walking path where water was ponding due to a leaking sprinkler head. There was conflicting evidence as to how long the sprinkler head was leaking that caused the water to pond on the path. It appeared that the grading of the ground adjacent to the place on the path where Ms. Lewis fell also contributed to the ponding in this area. County staff at the park conducts continuous and ongoing visual inspections for safety hazards. The primary issue was, given the continuous and ongoing visual inspections by staff at the park, did staff know or should we have known about the leaking sprinkler head prior to the incident. Given the severity of Ms. Lewis' damages, the totality of the surrounding circumstances and exposure to damages at trial up to \$200,000, it is recommended that the County approve the Settlement Agreement in the amount of \$85,000, inclusive of attorney's fees and costs.

Attachments:

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

Recommended by: _____

County Attorney



Date

3/20/14

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$85,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$85,000</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:

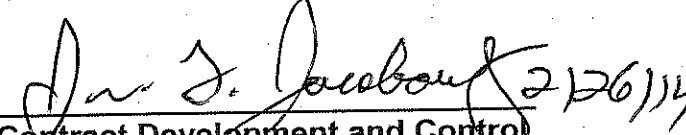
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

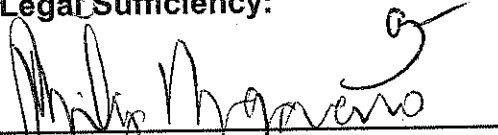


 OFMB



 Contract Development and Control
 2-26-14 *Becker*

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

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

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 12th day of March, 2014, by and between **PALM BEACH COUNTY** (the "COUNTY"), a political subdivision of the State of Florida, and **CHRISTINE LEWIS**.

WHEREAS, CHRISTINE LEWIS sued the COUNTY in a lawsuit presently styled Christine Lewis v. Palm Beach County, Case No. 502013CA008047XXXXMB(AA), in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on July 23, 2012, at Dyer Park, 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.

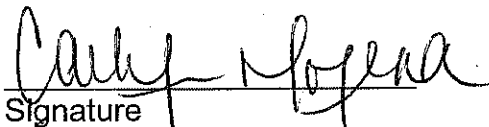
NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

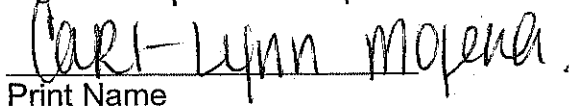
1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Within five (5) days Dale A. Buckner, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims, and 3) the Stipulation and Final Order of Dismissal with Prejudice, attached hereto.
3. The COUNTY shall pay to Christine Lewis the amount of **EIGHTY-FIVE THOUSAND DOLLARS AND 00/100 (\$85,000.00)**, by a check made payable to **STEINGER, ISCOE & GREENE, P.A., TRUST ACCOUNT**, within fourteen (14) days of approval of this Settlement Agreement by the Palm Beach County Board of County Commissioners.
4. Dale A. Buckner, Esq. shall not disburse, and Christine Lewis, 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. Christine Lewis acknowledges and agrees that 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, 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. Christine Lewis 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:


Signature


Print Name

PLAINTIFF:


CHRISTINE LEWIS

ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____

By: _____
Priscilla A. Taylor, Mayor

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, **CHRISTINE LEWIS**, being of lawful age, for the sole consideration of **EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00)**, to the Undersigned in hand paid, does hereby and for hers 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 **July 23, 2012**, at Dyer Park 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 July 23, 2012.

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 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 Plaintiff, Christine Lewis, being of lawful age, agrees 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.

6th IN WITNESS HEREOF, I, CHRISTINE LEWIS, have hereunto set my hand and seal this day of February, 2014.

IN THE PRESENCE OF:

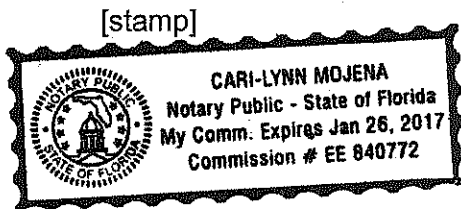
PLAINTIFF:

Ronald Reguera
WITNESS
Print Name: Ronald Reguera

Christine Lewis
CHRISTINE LEWIS

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 6th day of February, 2014, by CHRISTINE LEWIS, who [] is personally known to me; OR [] has produced FDL as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.



Cari-Lynn Mojena
Notary Public
My Commission Expires: JAN. 26, 2017

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

CASE NO. 502013CA008047XXXXMB(AA)

CHRISTINE LEWIS,

Plaintiff,

v.

PALM BEACH COUNTY, FLORIDA, a
political subdivision of the State of Florida,

Defendant.

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, **CHRISTINE LEWIS**, and Defendant, **PALM BEACH COUNTY**, by and through their undersigned counsel, 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, **CHRISTINE LEWIS**, against Defendant, **PALM BEACH COUNTY**, be dismissed with prejudice, each party to bear its own costs and attorney's fees in accordance with the attached Final Order of Dismissal with Prejudice attached hereto as Exhibit "A".

DATED this _____ day of March, 2014.

Philip Mugavero, Esq.
Fl. Bar No.: 931179
Sr. Assistant County Attorney
Palm Beach County Attorney's Office
300 N. Dixie Hwy., Suite 359
West Palm Beach, FL 33401

Dale A. Buckner, Esq.
Fl. Bar No.: 0611654
Counsel for Plaintiff
Steinger, Iscoe & Greene, P.A.
1645 Palm Beach Lakes Blvd., 9th Flr
West Palm Beach, FL 33401

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

CASE NO. 502013CA008047XXXMB(AA)

CHRISTINE LEWIS,

Plaintiff,

v.

PALM BEACH COUNTY, FLORIDA, a
political subdivision of the State of Florida,

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.

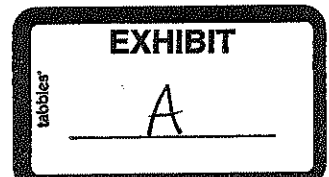
DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this _____ day of March, 2014.

Peter D. Blanc
Circuit Court Judge

Copies Furnished to:

Philip Mugavero, Esq., Senior Assistant County Attorney, Palm Beach County Attorney's Office, 300 North Dixie Highway, Suite 359, West Palm Beach, Florida, 33401.

Dale A. Buckner, Esq., Steinger, Iscoe & Greene, P.A., 1645 Palm Beach Lakes Blvd., 9th Floor, West Palm Beach, Florida, 33401.



BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

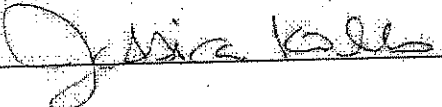
REQUEST DATE: 2/18/14 REQUESTED BY: County Attorney

REQUESTED FOR: Christine Lewis v. Palm Beach County Claim #000103-009425-GB-01

REQUESTED AMOUNT: \$85,000 AGENDA DATE: March 11, 2014

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:  DATE: 2/18/14

Handwritten initials