

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 1/15/19 [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 \$105,000 in the personal injury action styled Travon Mitchell vs. Palm Beach County Board of County Commissioners, Case No. 502018CA002189XXXXMB AF

Summary: On July 11, 2017, on Gun Club Road, a Palm Tran bus rear-ended a vehicle that had stopped at the red light at Congress Avenue. As a result of the accident, Plaintiff Travon Mitchell suffered bodily injury and incurred medical expenses. Countywide (RMF)

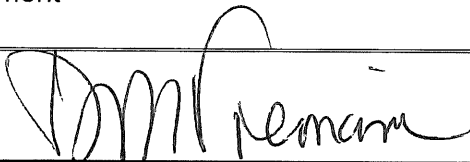
Background and Justification: On July 11, 2017, on Gun Club Road, a Palm Tran bus rear-ended a vehicle that had stopped at the red light at Congress Avenue. As a result of the accident, the passenger of the rear-ended vehicle, Plaintiff Travon Mitchell suffered neck, knee, and low back injuries. A cervical MRI revealed a disc herniation with compression of the thecal sac. Plaintiff underwent an anterior cervical discectomy and hardware implant. Plaintiff continues to experience pain and difficulties with activities of daily living. Plaintiff also claims that he has been unable to work due to his injuries. He incurred nearly \$150,000 in medical bills.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$105,000.

This full and final settlement is warranted based on the County’s liability exposure and the magnitude of the injuries claimed.

Attachments:

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

Recommended by:  12/20/18
County Attorney Date

Approved by: N/A
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs	<u>\$105,000</u>				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	<u>\$105,000</u>				

ADDITIONAL FTE

POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
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Is Item Included In Current Budget? Yes X No _____

Does this item include the use of Federal Funds? Yes _____ No X

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

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

Palm Beach County Self Insured Fund

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

B. Deane 12/27/18 OFMB 12/28 J. J. [Signature] 1/3/19 Contract Development and Control

B. Legal Sufficiency:

Rachel Falcetti
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 17th day of December, 2018, by and between PALM BEACH COUNTY, (which shall be referred to as "COUNTY"), and TRAVON MITCHELL.

WHEREAS, TRAVON MITCHELL sued the COUNTY in a lawsuit presently styled TRAVON MITCHELL v. PALM BEACH COUNTY, Case No. 502018CA002189XXXXMB AF, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an accident involving a Palm Tran Bus on or about July 11, 2017 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 the 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 of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to TRAVON MITCHELL the amount of ONE HUNDRED AND FIVE THOUSAND DOLLARS (**\$105,000.00**), by a check made payable to Travon Mitchell and The Trust Account of the Abellon Law Firm whose Tax I.D. No. is 271206000.
3. Within ten (10) days of receipt of the COUNTY'S payment, Maria Abellon, Esq., J. Freddy Rhoads, Esq., or other counsel for Plaintiff, shall execute and deliver to the Palm Beach County Attorney's Office (i) a Release of All Claims in the form of the attached hereto as Exhibit A, and (ii) the Stipulation and Final Order of Dismissal with Prejudice, in the form of the attached hereto as Exhibit B, which, in turn, the Palm Beach County Attorney's Office will file with the court.
4. Maria Abellon, Esq., J. Freddy Rhoads, Esq., other counsel for Plaintiff, or any person at their firms shall not disburse, and TRAVON MITCHELL shall not accept, any proceeds from the settlement check described in paragraph 2 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 in accordance with paragraph 3 above.

5. TRAVON MITCHELL 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, subrogation claims or rights of reimbursement. TRAVON MITCHELL, as well as any subrogation claims or rights of reimbursement, on behalf of himself and his 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 attorney's fees, arising out of or related to such liens or claims of liens, subrogation claims or rights of reimbursement.

6. Each party shall bear its respective attorney's 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. TRAVON MITCHELL 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 arising out of or relating to the subject incident.

10. The parties have considered Medicare's interests in this settlement and have determined that an allocation for future Medicare covered expenses is not required due to the fact that Plaintiff's Claim is completely denied and the Defendant/Respondent has not accepted liability for any of Plaintiff's claims for payment to date.

11. Plaintiff, agree to hold harmless and indemnify the Defendant/Respondent for any pre-settlement Medicare conditional payments reimbursement demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agency or any other governmental entity, currently known, discovered or demanded in the future.

