

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070804

1. ACTION REQUESTED/PURPOSE: Approve mediated settlement in the case of Fort Myers Airways, Inc. v. Lee County and Lee County Port Authority, Case No. 96-6027-CA-WCM.

2. FUNDING SOURCE: No funding source is necessary since the parties are equally dividing funds that are on deposit with the Clerk of Court.

3. WHAT ACTION ACCOMPLISHES: Resolves all claims and law suits involving the parties.

4. MANAGEMENT RECOMMENDATION: Approve – all staff members involved in the mediation recommend approval.

5. Departmental Category: 12 – County Attorney **A12B** **6. Meeting Date:** June 5, 2007

7. Agenda:	8. Requirement/Purpose: <i>(specify)</i>	9. Request Initiated:
<input type="checkbox"/> Consent	<input type="checkbox"/> Statute	Commissioner _____
<input checked="" type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	Department <u>County Attorney</u>
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	Division <u>Litigation</u>
<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Other	By: <u>John S. Turner, Assistant</u>
<input type="checkbox"/> Walk-On		<u>County Attorney</u>

10. Background: There were originally three cases involving Lee County, Lee County Port Authority and Fort Myers Airways, Inc. Case No. 96-CC-1682 was an eviction action to remove Fort Myers Airways from Page Field after expiration of its lease in May of 1996-Lee County Port Authority wanted possession of the property and Fort Myers Airways would not move; Case No 96.-AP-7591 was an appeal by Fort Myers Airways on the eviction order issued by the County Court; and Case No. 96-6027-CA was the case set for trial in August of 2007 on Fort Myers Airway's claim for damages for improper breach of lease agreement and bad faith and unfair dealing by Lee County Port Authority after its lease was terminated. Lee County and Lee County Port Authority also have claims against Fort Myers Airways for loss of profits for Fort Myers Airway's holding over as tenant for 9 months and the costs of environmental assessment and clean-up of Fort Myers Airway's facilities at Page Field. Lee County's loss of profits are based on lost fuel sales and hangar rental for the 9 months. Lee County and Lee County Port Authority incurred costs of approximately \$223,672.00 for environmental assessment and clean-up. Lee County Port Authority's lost profit claim cannot be calculated until all of Fort Myers Airway's records have been produced which has not occurred to date. Lee County and Lee County Port Authority attempted to establish lost profits at the eviction hearings, and the Court used the amounts offered to set cash supercedeas and performance bonds. On May 22, 2007, the parties met in mediation and accepted the mediator's recommendation to equally divide the court held funds (mediation settlement agreement attached), to resolve the case. The total amount of money deposited by Fort Myers Airways was \$336,310.78, which is the amount to be equally divided by the parties as settlement of all claims. Lee County and Lee County Port Authority vigorously deny all Fort Myers Airway's claims, and are ready for trial on all issues and prepared to seek a judgment against Fort Myers Airways for its lost profits and environmental clean-up costs, but because of the uncertainty of the collectability of any judgment and the uncertainty of jury trials, staff and counsel recommend settlement to recover a portion of such expenses.

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>J. Turner</i>	RK 5/24	NA 5/24/07	19 5/24/07	20 5/24/07	<i>5-24-07</i>

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

CL. ATTY.
FORWARDED
TO CO. ADMIN.
5/24/07

RECEIVED BY
COUNTY ADMIN: *JK*
5/24/07
9:20 AM
COUNTY ADMIN
FORWARDED TO:
3/24 3:35
ML

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

FORT MYERS AIRWAYS, INC.,
a Florida corporation,

Plaintiffs,

vs.

Case No. 96-6027 CA-WCM
Date of Mediation: May 22, 2007
Mediator: David Prolman

LEE COUNTY PORT AUTHORITY,
a political subdivision of the State
of Florida, and LEE COUNTY,
FLORIDA, a political subdivision
of the State of Florida,

Defendants.

MEMORANDUM OF SETTLEMENT

PURSUANT TO the Court's Order/Stipulation of the Parties, Mediation was conducted on the date above and the Parties have reached a settlement, as set forth in the Memorandum attached or outlined below.

The terms of the Settlement are as follows:

1. This action has been amicably resolved and once the conditions listed below have been met and satisfied, the case shall be dismissed with prejudice.
2. Defendant(s) agree and Plaintiff(s) agree to accept the sum of one half of the amount of bond in the approximate amount of \$336,310.78, in full and final settlement of all claims.
3. Within twenty (20) days of approval of this agreement by the Lee County Board of County Commissioners/Lee County Port Authority, the parties shall execute and deliver a full and final release and stipulation for dismissal with prejudice, to be signed by all parties and Ed Wilson, individually, for all cases involving these parties, including 96-AP-7591 and 96-CC-1682.
4. Each party shall bear its own costs and attorney's fees.
5. Parties agree to file appropriate motions to obtain the deposited funds listed above in paragraph no. 2, less costs, if any.

6. Representatives, attorneys and staff of the Defendants, Lee County and Lee County Port Authority will give their recommendation to the Board of County Commissioners and the Board of Lee County Port Authority for approval of this Settlement.



Ed Wilson, Fort Myers, Airways, Inc.
Plaintiff



Defendant Lee County



Robin S. Trupp
Attorney for Plaintiff



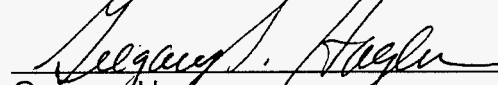
John S. Turner
Attorney for Defendant



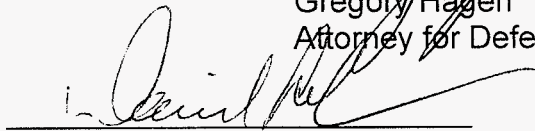
Ed Wilson, individually



Defendant-Lee County Port Authority



Gregory Hagen
Attorney for Defendant



Mediator