

REVISED September 24, 2013 - Regular Meeting
Agenda Item #15

Subject

Authorize the Settlement of Victoria Diaz v. Manatee County; Case No. 2012-CA-7204

Briefings

None

Contact and/or Presenter Information

James A. Minix, Chief Assistant County Attorney
Jo Ann Grace, Legal Assistant, Ext. 3750

APPROVED in Open Session

Manatee County Board of County
Commissioners

Action Requested

Motion to approve settlement between Victoria Diaz and Manatee County.

Enabling/Regulating Authority

Sections 125.01 and 768.28, Florida Statutes.

Background Discussion

This involves a motor vehicle accident which occurred on April 19, 2010 on 1st Street in Bradenton where a Manatee County Sheriff's Office employee, Maria Cavazos, rear-ended Plaintiff Victoria Diaz's vehicle at a speed of approximately 25 mph. Plaintiff's vehicle was stopped behind a car that was turning into a car dealership off of 1st Street when the Sheriff's Office employee hit the Plaintiff from behind. The impact caused damages of \$2,003.62 to the Plaintiff's vehicle and no injuries were reported at the scene. The settlement is for the total amount of \$35,000 for all claims from Victoria Diaz and her minor child, Juan Carranza.

On April 21, 2010, Plaintiff visited Physicians Group, LLC complaining of dizziness, neck and back pain, headaches, shoulder pain, numbness and tingling in the left arm and hand, as well as other issues. Plaintiff's medical records indicate that injuries sustained and expenses incurred total estimated medical bills of \$15,446.90. The Plaintiff's initial demand for relief came in June 2011 for the amount of \$100,000. Medical records and doctors have indicated that Plaintiff may need neck and left shoulder surgery in the future which may cost between \$85,000-\$95,000. Plaintiff was assigned an 11% permanent impairment rating for her injuries which were estimated to be between \$1,000-\$2,000/year for future medical treatment.

The County Attorney's Office believes this settlement offer of \$35,000 is a benefit/savings to the County and should be approved since: (1) there is clear liability on the part of the Sheriff's Office employee; (2) the accident was a particularly hard (25 mph) impact to Plaintiff's stopped vehicle; (3) medical records and doctor testimony indicate potential damages at a jury trial between \$50,000-\$75,000; (4) the settlement amount of \$35,000 includes \$5,000 to settle a claim for potential damages against Manatee County by the Plaintiff's minor child, Juan Carranza, who was in the car at the time of the accident and who currently has a claim pending with the Risk Management Division; and (5) the County Attorney's Office believes that if this matter went before a jury, that it would likely find in Plaintiff's favor with total damages exceeding the settlement amount.

Therefore, the County Attorney's Office recommends approval of the above settlement offer.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

See attached settlement proposal from Plaintiff's counsel, Gregory S. Hagopian, dated August 21, 2013, Settlement Agreement, HIPAA Authorization, and Release.

Reviewing Attorney

N/A

Instructions to Board Records

Please return a fully executed of this agenda memo and any attachments electronically to joann.grace@mymanatee.org. - Sent approved file via email to JG - 9/24 - SS

Thank you.

Cost and Funds Source Account Number and Name

\$35,000.00

Amount and Frequency of Recurring Costs

One-time payment.

Attachment: [Minix.confirm settlement.pdf](#)

Attachment: [settlement agreement.pdf](#)

Attachment: [med auth.pdf](#)

Attachment: [release.pdf](#)



August 21, 2013

Received By
Manatee County Attorney's Office
Date 8/26/13
Time 3:00 PM
 Rec'd By Mail
 Rec'd By Hand Delivery
 Rec'd By Fax
Time Sensitive Y N U

5219

also via electronic mail:
jim.minix@mymanatee.org &
carol.owsianka@mymanatee.org

PRINCIPALS:

