

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: June 21, 2016

Consent       Regular  
 Public Hearing

Department  
Submitted By: COUNTY ATTORNEY

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 Seventy Five Thousand Dollars (\$75,000.00) in the personal injury case of Robert Terwilliger v. Palm Beach County Board of County Commissioners, Case No. 50 2015 CA 000216 XXXXMB AF.

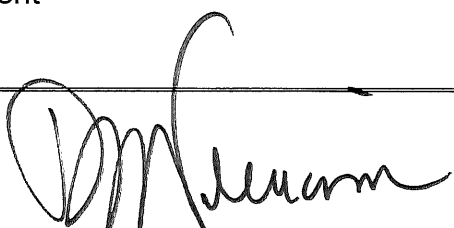
**Summary:** This is a personal injury lawsuit arising from a rear end collision between a Palm Tran bus and a motor vehicle driven by Plaintiff, Mr. Robert Terwilliger. The Palm Tran bus driver caused the accident and was ultimately terminated from Palm Tran, Inc. for having multiple at fault accidents within a two year period. Palm Beach County has already paid Plaintiff \$15,000.00 to resolve his property damage claim. The settlement of Plaintiff's personal injury claim is in the best interests of Palm Beach County and is subject to Board approval and entry of a release of all claims in favor of Palm Beach County. Countywide (AP)

(continued on page 3)

**Attachments:**

- 1. Settlement Agreement and Release
- 2. Budget Availability Statement

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Recommended by:  \_\_\_\_\_  
County Attorney Date

Approved by: N/A \_\_\_\_\_  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	75,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>75,000</b>	_____	_____	_____	_____
 # 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:**

<p><u><i>[Signature]</i></u> 6/10/16 OFMB Ex 4/08 JPC/16</p>	<p><u><i>[Signature]</i></u> 6/14/16 Contract Development and Control 4/13/16 SW</p>
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**B. Legal Sufficiency:**

*[Signature]*  
Senior 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)

On November 20, 2013, Plaintiff, Robert Lloyd Terwilliger, was operating his motor vehicle northbound on U.S. 1 at or near the intersection of Blue Heron Boulevard when he was rear ended by a Palm Tran bus. The Palm Tran bus driver caused the accident and was ultimately terminated from Palm Tran, Inc. for having multiple at fault accidents within a two year period. Palm Beach County paid Plaintiff \$15,000.00 to resolve the property damage claim relating to his motor vehicle. Plaintiff then sued Palm Beach County Board of County Commissioners for injuries allegedly sustained in this accident. Plaintiff, Mr. Robert Lloyd Terwilliger, was 68 years old at the time of the accident. He complained of neck pain and was transported to St. Mary's Hospital by EMS, where he was treated for a neck injury, and released. His subsequent treatment included chiropractic care, MRI of his neck, steroid injections, as well as treatment with a neurosurgeon. His MRI in December of 2013 revealed disc herniations at C2-C6, most predominantly, according to his neurosurgeon, at C3-4. Plaintiff alleges total medical bills of approximately \$49,000. He continues to experience pain and discomfort, as well as a loss of range of motion in the neck. His neurosurgeon estimated neck surgery would cost \$150,000, and opined that he sustained an 8% impairment to the whole person due to his cervical spine injury. This case is currently set on a trial docket that runs from June 27, 2016, to August 5, 2016.

Settlement of this lawsuit is in the County's best interests due to clear liability, the potential for significant damage exposure, substantial expert witness fees and litigation costs, as well as personnel time. Plaintiff initially demanded \$200,000 to settle this lawsuit. The parties have conditionally settled this lawsuit for \$75,000, inclusive of pain and suffering, past medical bills, future medical care and bills, lost wages, future loss of earning capacity, as well as attorney's fees and costs. The settlement is subject to: (1) Board approval; (2) a release of all claims in favor of the County. Based upon the facts and circumstances of this lawsuit, it is recommended that the Board approve the Settlement Agreement, subject to the above referenced conditions.

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (hereinafter referred to as "AGREEMENT") arises out of a motor vehicle accident which occurred on November 20, 2013, in Riviera Beach, Palm Beach County, Florida. On that date Plaintiff, **ROBERT TERWILLIGER**, was operating his motor vehicle northbound on U.S. 1 at or near the intersection of Blue Heron Boulevard when he was involved in a motor vehicle accident with a Palm Tran bus (hereinafter referred to as the "ACCIDENT"). As a result of the ACCIDENT, PLAINTIFF, **ROBERT TERWILLIGER**, (hereinafter referred to as "FIRST PARTY"), filed a lawsuit against DEFENDANT, **PALM BEACH COUNTY** (hereinafter referred to as the "SECOND PARTY"). The lawsuit is styled **ROBERT TERWILLIGER, Plaintiff, vs. PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, Defendant**, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 502015CA000216MB (hereinafter referred to as the "LAWSUIT"). **FIRST PARTY** and **SECOND PARTY**, as more specifically set forth below, have agreed to settle the LAWSUIT.

