

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 14, 2018 [X] Consent [] Regular
[] Ordinance [] 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 \$100,000 in the personal injury action styled Jean Reed-Garry v. Palm Beach County, Case No. 502015CA000362XXXXMB AE.

Summary: On June 27, 2012, Plaintiff, Jean Reed-Garry, was a restrained passenger in a car that was rear-ended. Palm Beach County Fire Rescue responded and as they attempted to place her into the rescue vehicle, the stretcher tipped over and Plaintiff was allegedly injured. Countywide (SCL)

Background and Justification: Plaintiff, Jean Reed-Garry, a restrained 63 year old passenger, was rear ended as she exited I-95 onto Lantana Road. Fire Rescue responded and placed her onto a stretcher. As they attempted to place her into the rescue vehicle, the stretcher wheels hit a piece of pavement, causing the stretcher to fall to the ground on its right side. Plaintiff underwent right shoulder surgery and a three level neck surgery for herniated discs. She further claimed a traumatic brain injury as a result of her head allegedly striking the pavement multiple times. She treated with a neurologist, neuropsychologist, orthopedic surgeon, and underwent injections and several courses of physical therapy. Her medical bills exceeded \$200,000.

This full and final settlement is warranted based on the County's liability exposure and the magnitude of the injuries claimed. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$100,000.

Attachments:

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

Recommended By:  7/20/18
Department Director Date

Approved By: N/A
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs	100,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	100,000				
# ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item included in current budget? Yes X No

Does this Item include the use of federal funds? Yes No X

Budget Account No.:

Fund 5010 Agency 700 Organization 7130 Object 4511

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

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

Steve Ponz 7/24/18
OFMB 7/24 10/1/24 7/23

Ann-J. Jacobson 8/3/18
Contract Dev. & Control

B. Legal Sufficiency

Sara C. Lindsey
Assistant County Attorney

C. Other Department Review

Michael C. Mackey
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 _____, 2018, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and JEAN REED-GARRY.

WHEREAS, Jean Reed-Garry sued the COUNTY in a lawsuit presently styled Jean Reed-Garry v. Liberty Mutual Insurance Company and Palm Beach County, Case No. 502015CA000362XXXXMB AE, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on June 27, 2012, at or near intersection of I-95 and Lantana Road 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, Kenneth Sobel, 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 for Final Order of Dismissal with Prejudice.
3. Within a reasonable time of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Jean Reed-Garry the amount of One Hundred Thousand Dollars (\$100,000), by a check made payable to Sobel Legal PA IOTA Trust Account, Tax ID No. 46-2828855.
4. Kenneth Sobel, Esq. shall not disburse, and Jean Reed-Garry shall not accept, any proceeds from the settlement check described in paragraph 3 unless and until the Final Order of Dismissal with Prejudice has been signed by the Court.
5. Jean Reed-Garry 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. Jean Reed-Garry, on behalf of herself and her officers, agents, employees,

heirs, executors, administrators and assigns, further agrees 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, Jean Reed-Garry, 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, Jean Reed-Garry, being of lawful age, agrees to be responsible for any claims or liens by Medicare and agrees that she 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. Jean Reed-Garry 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 she may have against the COUNTY.

12. This Settlement Agreement shall be binding on the parties hereto, her 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.

Jean Reed-Garry
Plaintiff, Jean Reed-Garry

Michael C. Mackey
Michael Mackey
Fire Rescue Administrator

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Asa C. Lindsey
Senior Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **JEAN REED-GARRY**, being of lawful age, for the sole consideration of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her 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 **June 27, 2012**, at or near the intersection of I-95 and Lantana Road 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 Release, 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 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 representatives or by any physician or surgeon employed by 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 is entitled.

FURTHERMORE, the undersigned Plaintiff, JEAN REED-GARRY, 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, JEAN REED-GARRY, have hereunto set my hand and seal this 9 day of July, 2018.

IN THE PRESENCE OF:

PLAINTIFF:

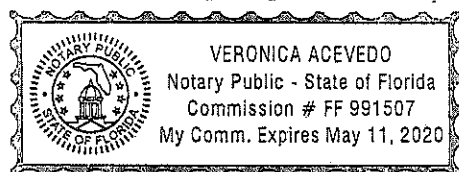
Veronica Acevedo
WITNESS

Jean Reed-Garry
JEAN REED-GARRY

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 9 day of July, 2018, by Jean Reed-Garry, who [] is personally known to me; OR ☒ has produced Hondait as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]

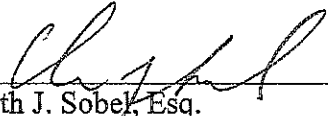


Veronica Acevedo
Notary Public
My Commission Expires:

STATEMENT OF ATTORNEY FOR RELEASOR

I, Kenneth J. Sobel, Esquire, state that I am the attorney for Jean Reed-Garry, the above-signed Releasor; that I have explained to Jean Reed-Garry, all the terms of this Release and the Settlement Agreement upon which it is based; and that Jean Reed-Garry, has represented to me that she understands all the terms and their significance. Jean Reed-Garry has signed this Release knowingly, voluntarily and on my advice.

DATED this 16th day of July, 2018.



Kenneth J. Sobel, Esq.
Florida Bar No. 511668

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 07/19/2018

REQUESTED BY: County Attorney

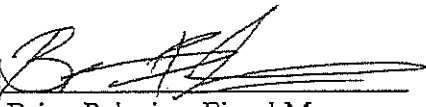
REQUESTED FOR: Jean Reed-Garry v. Palm Beach County

REQUESTED AMOUNT: \$100,000

AGENDA DATE: August 14, 2018

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:  DATE: 07/19/2018
Brian Palacios, Fiscal Manager