

Meeting Date
October 10, 2017



AGENDA	
Section	Consent
Item No.	<i>II.D.4</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Cathleen Smiley v. Brevard County, 05-2000-CA-004291-XXXX-XX Local Claims Bill (SB 52: Relief of Cathleen Smiley by Brevard County)
DEPT/OFFICE:	Constituent – Michael Hayworth, Esquire

Requested Action:

Senator Mayfield, out of respect for this Board, has requested that notification be provided to the current sitting Board of County Commissioners and their acknowledgement of the stipulated judgment in Smiley v. Brevard County and the filing of the Claims Bill in relation to the stipulated judgment.

Summary Explanation & Background:

This lawsuit is the fourth (and final) auto liability claim arising out of a June 18, 1998 multi-vehicle accident involving a County (Space Coast Area Transit) bus. This was a severe rear-end collision caused by the County Employee driving the Space Coast Area Transit bus. Therefore, liability for the accident's occurrence was not in dispute.

Post-accident, Mrs. Smiley received substantial medical care and treatment with medical bills totaling \$22,437.42. Per the opinion of the Plaintiff's treating neurologist, Dr. Christopher Prusinski, the Plaintiff, Cathleen Smiley, suffered multiple injuries including:

1. Closed head injury with post-concussive syndrome
2. Post-traumatic cervical sprain
3. Post-traumatic thoracic sprain
4. Post-traumatic headaches
5. Left shoulder injury

Furthermore, Dr. Prusinski placed Mrs. Smiley at a point of Maximum Medical Improvement and opined she had suffered an eight (8%) percent whole body impairment. He also opined she will likely suffer aggravations and exacerbations of said injuries in the future and would need appropriate medical care and treatment when such occur. He also placed permanent physical restrictions on her activities in an attempt to reduce the incidents of such aggravations and exacerbations.

Three other lawsuits arising out of this accident were filed and resolved leaving Mrs. Smiley's lawsuit as the final matter. Because the County was self-insured at the time of this accident and had already paid out the sovereign immune limits in effect at the time of this incident (\$200,000 for all claims from a single incident) to the other three injured individuals, Mrs. Smiley's only remedy to recover a portion of her damages is to seek passage of a Claims Bill from the legislature authorizing the County to pay the judgment they stipulated to pay.

The prior Board of County Commissioners, in regular session on May 27, 2014, approved resolution of the lawsuit, Cathleen Smiley v. Brevard County, by authorizing the County Attorney to execute a Stipulation to a Consent Judgment in the amount of \$25,000 allowing the Plaintiff to seek a Claims Bill from the legislature, pursuant to Florida Statute 768.28, directing such payment by the County; and authorized the Chairman to sign the final Settlement Agreement and Release. The Settlement Agreement and Release was duly executed thereafter by both the Plaintiffs and the Chair of the Board of County Commissioners on or about May 27, 2014.

The Settlement Agreement and Release previously approved and executed resulted in the entry of a Consent Judgment by the Circuit Court and also requires the County to cooperate in the Claims Bill process and not oppose the Claims Bill; that the Plaintiff would be responsible for pursuing the Claims Bill; that the County would pay the sum of the Claims Bill, up to \$25,000.00 (twenty-five thousand dollars), to Mrs. Smiley as/if approved by the Florida legislature; and for a dismissal of the lawsuit with prejudice by the Plaintiffs upon execution of the Stipulated Judgment by the County.

Furthermore, as additional background information, of the other three (3) personal injury claims arising out of this accident, two (2) of those claims led to Claims Bills being filed with the support of Brevard County, and were passed by the legislature. The Claims Bills for Howard S. Evarts (HB 799) and Alan S. Hammer (HB 797) were both approved for the amount of \$75,705 each.

