

Agenda Item #:

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

Meeting Date: September 27, 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 \$65,000.00 in the personal injury action styled Kelvin Baker vs. Palm Beach County, Case No. 502015CA001050XXXXMB.

Summary: On January 17, 2013, Mr. Baker was standing on the steps of a Palm Tran bus waiting to pay his fare when the driver opened the bus doors which allegedly struck Plaintiff in the back causing injuries. Plaintiff underwent therapy, injections, and back surgery. He incurred medical bills in excess of \$130,000. Countywide (SCL).

Background and Justification:

On January 17, 2013, Mr. Baker was a passenger on a Palm Tran bus. After boarding the bus and while standing at the front of the bus waiting to pay his fare, the driver proceeded to the next bus stop. When the driver opened the doors at the next stop, Plaintiff was allegedly struck in the back by a door and injured. Plaintiff went to an emergency room, was treated and released. He treated with a chiropractor and underwent injections without relief. He underwent back surgery in June, 2013. His medical bills exceeded \$130,000 and Plaintiff had no insurance. A Palm Tran Safety and Training Supervisor testified at his deposition that the incident was preventable based on the bus operator's training.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$65,000.00.

Attachments:

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

Recommended by:

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	65,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	65,000	_____	_____	_____	_____
# 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:

[Signature] 9/15/16
 9/15/16 OFMB 9/15/16

[Signature] 9/22/16
 Contract Development and Control
 9/22/16

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.

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 31st day of August, 2016, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and Kelvin Baker.

WHEREAS, Kelvin Baker sued the COUNTY in a lawsuit presently styled Kelvin Baker v. Palm Beach County, a political subdivision of the State of Florida, Case No. 502015CA001050XXXMB, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on January 17, 2013, on a Palm Tran bus when Plaintiff was allegedly struck in the back when the driver opened the bus doors at the bus's front entrance, in 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 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, Jeffrey Kirby, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims, and 3) after payment of the settlement funds, the Stipulation for Final Order of Dismissal.
3. Within a reasonable time of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Kelvin Baker the amount of Sixty Five Thousand Dollars (**\$65,000.00**), by a check made payable to Kelvin Baker and Trust Account of the Law Offices of Craig Goldenfarb, P.A.
4. Jeffrey Kirby, Esq. shall not disburse, and Kelvin Baker 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. Kelvin Baker 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. Kelvin Baker, on behalf of himself and his 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 Plaintiff, Kelvin Baker, 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, Kelvin Baker, 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.

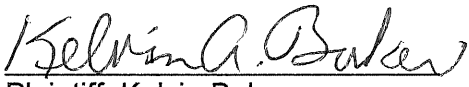
11. Kelvin Baker declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY.

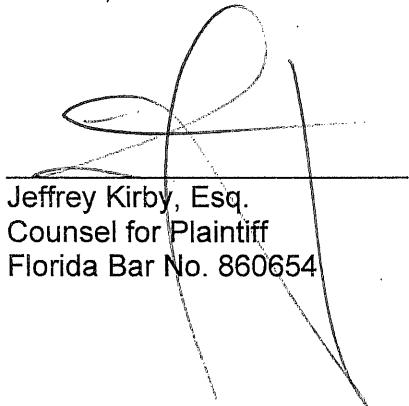
12. This Settlement Agreement shall be binding on the parties hereto, his assigns, transferees, heirs, and other successors in interest.

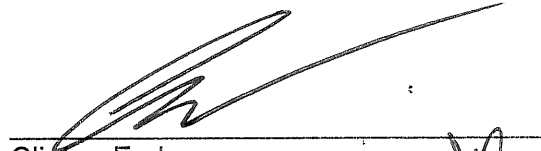
13. The parties represent that no claim that has been; or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

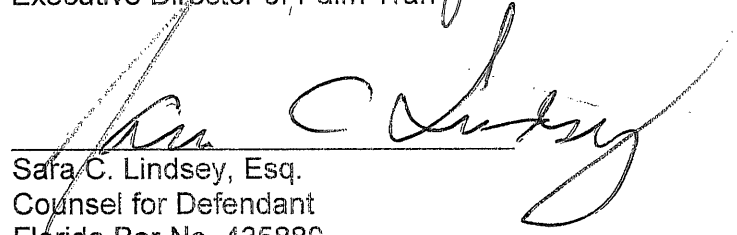
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9/1

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.


Plaintiff, Kelvin Baker


Jeffrey Kirby, Esq.
Counsel for Plaintiff
Florida Bar No. 860654


Clinton Forbes
Executive Director of Palm Tran



Sara C. Lindsey, Esq.
Counsel for Defendant
Florida Bar No. 435880

ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____

By: _____

8.15


RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **KELVIN BAKER**, being of lawful age, for the sole consideration of **SIXTY FIVE THOUSAND DOLLARS (\$65,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for 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, 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 a Palm Tran bus on or about January 17, 2013, in 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 agrees 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 his representatives or by any physician or surgeon employed by him. 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 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,

A handwritten signature in black ink, appearing to be "K. Baker", is located in the bottom right corner of the document.

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 is entitled.

FURTHERMORE, the undersigned Plaintiff, Kelvin Baker, 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.

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, Kelvin Baker, have hereunto set my hand and seal this 31st day of August, 2016.

IN THE PRESENCE OF:

PLAINTIFF:

Pamela Hennessy
WITNESS

Kelvin A. Baker
Kelvin Baker

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 31st day of August, 2016, by Kelvin Baker, who [] is personally known to me; or has produced FLDL as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

Susan L. Reskin
Notary Public
My Commission Expires:



Susan L. Reskin
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF939953
Expires 12/6/2019

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BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 9/8/2016

REQUESTED BY: County Attorney

REQUESTED FOR: Kelvin Baker v. Palm Beach County

REQUESTED AMOUNT: \$65,000

AGENDA DATE: September 27, 2016

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: 
Brian Palacios, Fiscal Manager

DATE: 9/8/2016