

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 12, 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 One Hundred Seventy Five Thousand Dollars (\$175,000.00) in the personal injury case of Freddy Ospina and Emilcen Ospina v. Palm Beach County and Palm Tran, Case No. 50 2014 CA015248XXXXMBAE.

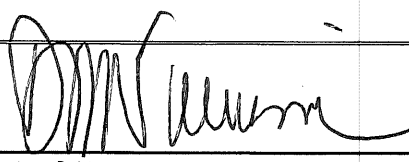

SUMMARY: On July 14, 2012, the Ospinas were sitting in the front seat of a Palm Tran bus when the driver, who was allegedly inattentive, suddenly slammed on brakes to avoid a car that had stopped in front of him. Plaintiffs were ejected from their seats and injured. Both plaintiffs underwent neurosurgery and their combined medical bills exceeded \$250,000. Countywide (SCL)

BACKGROUND AND JUSTIFICATION:

On July 14, 2012, Mr. and Mrs. Ospina were passengers on a Palm Tran bus. The driver came to a sudden stop to avoid striking a car that had stopped in front of him, causing the plaintiffs to be ejected from their seats and injured. Mr. Ospina was thrown to the floor and his wife was thrown into the handicapped seat in front of her. Both Ospinas (and others) were transported by ambulance to an Emergency Room, treated and released. The Ospinas underwent neurosurgery and treated with a chiropractor. Mrs. Ospina had a cervical fusion at two levels and Mr. Ospina had a discectomy in his low back and sustained a rotator cuff tear. Ms. Ospina also had epidural injections without relief. Medical bills for both plaintiffs combined were more than \$250,000 and plaintiffs had no insurance. A Palm Tran Safety and Training Supervisor testified at his deposition that the accident was preventable based on the bus operator's training.

Attachments:

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

Recommended by:  6/24/16 
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	175,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 175,000	 _____	 _____	 _____	 _____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511

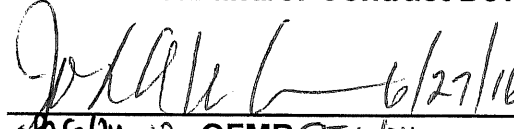
Reporting Category _____

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

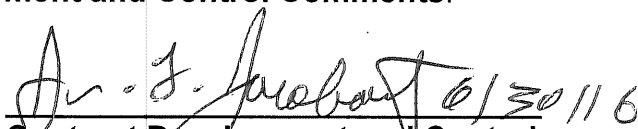
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

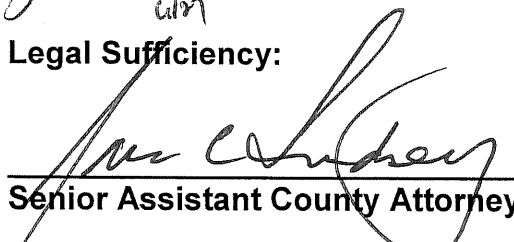


 SP 6/24 JB OFMB ET 6/24
 UM



 Contract Development and Control 6/30/16

B. Legal Sufficiency:



 Senior 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 _____ day of _____, 2016, by and between Palm Beach County, a political subdivision of the State of Florida and Palm Tran, Inc., (“the COUNTY”) and Freddy Ospina and Emilcen Ospina.

WHEREAS, Freddy and Emilcen Ospina sued the COUNTY in a lawsuit presently styled Freddy Ospina and Emilcen Ospina v. Palm Beach County and Palm Tran, Case No. 502014CA015248XXXMB AE, in the Circuit Court of Palm Beach County, Florida (the “Pending Lawsuit”), for damages arising from an incident that occurred on July 14, 2012, at or near intersection of Military Trail and Westgate Avenue, West Palm 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 and Palm Tran, Inc. 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, Eiman Sharmin, 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.
3. Within a reasonable time of full execution and receipt hereof, and subject to approval by the Palm Beach County Board of County Commissioners, the COUNTY shall pay to Freddy Ospina and Emilcen Ospina the amount of One hundred seventy five thousand dollars (**\$175,000.00**), by a check made payable to Sharmin & Sharmin P.A. Trust account F/B/O Freddy Ospina and Emilcen Ospina.
4. Eiman Sharmin, Esq. shall not disburse, and Freddy Ospina and Emilcen Ospina 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. Freddy Ospina and Emilcen Ospina acknowledge and agree that they are responsible for the payment of any liens against this settlement and that the COUNTY and Palm Tran, Inc., shall not be responsible for any portion of said liens. Freddy Ospina

and Emilcen Ospina, on behalf of themselves and their 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. **FURTHERMORE, the undersigned Plaintiffs, Freddy Ospina and Emilcen Ospina, being of lawful age, agree to hold harmless and indemnify the Defendants, Palm Beach County and Palm Tran, Inc., 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 Plaintiffs, Freddy Ospina and Emilcen Ospina, being of lawful age, agree to be responsible for any claims or liens by Medicare and agree that they will defend and hold harmless the Defendants, Palm Beach County and Palm Tran, Inc., 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. Freddy Ospina and Emilcen Ospina declare and acknowledge 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.

WITNESS:

PLAINTIFF:

Signature

FREDDY OSPINA

Print Name

WITNESS:

PLAINTIFF:

Signature

EMILCEN OSPINA

Print Name

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

PALM TRAN, INC.

By: _____
Senior Assistant County Attorney

By: _____
Clinton B. Forbes, Executive Director

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **Freddy Ospina and Emilcen Ospina**, being of lawful age, for the sole consideration of **One hundred seventy five thousand dollars (\$175,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, do hereby and for their executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY and PALM TRAN, INC.**, (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 July 14, 2012, at or near intersection of Military Trail and Westgate Avenue, West Palm Beach, Palm Beach County, Florida.

FURTHERMORE, the Undersigned agree 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 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 them. 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 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 Releasers are entitled.

FURTHERMORE, the undersigned Plaintiffs, Freddy Ospina and Emilcen Ospina, being of lawful age, agrees to hold harmless and indemnify the Defendants, Palm Beach County and Palm Tran, 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.

IN WITNESS HEREOF, I, Freddy Ospina and I, Emilcen Ospina, have hereunto set my hand and seal this ____ day of _____, 2016.

IN THE PRESENCE OF:

PLAINTIFF:

WITNESS

FREDDY OSPINA

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 ____ day of _____, 2016, by _____, 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]

Notary Public
My Commission Expires:

IN THE PRESENCE OF:

PLAINTIFF:

WITNESS

EMILCEN OSPINA

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 ____ day of _____, 2016, by _____, 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]

Notary Public
My Commission Expires:

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 06/17/2016

REQUESTED BY: County Attorney

REQUESTED FOR: Freddy Ospina and Emilcen Ospina v. Palm Beach County and Palm Tran

REQUESTED AMOUNT: \$175,000.00 AGENDA DATE: July 12, 2016

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:  DATE: 6/20/2016