



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

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Dylan Reingold, County Attorney  
William K. DeBraal, Deputy County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Dylan Reingold, County Attorney

**DATE:** July 15, 2019

**SUBJECT:** *Ocean Concrete and George Maib v. Indian River County*  
Circuit Court Case No. 31-2007-CA-011589. DCA Case No. 4D16-3210.

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**BACKGROUND.**

As the Indian River County Board of County Commissioners is aware, this case arises out of a dispute regarding a proposed development of property for use as a concrete batch plant. The plaintiffs' fourth amended complaint set forth three counts against Indian River County: Count I for inverse condemnation or regulatory taking; Count II for violation of the Bert J. Harris Act; and Count III for compensatory damages and declaratory judgment pursuant to 42 U.S.C. § 1983. On November 20, 2015, a jury returned a verdict in favor of Indian River County on Count III, finding that the plaintiffs' procedural due process rights were not violated. On August 19, 2016, the circuit court issued a final judgement in favor of Indian River County on all remaining counts.

The case was appealed and on March 14, 2018, the district court affirmed in part, reversed in part and remanded. The appellate court upheld the trial court ruling on the inverse condemnation or regulatory taking count and the count under 42 U.S.C. § 1983. However, the appellate court ruled that Indian River County was liable under the Bert J. Harris Act. The County sought an appeal with the Florida Supreme Court, which denied taking jurisdiction. The case is currently pending, awaiting trial for damages.

The claim presented by the plaintiffs is predicated on an appraisal that claimed the loss in value due to the elimination of a cement batch plant from the property was \$1.7 million. Under the Bert J. Harris Act, the plaintiffs may be able to recover reasonable costs and attorney fees, and be paid interest, if the plaintiffs prevail in the action.

On July 11, 2019, the plaintiffs and the County attended mediation. Although we were not able to settle the case, outside counsel and the County Attorney, decided it might be important to file a Proposal for Settlement (PFS)

A proposal for settlement in Florida can be filed by a party to a civil lawsuit for damages pursuant to section 768.79, Florida Statutes. The party to whom the proposal is directed has thirty days from the date of filing to accept the proposal or it is deemed rejected. If the proposal for settlement is rejected by the offeree and the case progresses through litigation and the judgment is at least 25% less than the amount of the proposal for settlement, a court can award costs and attorney's fees incurred after the date of the proposal.

The County Attorney's Office recommends that the County offer a PFS in the amount of \$800,000, which would include the fees and costs. It should be noted that the insurance carrier will be contributing roughly \$700,000 to the settlement.

**FUNDING.**

Of the \$800,000 recommended settlement, approximately \$700,000 will be paid by the County's insurance policy. The remaining \$100,000 will be made available via budget amendment from the Risk Fund's cash balance.

**RECOMMENDATION.**

The County Attorney's Office recommends that the Indian River County Board of County Commissioners approve filing of a Proposal for Settlement in the amount of \$800,000.