In consideration of these premises, and the payment of money by **SECOND PARTY** to **FIRST PARTY** as set forth below, 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. **FIRST PARTY** and **SECOND PARTY** have amicably resolved the LAWSUIT.
2. **FIRST PARTY** and **SECOND PARTY** agree on the following settlement terms:

A. **FIRST PARTY** and **SECOND PARTY** agree to settle the LAWSUIT for **SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS**.

B. Settlement of the LAWSUIT is contingent on, and subject to, the approval of the AGREEMENT by the **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**.

3. **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 and attorneys 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, with the assistance of their attorney, 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 attorney, or by

any person or persons representing or employed by such other party concerning the subject matter of the ACCIDENT or LAWSUIT.

4. **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, insurers, excess insurers, 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 **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 ACCIDENT and LAWSUIT, or which should have or could have been raised or asserted in the LAWSUIT.

5. **FIRST PARTY** agrees, acknowledges, and understands that each party shall bear its own costs and attorney's fees relating to the ACCIDENT and the LAWSUIT.

6. **FIRST PARTY** acknowledges that the Centers for Medicare and Medicaid Services ("CMS"), also known as **MEDICARE**, has a right to recover any conditional payments from the settlement funds which were not resolved at the time of the settlement, and may have a right to recovery of the entire settlement amount. **FIRST PARTY** agrees that this settlement includes future medical claims allegedly caused by or related to the ACCIDENT and requested in the LAWSUIT, and **FIRST PARTY** acknowledges his responsibility to protect Medicare's interests as may be required under federal law, including without limitation 42 U.S.C. § 1395y(b). **FIRST PARTY** shall pay, satisfy, and/or resolve any and all past and future medical claims, medical bills, liens, subrogation interests, rights of reimbursement, and requests for payment or reimbursement from any person or entity, including **MEDICARE**, arising out of or relating to the ACCIDENT or LAWSUIT, out of the above settlement proceeds, and agrees, on behalf of himself, as well as his spouse, heirs, executors, successors, and assigns, to defend, indemnify, and hold forever harmless **SECOND PARTY** against any and all such claims, demands or actions, known or unknown, including those arising under federal law, **MEDICARE** or the Medicare Secondary Payer law, made against **SECOND PARTY**.

7. **FIRST PARTY** understands and agrees that should **MEDICARE** or any other federal or state agency find that a Medicare Set-Aside Allocation should have been established and that **MEDICARE's** interests were not adequately protected, **MEDICARE** may require **FIRST PARTY** to expend up to the entire settlement amount on **MEDICARE** covered expenses related to the injuries allegedly sustained in the ACCIDENT and compensated through settlement of the LAWSUIT before **MEDICARE** will provide coverage for the injury. **FIRST PARTY** voluntarily accepts this risk and waives any and all claims and damages of any nature whatsoever against **SECOND PARTY** should **MEDICARE** take such action, including but not limited to a private cause of action against **SECOND PARTY** under the Medicare Secondary Payer Act.



8. **FIRST PARTY** 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 **SECOND PARTY**, and that **SECOND PARTY** denies liability for the **ACCIDENT** and merely intends to avoid further litigation and buy its peace.

9. 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 document executed by all parties.

10. **FIRST PARTY** and **SECOND PARTY** hereby declare to one another that they have carefully read this **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.

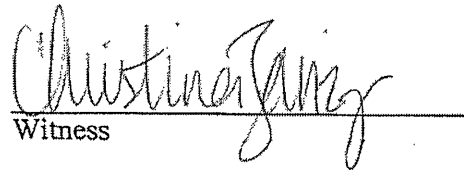
11. Whenever and wherever the context of this **AGREEMENT** requires, any references to the singular shall be read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed, and interpreted to mean the feminine gender and vice-versa; 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:**

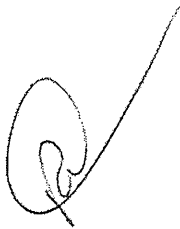
**FIRST PARTY**

  
\_\_\_\_\_  
ROBERT TERWILLIGER,  
Plaintiff

June 3, 2016  
Date

  
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness



**SECOND PARTY**

**ATTEST:**  
Sharon R. Bock, Clerk

**PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS**

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

By: \_\_\_\_\_  
Mary Lou Berger, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_ 6/8/16  
Assistant County Attorney

BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT

REQUEST DATE: 06/06/2016

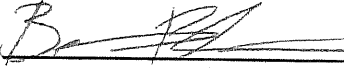
REQUESTED BY: County Attorney

REQUESTED FOR: Robert Terwilliger v. Palm Beach County Board of County Commissioners

REQUESTED AMOUNT: \$75,000.00 AGENDA DATE: June 21, 2016

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:  DATE: 6/8/2016