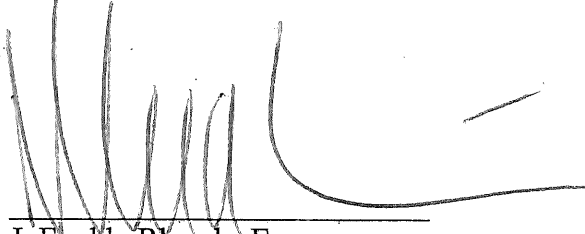
12. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.


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.

TRAVON MITCHELL v. PALM BEACH COUNTY Settlement Agreement
Case No. 502018CA002189XXXXMB AF

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


Plaintiff, TRAVON MITCHELL


J. Freddy Rhoads, Esq. or
Maria Abellon, Esq.
Counsel for TRAVON MITCHELL


Jacqueline Binns, PALM BEACH COUNTY
Property & Casualty Insurance and Claims
Manger


Rachel M. Fahey, Esq.
Counsel for PALM BEACH COUNTY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Chief Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor Mack Bernard

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Travon Mitchell, being of lawful age, for the sole consideration of **ONE HUNDRED AND FIVE THOUSAND DOLLARS (\$105,000.00)**, 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 BOARD OF COUNTY COMMISSIONERS**, (hereinafter "COUNTY"), and their officers, agents, employees, heirs, executors, administrators, successors and assigns (together "Releasees"), 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, relating to or resulting from an alleged rear-end car accident involving a Palm Tran bus that occurred on or about **July 11, 2017**, in West Palm Beach, Palm Beach County, Florida.

FURTHERMORE, the undersigned agrees that each party shall bear their 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 (collectively "medical bills"), 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 agree to indemnify and save harmless the Releasees for any attorney's fees, costs and/or judgments which may be entered against the Releasees with respect to the collection of the medical bills.

FURTHERMORE, the undersigned Plaintiff, Travon Mitchell agrees to hold harmless and indemnify the Defendant 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.

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 therefor and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned hereby declares and represents that any injuries sustained 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 relied 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 their representatives or by any physician or surgeon employed by them.

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 reserve 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.

THE UNDERSIGNED hereby declare 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, Travon Mitchell, have hereunto set my hand and seal this 13th day of December, 2018.

IN THE PRESENCE OF:

[Signature]

WITNESS SIGNATURE

Travon Mitchell
TRAVON MITCHELL

Abraham Nieto
(PRINT WITNESS' NAME)

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing two-page Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 13th day of December, 2018, by Travon Mitchell, who:

☐ is personally known to me; OR
☒ has produced FL DL M324-813-90-366-1,
as identification; and who

☐ did take an oath; OR
☒ did not take an oath.

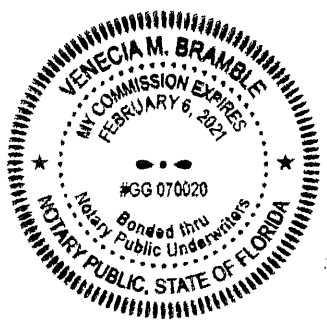
and who executed the within Release of All Claims, and who acknowledged the within Release of All Claims to be freely and voluntarily executed for the purposes therein recited.

[seal]

Venecia Bramble
V Bramble

Notary Public in and for Palm Beach County, Florida

My commission expires: 2-6-2021



STATEMENT OF ATTORNEY FOR RELEASOR

I, Maria Aballon, Esquire, state that I am the attorney for Plaintiff, Travon Mitchell, the above-signed Releasor; that I have explained to Plaintiff, Travon Mitchell, all the terms of this Release and the Settlement Agreement upon which it is based; and that Plaintiff, Travon Mitchell, has represented to me that he understands all the terms and their significance. Plaintiff, Travon Mitchell, has signed this Release knowingly, voluntarily and on my advice.

DATED this 17th day of December, 2018.



Florida Bar No. 0031758

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 12/18/2018

REQUESTED BY: County Attorney

REQUESTED FOR: Travon Mitchell v. Palm Beach County

REQUESTED AMOUNT: \$105,000

AGENDA DATE: January 15, 2019

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: 

Brian Palacios, Fiscal Manager

DATE: 12/18/2018