Fiscal Impact: \$25,000.00 from fund/account - 5050/389630 (Risk Management)

POC: Shannon L. Wilson, Deputy County Attorney
shannon.wilson@brevardcounty.us

Clerk to the Board Instructions:

Exhibits Attached: Settlement Agreement and Release

Contract /Agreement (If attached): Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Frank Abbate	Interim Assistant County Manager Jim Liesenfelt	Department Director / Extension
	Assistant County Manager John Denninghoff	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Tammy.Rowe@brevardclerk.us

October 11, 2017

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Shannon Wilson

RE: Item II.D.4., Acknowledgement of Stipulated Judgment for Cathleen Smiley v. Brevard County, Case No. 05-2000-CA-004291-XXXX-XX Local Claims Bill (SB 52: Relief of Cathleen Smiley by Brevard County)

The Board of County Commissioners, in regular session on October 10, 2017, acknowledged notification of the stipulated judgment in Smiley v. Brevard County, Case No. 05-2000-CA-004291-XXXX-XX, and the filing of the Claims Bill (SB 52: Relief of Cathleen Smiley by Brevard County) in relation to the stipulated judgment.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

cc: Risk Management
Finance
Budget

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into this 27 day of May, 2014, by Cathleen Smiley and Gregory Smiley, her ex-husband (hereinafter referred to as the "Plaintiffs") and BREVARD COUNTY (hereinafter referred to as the "Defendant").

(n/k/a Cathleen Waller)

I. RECITAL OF FACTS:

1. On or about February 29, 2000, Plaintiffs, SMILEYS filed a complaint against the Defendant in the Circuit Court of Brevard County, Florida (Civil Action No.05-2000-CA-004291-XXXX-XX) which complaint arose out of certain alleged negligent acts or omissions by the Defendant which is alleged to have taken place on June 18, 1998. The Plaintiffs sought to recover money damages in excess of \$15,000.

2. The Parties hereto desire to enter into a Settlement Agreement and Release in order to provide for payment in full settlement and discharge of all claims against Brevard County which are or might have been the subject of the complaint, upon the terms and conditions set forth herein.

II. AGREEMENT:

The Parties agree as follows:

1. In consideration for the payment called for herein, the Plaintiffs completely release and forever discharge the Defendant and the Defendant's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the former might have been, or now, or may hereinafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action (including derivative causes of action), wrongful death claims, rights, damages, costs, loss of services, loss of consortium, expenses and compensation of any nature whatsoever, whether based on tort, contract, or other theory of recovery, and from compensation, which the Plaintiffs now have, or which may hereafter accrue, or otherwise be acquired, on account of, or in any way growing out of or which are the subject of, the complaint (and all related pleadings), including, without limitation, any and all known or unknown claims for bodily or personal injuries to the Plaintiffs, or any future wrongful death claim of the Plaintiffs' representatives, which may have resulted, or may result, from the alleged acts or omissions of the Defendant.

2. This release, on the part of the Plaintiffs, shall be a fully binding and complete settlement between the Plaintiff(s) and the Defendant, their assigns and successors save only the executory provisions of the Settlement Agreement.

III. PAYMENTS:

IN CONSIDERATION of the release set forth above, the Defendant hereby agrees to pay the following sums in the following manner:

The Defendant agrees to the execution of a Stipulated Judgment in the amount of Twenty-Five Thousand Dollars (\$25,000.00) in this case. However, as a result of other payments that Brevard County has made regarding the occurrence on June 18, 1998 (Porter v. Brevard County, Case

No. 05-1999-CA-009374-XXXX-XX; Evarts v. Brevard County, Case No. 05-1999-CA-025509-XXXX-XX; Hammer v. Brevard County, Case No. 05-1999-CA-025510-XXXX-XX and property damage claims, etc.), the County is prohibited from paying the Judgment amount, unless the Plaintiffs seek a Claims Bill, as a result of the Two Hundred Thousand Dollar (\$200,000.00) sovereign immunity limit imposed upon the County pursuant to Section 768.28, Florida Statutes.

The Plaintiffs shall be entitled to take the Stipulated Judgment in this case to the Legislature for the State of Florida to seek passage of a Claims Bill. The Defendant shall not oppose the Plaintiffs' efforts in seeking their Claims Bill and will support the Plaintiffs in their efforts at seeking a Claims Bill. It shall be the responsibility of the Plaintiffs to follow the procedures established by the Legislature to seek a Claims Bill. Should the Legislature pass a Claims Bill sought by the Plaintiffs, the County will pay such Claims Bill as directed by the Bill.

