



# Broward County

## Legislation Details (With Text)

**File #:** 20-853      **Version:** 1

**Status:** Agenda Ready

**In control:** County Attorney

**On agenda:** 5/5/2020      **Final action:** 5/5/2020

**Title:** MOTION TO AUTHORIZE County Attorney to execute agreements with the codefendants in two lawsuits against the County under which the codefendants will be providing funding towards the County's defense costs.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
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### Broward County Commission Regular Meeting

**Director's Name:** Andrew J. Meyers

**Department:** County Attorney

### Information

#### Requested Action

MOTION TO AUTHORIZE County Attorney to execute agreements with the codefendants in two lawsuits against the County under which the codefendants will be providing funding towards the County's defense costs.

#### Why Action is Necessary

Board approval is required to authorize the County Attorney to execute agreements on behalf of the County.

#### What Action Accomplishes

Authorizes the County Attorney to execute agreements regarding the codefendants' funding of the County's defense costs.

#### Is this Action Goal Related

No

#### Previous Action Taken

#### Summary Explanation/Background

The County and two of its vendors at Fort Lauderdale-Hollywood International Airport are defendants in putative class actions pending in state and federal court (the "Lawsuits") relating to the printing of credit card receipts at airport parking facilities. The vendors' contracts with the County contain

indemnification clauses that address defense costs. Neither vendor has formally acknowledged the applicability of its defense and indemnity obligations to these Lawsuits. However, the Office of the County Attorney has reached an agreement with one of the vendors to provide the County with \$150,000 to fund the County's defense of the Lawsuits on an interim basis without the vendor formally admitting it is obligated to defend the County. The County would not have any obligation to repay any expended funds to that vendor. There have also been discussions with the other vendor related to defense costs, and while a conceptual agreement has been reached, no written agreement has been finalized.

Approval of this item would authorize the County Attorney to execute the agreement it has reached with one of the vendors, and would also authorize the County Attorney to execute any future similar agreement with either or both of the vendors regarding defense costs related to the Lawsuits. Any amounts obtained from the vendors will be used to pay outside counsel with expertise in "FACTA" and class action litigation to assist the County in defending the Lawsuits.

At the October 15, 2019, Commission meeting, the Board authorized the County Attorney to retain outside counsel, at no cost to the County, to represent the County in the Lawsuits. The agenda report identified Shook Hardy & Bacon ("Shook Hardy") as the law firm being considered. The Office of the County Attorney has evaluated other firms but has determined that Shook Hardy is best suited to represent the County. In the process of a conflict-of-interest review, Shook Hardy identified a matter pending with the County related to a preexisting client and a construction dispute. The matter has been dormant for over a year.

Section 18.88 of the Broward County Administrative Code, "Conflicts of Interest for Outside Legal Counsel," gives the County Attorney discretion to determine whether a potential conflict of interest of outside counsel should preclude the County from retaining such counsel. The County Attorney has determined that the limited, dormant conflict here would not prejudice the County in any way or benefit Shook Hardy or its client in the other matter. However, in an abundance of caution given the wording of Section 18.88, this matter is being disclosed, and any concern regarding retaining Shook Hardy (due to the conflict) can be addressed either in individual briefings or during the Board's consideration of this item.

#### **Source of Additional Information**

Michael J. Kerr, Deputy County Attorney, 954-357-7600

#### **Fiscal Impact**

##### **Fiscal Impact/Cost Summary**

No cost to the County.