C.J. Czaia
Attorney at Law

Kevin M. Gallagher
Attorney at Law

David A. Hall
Attorney at Law

Gregory Hagopian
of Counsel

Lesa Miller
of Counsel

James A. Minix, Esq.
Chief Assistant County Attorney
Post Office Box 1000
Bradenton, FL 34206

Re: Diaz v. W. Brad Steube, Sheriff of Manatee County
Case No: 2012-CA-7204

Dear Mr. Minix:

This will confirm my client, Victoria Diaz', proposal to resolve her pending case against the Manatee County Sheriff's office for a total of \$35,000.00. In return, Ms. Diaz agrees to sign a release for both her and any potential claims her son, Juan Carranza, may have arising out of the April 19, 2010, motor vehicle crash. Upon receipt of the \$35,000.00, we will dismiss the pending case with prejudice.

Please let me know once the Board and County Attorney have had the opportunity to review and, hopefully, accept our proposal. We look forward to hearing from you.

Thank you for your continued professionalism and hard work in resolving this matter.

Sincerely,

Gregory S. Hagopian, Esq.

GSH/ssw

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

VICTORIA DIAZ,

Plaintiff,

Case No. 2012-CA-7204

v.

W. BRAD STEUBE, SHERIFF
OF MANATEE COUNTY,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is executed by the parties, VICTORIA DIAZ and MANATEE COUNTY, FLORIDA, in full settlement of all claims arising out of the above-captioned litigation. The parties agree as follows:

1. Manatee County, on behalf of W. Brad Steube, shall pay and Plaintiff shall accept the sum of THIRTY FIVE THOUSAND DOLLARS (\$35,000) as a full and complete settlement of all claims arising out of this cause of action or that could have been brought as a part of this action. The settlement payment shall be made to Victoria Diaz and the trust account of Gregory S. Hagopian, Esquire at Czaia, Gallagher & Hagopian, P.A., 4420 5th Street West, Bradenton, Florida 34207 within thirty (30) days of the execution of this Settlement Agreement.

2. The sum of \$30,000 shall cover the Plaintiff's claims and the sum of \$5,000 shall cover any claims of Plaintiff's minor child, Juan Carranza.

3. Upon the closing of the settlement and payment of all sums herein, Plaintiff shall dismiss its Complaint, with prejudice, each party to bear their own fees and costs.

4. **RELEASE**. Except as to any claims arising under this Settlement Agreement, the Plaintiff does hereby release Manatee County from any and all claims, demands, suits and causes

of action which has or may have against Manatee County, its officer, employees and agents including W. Brad Steube, or any officer, deputy or employee of Sheriff Steube, arising out of the allegations in the Complaint. This will include all claims that could be brought by the Plaintiff's minor child, Juan Carranza, who is not a party to this action but has a claim pending with Manatee County.

5. Plaintiff acknowledges that regardless of the County's issuance of any IRS Form 1099, they will obtain their own advice on the taxable status of the payment listed in paragraph 1 above, and be responsible for any tax liability related thereto. Plaintiff agrees to furnish an executed IRS Form W-9 if required by Manatee County.

6. The Plaintiff hereby warrants and represents that she has not relied upon any representations by Manatee County, its counsel, or insurers in deciding to settle this litigation. In entering into this Settlement Agreement, the Plaintiff represents that she has relied solely upon the advice of her attorney, who is the attorney of her own choice, concerning all legal and tax consequences of this settlement; that the terms and effects of this settlement have been completely read and explained to her by her attorney; and that the terms and effects of this settlement are fully understood and voluntarily accepted by her.


7. This Settlement Agreement may be submitted to the Court for an Order approving same and reserving jurisdiction to enforce the terms of the Settlement Agreement should that become necessary.

8. In the event either party breaches this Settlement Agreement and it becomes necessary for the other party to incur attorneys fees to enforce it, the non-defaulting party shall recover from the breaching party his or her reasonable attorney's fees and costs.


9. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Facsimile signatures shall suffice to bind the parties.

10. This Settlement Agreement is subject to approval by the Manatee County Board of County Commissioners and is not final until such Board approval is given. In the event the Board does not approve, this Settlement Agreement shall be null and void.

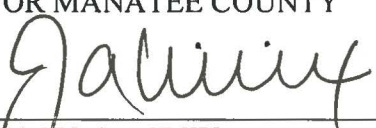
11. Additional provisions: _____



VICTORIA DIAZ (Plaintiff)



GREGORY S. HAGOPIAN
Czaia, Gallagher & Hagopian, P.A.,
Florida Bar No. 980481
4420 5th Street West
Bradenton, Florida 34207
Telephone (941) 727-6944
Facsimile: (941) 727-6933
Attorney for Plaintiff

FOR MANATEE COUNTY
 09/05/13

JAMES A. MINIX
Chief Assistant County Attorney
Florida Bar No. 0239240
Post Office Box 1000
Bradenton, Florida 34206
Telephone: (941) 745-3750
Facsimile: (941) 749-3089
Attorney for Manatee County

**AUTHORIZATION FORM (HIPAA)
FOR RELEASE OF MEDICAL, EMPLOYMENT, INSURANCE
AND WORKERS' COMPENSATION INFORMATION**

By signing this Authorization form, I hereby authorize the Manatee County Board of County Commissioners ("BOCC") to use and/or have disclosed to it certain medical, employment, insurance and workers' compensation information as set forth below pertaining to the following individual:

Name: Victoria Diaz

Birth Date: 05/06/1973

Date of Accident: 04/19/2010

Victoria Diaz vs. W. Brad Steube, Sheriff of Manatee
County

Case No.: 2012-CA-7204

Information to be Disclosed: A copy of the entire medical, claim, employment, insurance and workers' compensation records related to *Victoria Diaz v. W. Brad Steube, Sheriff of Manatee County, Case No. 2012-CA-7204* to be used or disclosed as set forth in this Authorization, including but not limited to records regarding any psychological/psychiatric diagnoses, conditions, illnesses or treatment provided which are directly related to the personal injury or damage claim noted above.

I understand this Authorization is voluntary.

I authorize this information to be disclosed to the Board of County Commissioners (BOCC) and its attorneys for the purposes of the BOCC's review, discussion and consideration of my proposed personal injury or damage litigation settlement. I authorize the BOCC to discuss these records and matters in open session.

I understand the information used or disclosed pursuant to this Authorization will be subject to re-disclosure by the recipient and will become a public record under Florida law, no longer subject to applicable privacy laws or regulations.

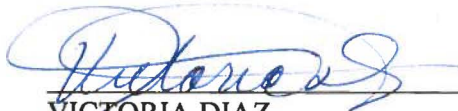
This authorization shall be effective for the entire duration of the legal matters related to the above-referenced personal injury or damage claim.

This Authorization shall expire upon the conclusion of the legal matters related to the above-referenced personal injury claim.

I understand that I have the right to revoke this Authorization at any time in writing, except to the extent that the BOCC and/or its attorneys has/have already acted in reliance on the Authorization. I can revoke this Authorization by providing written revocation to the Manatee County Attorney's

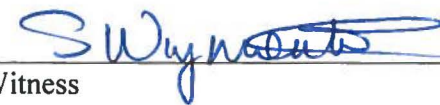
Office, P.O. Box 1000, Bradenton, FL 34206-1000, Attention: Risk Manager.

A photocopy, facsimile or electronically transmitted version of the signed original of this Authorization shall have the same validity as the original.