IV. INTENT AND VOLUNTARINESS:

1. It is understood and agreed that this Settlement Agreement and Release is a compromise of all disputed claims arising out of said June 18, 1998 accident and that the settlement is intended merely to avoid litigation and to buy each Party their respective peace. This Settlement Agreement and Release relates to all claims related to the above referenced lawsuit with respect to the Plaintiffs and the Defendants, BREVARD COUNTY and Howard Evarts. However, nothing herein shall be construed to be a release of any other person, party or entity which is not a named party to this Settlement Agreement and Release.

2. The Plaintiffs hereby declare and represent that in making this Release, it is understood and agreed that the Plaintiffs are relying solely upon the Plaintiffs' own judgment, beliefs and knowledge of the nature, extent, effect and duration of Plaintiffs' damages.

3. This Release is fully and voluntarily executed by the Plaintiffs after having been apprised of all relevant information and data furnished by their legal counsel. Plaintiffs, in executing this Release, do not rely on any inducements, promises or representations made by the Defendant, or any of the Defendant's representatives, other than this Settlement Agreement and Release and Stipulated Judgment. Furthermore, no promises, inducements, or agreements not herein set forth have been made to the Plaintiffs. This Settlement Agreement and Release contains the entire agreement between the parties related to the above referenced litigation, and the terms of this Release are contractual and not merely a recital. The Plaintiffs understand that the County has no control over the Claims Bill process and this Settlement Agreement and Release ends all litigation between the Plaintiffs and the Defendants arising out of the accident on June 18, 1998 whether or not the Plaintiff is successful in obtaining a Claims Bill.

4. In the event of litigation or arbitration connected with the enforcement or interpretation of this Settlement Agreement and Release, the prevailing party shall be entitled to the payment of attorney fees, costs and expenses incurred in connection therewith.

5. Further, in return for the above-recited consideration the Plaintiffs do hereby agree to fully indemnify and hold harmless the above released parties against any and all claims, including any employer or insurer, personal injury protection carrier, or health, surgical medical or hospitalization insurer, whether group or otherwise, arising out of the injuries sustained by the Plaintiffs or for the Plaintiffs' claims for damages arising therefrom including, but not limited to, any expenses arising out of services rendered to them in connection with said injuries or damages; said agreement to indemnify and hold harmless shall include attorney's fees and costs incurred by the released parties herein as a result of any claims against them from the aforementioned incident.

6. Further, pursuant to the terms of this Settlement Agreement and Release, the Plaintiffs hereby instruct their attorney to sign, in conjunction with the Defendant, and file with the court a Stipulated Judgment in the aforementioned case in compliance with the terms set forth herein with respect to this Defendant. This will be in the form of a Consent Judgment for the amounts set forth herein.

THE UNDERSIGNED HAVING READ THIS SETTLEMENT AGREEMENT AND RELEASE AND UNDERSTAND THE PURPOSE, CONTENT, AND EFFECT OF THIS RELEASE. IT CONTAINS AND SETS FORTH THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, AND THERE IS NO PART OF THIS SETTLEMENT AGREEMENT AND RELEASE WHICH IS NOT FULLY, COMPLETELY, ACCURATELY AND TRULY SET FORTH HEREIN.

THE PLAINTIFFS HAVE READ AND FULLY UNDERSTAND THE FOREGOING RELEASE AND AGREES THAT ALL DOUBTS AND AMBIGUITIES IN CONNECTION WITH THE GENERAL RELEASE OF ALL CLAIMS BE CONSTRUED IN FAVOR OF THIS SETTLEMENT AGREEMENT AND RELEASE.

St M Walk
WITNESS
DATED: 4/20/15

Deborah A Smiley
WITNESS
DATED: 7/21/14

ATTEST:
Scott Ellis
Scott Ellis, Clerk to the Board

Cathleen L Walker
SIGNATURE - Cathleen Smiley (n/k/a Cathleen Walker)
Cathleen L Walker
PRINTED NAME

Gregory P Smiley
SIGNATURE - Gregory Smiley
Gregory P. Smiley
PRINTED NAME

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
Mary Bolin Lewis
Mary Bolin Lewis, Chair

As approved by the Board on May 27, 2014.

Reviewed for legal form and content:
Sharon L. Walker, 5/23/14
County Attorney's Office