

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

**Meeting Date:** September 13, 2011       **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 \$65,000 in the personal injury action styled Eddie M. Rodriguez vs. Palm Tran, Inc., Case No. 502010CA027707XXXXMB AF.

**Summary:** Plaintiff was in a pedestrian-bus accident on December 17, 2008. Plaintiff alleges that when he exited the Palm Tran bus to retrieve his bicycle located on the front rack of the bus, the bus driver failed to keep the bus in the stopped position and began to move forward striking the plaintiff. Plaintiff was taken to the emergency room. He sustained injuries to both knees and his lower back and treated with several health care providers. Staff, including the Risk Management Roundtable Committee concur that this settlement is in the best interest of Palm Beach County. **Countywide** (SCL)

**Background and Justification:** Plaintiff, Eddie M. Rodriguez, 41 years old, exited a Palm Tran bus and was in the process of removing his bicycle from the bicycle rack at the front of the bus when the bus began to move forward. The bike rack struck the Plaintiff in the right knee. He was transported by ambulance to the hospital where he was treated and released. Conservative follow up care consisted of several months of physical therapy and cortisone knee injections. MRI's of the knees showed meniscal tears and traumatic changes, a fracture and joint effusion. Ultimately, he underwent knee surgery for meniscal tears and he lost his job as a result of the accident. He claimed approximately \$20,000 in lost wages and \$56,000 in medical bills. He also sustained a permanent impairment of 11%. The Palm Tran video of the accident was lost and therefore unavailable for review.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$65,000.

**Attachments:**

1. Settlement Agreement and Release of All Claims

**Recommended by:** \_\_\_\_\_

  
County Attorney

8-31-11  
Date

**Approved by:** \_\_\_\_\_

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2011	2012	2013	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$65,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$65,000</u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget?      Yes  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:**

 _____ OFMB VA 8/25/11	 _____ Contract Development and Control 8/26/11
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

  
 \_\_\_\_\_  
 Department Director  
 Palm Tran

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of August, 2011, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and EDDIE M. RODRIGUEZ.

WHEREAS, Eddie Rodriguez sued the COUNTY (Palm Tran, Inc.) in a lawsuit presently styled Eddie M. Rodriguez v. Palm Tran, Inc., Case No. 502010CA027707XXXXMB AF, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on December 17, 2008, in Boca Raton, 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 (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, Michael Overbeck, Esq., shall deliver to the Palm Beach County Attorney's Office the executed 1) Settlement Agreement, 2) Release of All Claims, and 3) the Stipulation and Final Order of Dismissal with Prejudice, attached hereto.

3. Within thirty (30) days of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Eddie M. Rodriguez the amount of **Sixty Five Thousand Dollars (\$65,000)**, by a check made payable to Eddie M. Rodriguez and Schuler, Halvorson, Weisser, & Zoeller P.A.

4. Michael Overbeck, Esq. shall not disburse, and Eddie M. Rodriguez shall not accept, any proceeds from the settlement check described in paragraph 3 unless and until the Settlement Agreement and Release of All Claims have 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. Eddie M. Rodriguez acknowledges and agrees that he is responsible for the payment of any liens, including but not limited to Worker's Compensation liens, against this settlement and that the COUNTY shall not be responsible for any portion of said liens. Eddie M. Rodriguez, 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. Each party shall bear its respective attorneys 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. Eddie M. Rodriguez 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 (Palm Tran, Inc.)

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

11. 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:

Kysthel Rodriguez B.

Eddie M. Rodriguez

Kysthel Rodriguez  
Print Name

EDDIE M. RODRIGUEZ

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By Aria Lindsey  
Assistant County Attorney

## RELEASE OF ALL CLAIMS

### KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **EDDIE M. RODRIGUEZ**, being of lawful age, for the sole consideration of **SIXTY FIVE THOUSAND DOLLARS (\$65,000)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her/his executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY (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 **December 17, 2008**, in Boca Raton, 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 therefore 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 him/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 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, 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, Eddie M. Rodriguez, being of lawful age, agrees to hold harmless and indemnify the Defendant, Palm Beach County (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.

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 WHEREOF, I, EDDIE M. RODRIGUEZ, have hereunto set my hand and seal this 20 day of August, 2011.

IN THE PRESENCE OF:

PLAINTIFF:

Kerry Shel Reelgers B.  
WITNESS

Eddie M. Rodriguez  
EDDIE M. RODRIGUEZ

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 20 day of Aug, 2011, by Eddie Rodriguez, 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]

[Signature]  
Notary Public  
My Commission Expires:

