# Lee County Board of County Commissioners Agenda Item Summary

Blue Sheet No. 20030020

#### 1. REQUESTED MOTION:

**ACTION REQUESTED:** Request approval of settlement offer and authorize the Chairman to execute a <u>Release and Assignment of All Claims</u> with Great American Insurance Company, as part of the County's receipt of three drafts totaling \$98,144.73 under Performance Bond Numbers 3424312, 5438583 and 5438584.

WHY ACTION IS NECESSARY: Board of County Commissioners approval is required for settlement offers and execution of <u>Release and Assignment of All Claims</u> to complete the transaction with Great American Insurance Company for their payment.

WHAT ACTION ACCOMPLISHES: Releases Great American Insurance Company from any further liability to the County for a \$98,144.73 payment to Lee County Government under Performance Bond Numbers 3424312, 5438583 and 5438584. The \$98,144.73 payment represents a 100% recovery of the damages for the County.

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	IENTAL CATE		3. MEETING DATE: 01-21-2003					
4. AGENDA:		5. REQUIREM	ENT/PUR	POSE:	6. REQUEST	OR OF INFORM	MATION:	
		(Specify)						
CONSE	NT	STATUTI	E		A. COMMISS	IONER	•	
✓ ADMIN	ISTRATIVE	ORDINA	NCE	<del>.</del>	B. DEPARTM	MENT Count	y Attorney	
APPEAI	LS	ADMIN. (	CODE _		C. DIVISION	Gener	al Services	
PUBLIC	;	✓ OTHER		<del></del>	BY:	Jut 5.	bur	
WALK (	ON	Settlement	Offer & E	xecution of		Scott S. Coover		
TIME REQUIRED: Rele		Release an	elease and Assignment of claim		Assistant County Attorney			
7. BACKGRO	DUND: The Co	unty entered into	separate c	ontracts with	Heard Communi	cations for bus a	dvertising and bus dollar amount as	
compensation for using LeeTran buses and bus benches for advertising. To ensure that the County would receive the guaranteed minimum payments for the bus bench and bus advertising contracts the County required Heard Communications to provide Performance Bonds at an agreed dollar amount for various periods of time provided in the contracts.  In September 2001 Heard Communications became delinquent in payments to the County for both the bus and bench advertising contracts. LeeTran informed Heard Communications that the County was not going to exercise the option year for the bench contract unless Heard Communications brought the outstanding accounts current in payments owed to the County. (Continued on Page 2)  8. MANAGEMENT RECOMMENDATIONS:								
9. RECOMMENDED APPROVAL:								
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Department	Purchasing	Human Resources	Other	County Attorney	Budget Services County  (v.4.) (Manager			
Director	Contracts	Resources		Attorney	Com	٠ ١/٩	I I I I I I I I I I I I I I I I I I I	
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10. COMMIS		SE S	-	Date: <sup>i</sup> Time:,	oy CoAtty  9 03  - 06  rded To:			

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Subject: Release and Assignment of All Claims

#### 7. BACKGROUND: (Continued)

In March 2002, Heard Communications filed a petition for relief under Chapter 11 of the Bankruptcy Code. On May 2, 2002, the County Attorneys Office formally notified the Surety of the Performance Bonds, Great American Insurance Company, that Heard Communications failed to make the agreed payments under both the bus and bus bench contracts, and that the County intended to collect the outstanding monies owed to the County from the Surety. On June 28, 2002, Heard Communications notified LeeTran that since the bus bench contract was not being extended for a longer contract term they were immediately terminating both the bus bench and bus advertising contracts as part of its reorganization plan under Chapter 11 of the Bankruptcy Code.

Great American Insurance Company has tendered three (3) drafts totaling \$98,144.73 to the County. As part of the proposed settlement agreement, Great American Insurance Company is requesting the County to execute a <u>Release and Assignment of Claim Between Great American Insurance Company and Lee County Board of County Commissioners</u> in order to close out the matter. The drafts are being held by the Lee County Attorneys Office until Board action has been determined.

ATTACHMENTS: Release and Assignment of Claim Between Great American Insurance Company and Lee County Board of County Commissioners (3 originals)

### RELEASE AND ASSIGNMENT OF CLAIM BETWEEN GREAT AMERICAN INSURANCE COMPANY AND LEE COUNTY BOARD OF COUNTY COMMISSIONERS

In consideration of the payment of Ninety Eight Thousand One Hundred Forty-Four Dollars and 73/100 (\$98,144.73) by GREAT AMERICAN INSURANCE COMPANY (hereinafter referred to as the "Surety"), the receipt and sufficiency of which is hereby acknowledged, the undersigned, LEE COUNTY BOARD OF COUNTY COMMISSIONERS, a Political Subdivision of the State of Florida (hereinafter "Claimant"), releases the Surety from all claims of any nature which the Claimant has or may have against the Surety under Performance Bond No.'s 3424312, 5438583 and 5438584 (the "Bonds").

Claimant hereby acknowledges that the aforesaid payment is a full and complete compromise, settlement, and satisfaction of all claims or liens which the Claimant has, or may have, against the Surety with regard to the above-referenced Bonds, and Claimant hereby releases the Surety, its agents, officers, employees, and assigns from all claims known or unknown, developed or undeveloped, which now exist or may exist on account of the projects known as RFP-00-03 and RFP-Q990259 for bus advertising franchise service and bus/bench advertising franchise service provided by Heard Communications, Gateway Outdoor Advertising (the "Obligor").

The Claimant hereby assigns, sells, transfers, and conveys to the Surety all of its right, title, and interest in the claims against the Obligor arising from the providing of anything of value to the Obligor in the transactions to which the Surety's payments to the Claimant relate.

With respect to the claims made under the Bonds, and the documentation submitted in connection therewith, Claimant represents and warrants that \$98,144.73 was due and owing to it by the Obligor, that it holds no security for the same or any part thereof, and that there are no setoffs or counterclaims in favor of the Obligor which will in any way reduce or diminish the sum of \$98,144.73 assigned by Claimant to Surety.

Claimant will also execute any further instruments necessary to vest title in the Surety to the claims, power and authority that are transferred and assigned pursuant to this Release and Assignment of Claim.

In furtherance of the above assignment of claims, if and to the extent that such assignment is not effective to transfer to the Surety the rights intended to be transferred thereby, Claimant further designates and constitutes the Surety and its successors, administrators, and assigns forever, Claimant's true and lawful attorneys in fact irrevocable, in the name, place, and stead of Claimant, with respect to the payments made by the Surety (but not otherwise), to ask, demand, sue for, attach, levy, recover, and receive all such sums which now are, or may hereafter become due, owing, and payable for, or on account of all or any of the accounts, dues, debts, and demands above assigned, giving and granting to the above attorneys full power and authority to do and perform all and every act and thing whatever requisite and necessary, as fully, to all intents and purposes, as Claimant might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the attorneys or their substitute shall lawfully do, or cause to be done by virtue hereof.

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Nothing set forth in this Release and Assignment of Claim is intended by the undersigned to obligate the Surety for any sum in excess of Surety's payments under the aforesaid Bonds.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
COMMISSIONERS
Ву:
, title

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## **ACKNOWLEDGEMENT**

STATE OF FLORIDA	) se:	
COUNTY OF LEE	) ss:	
On	_, 200,	personally came before me
and this person acknowledge	, under oath, to my satis	sfaction that:
authorized representation in this Release and As (b) the proper sea (c) this document	tive of Lee County Boassignment of Claim betwas affixed; and twas signed and made its voluntary act and	vered the attached document as the ard of County Commissioners, named ween the Surety and Lee County;  by the Lee County Board of County deed by virtue of authority from
Signed and sworn to before n this day of		,
Notary Public	<del></del>	

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