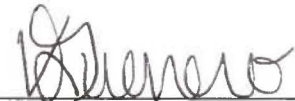
VICTORIA DIAZ

Date: 8/30/13



Witness

Date: 8/30/13



Witness

Date: 8/30/13

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, hereinafter the Releasor(s), being of lawful age, for the sole consideration of THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.) to the undersigned in hand paid, receipt whereof is hereby acknowledged, do hereby for themselves and for their heirs, executors, administrators, successors and assigns, release, acquit and forever discharge W. BRAD STEUBE, SHERIFF OF MANATEE COUNTY, hereinafter the Releasee(s), and its agents, attorneys, consultants, servants, successors, employees and other representatives, of and from all claims, demands, damages, actions, third-party actions, causes of action or suits at law or in equity of whatever nature, known and unknown, both to person and property, which have resulted or may in the future develop, from an accident which occurred on or about the 19th day of April, 2010, at or near 1st Street in Bradenton, Manatee County, Florida, and any claims or assertions raised or which could have been raised in connection with the claim against Manatee County brought by the undersigned in Manatee County, Florida, *Circuit Court Case No. 2010-CA-7204, Victoria Diaz v. W. Brad Steube, Sheriff of Manatee County.*

ATTORNEYS' FEES

Each party hereto shall bear all attorneys' fees and costs arising from the action of its own counsel in connection with this matter, the terms of the settlement agreement, the matters and documents referenced herein, the filing of a dismissal of the Complaint, and all related matters.

VOLUNTARY DISMISSAL WITH PREJUDICE

Following receipt of settlement funds and the execution of this release and settlement agreement, counsel for the Plaintiff has, or will, in the immediate future, deliver to counsel for Manatee County an executed voluntary dismissal with prejudice of all claims that have been brought or could be brought in this action. The Plaintiff has authorized Plaintiff's counsel to execute the dismissal on her behalf and hereby authorizes counsel for the Defendant to file the dismissal with the court and enter it as a matter of record.

RESERVATION OF FIRST PARTY BENEFITS

Notwithstanding anything herein to the contrary, this Release shall not release any health, disability or other insurance carrier or self-insured from its obligation to provide any personal injury protection coverage, medical payment coverage, uninsured/underinsured motorist coverage, health insurance coverage, major medical insurance coverage, workers' compensation benefits/insurance, and/or disability insurance coverage from all claims and demand, rights and causes of action of any kind the undersigned now has to hereafter any have, on account of personal injuries known or unknown to the undersigned arising from the subject accident. It is the intention of the parties to this agreement to release and discharge the Releasee(s) only, and to reserve all rights of Releasor(s), to obtain all first party benefits to which Releasor(s) may be entitled.

SUBROGATION INTERESTS

The undersigned agrees to satisfy or otherwise resolve any lien or subrogated interest for

workers' compensation and health care benefits paid or payable to the undersigned as a consequence of the occurrence settled pursuant to this agreement.

COURT APPROVAL

The undersigned acknowledges that in the event Juan Carranza has not attained the age of majority on the date of the execution of this agreement, and if there is the need for plaintiff to accept responsibility thereof, to obtain the court's approval of this settlement and to seek the court's authority to execute a binding release, to dismiss the claims herein with finality, and to seek authority to execute such other documents as is necessary to consummate the terms of the settlement outlined herein.

This Release applies to both Victoria Diaz and her minor child, Juan Carranza.

THE UNDERSIGNED ACKNOWLEDGES THAT THEY HAVE READ THIS RELEASE AND UNDERSTAND THE TERMS OUTLINED HEREIN.

Signed, Sealed and Delivered this 30th day of Aug, 2013.

S Weymouth
(WITNESS)

[Signature]
VICTORIA DIAZ, for herself and as natural guardian for JUAN CARRANZA, a minor, Releasor(s)

S Weymouth
Typed or printed name of witness

**STATE OF FLORIDA
COUNTY OF MANATEE**

The foregoing instrument was acknowledged before me this 30th day of August, 2013, by VICTORIA DIAZ, and JUAN CARRANZA, who are personally known to me or who have produced _____ as identification.

[Signature]
Notary Public, State of Florida
Print Name: _____
Expiration Date: _____

(Seal)

