

## MEMORANDUM

Agenda Item No. 11(A)(1)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

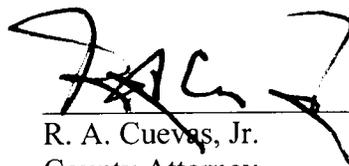
**DATE:** May 17, 2011

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution directing the  
County Attorney's Office to  
seek leave and appear as an  
Amicus Party in Citizens  
Property Insurance Corporation  
v. San Perdido Association,  
Inc., a case pending before the  
Florida Supreme Court

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Joe A. Martinez.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/jls

# Memorandum



**Date:** May 5, 2011

**To:** Board of County Commissioners

**From:** R. A. Cuevas, Jr.  
County Attorney 

**Subject:** Challenge to Sovereign Immunity Defense

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The doctrine of sovereign immunity protects the County from liability under Florida law from many of the claims made in personal injury lawsuits. It is an important and viable defense for the County, limiting the County's financial exposure in litigation.

Assertion of the sovereign immunity defense at the earliest stages of litigation protects the County from many of the burdens and expenses of litigation (i.e., copying and producing a multitude of documents, hiring experts, paying experts to prepare reports, paying experts for deposition and trial testimony, and the redirection of County staff to participate in defending the County's position). Accordingly, this office often moves to dismiss complaints against the County that appear to be barred by sovereign immunity. When a trial court improperly denies these motions to dismiss, this office seeks to have the decision immediately reviewed at the appellate court level. Although appellate courts do not typically review decisions by trial courts until after trial, this office has argued successfully to the Third District Court of Appeal that cases invoking sovereign immunity are special and deserve immediate review in order to preserve the County's right to be free from the burdens and expenses of unnecessary litigation.

There is a case pending in the Florida Supreme Court involving the issue of whether governmental entities can seek immediate review of trial court decisions that deny sovereign immunity. Neither of the parties to the litigation have an interest in preserving the right of a governmental entity, such as the County, to seek such review. Indeed, the petitioner has made arguments that could undermine prior appellate rulings adopting this office's position that governmental entities do have the right to seek immediate review of adverse trial court rulings on the sovereign immunity defense.

Should the Florida Supreme Court rule in favor of the petitioner for the reasons articulated in its brief, it could compromise the County's position in future cases, as well as four pending cases. Moreover, an inability to seek immediate review of a trial court decision denying sovereign immunity could negatively impact this office's ability to resolve cases early and on terms that are fair and favorable to the County. For these reasons, I recommend that the Commission direct this office to seek leave and appear in the case pending in the Supreme Court as an Amicus Party for the limited purpose of asking the Court to refrain from ruling on this issue as it is not essential to the case before it.



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** May 17, 2011

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(1)  
5-17-2011

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DIRECTING THE COUNTY ATTORNEY'S OFFICE TO SEEK LEAVE AND APPEAR AS AN AMICUS PARTY IN *CITIZENS PROPERTY INSURANCE CORPORATION V. SAN PERDIDO ASSOCIATION, INC.*, A CASE PENDING BEFORE THE FLORIDA SUPREME COURT

**WHEREAS**, the County enjoys sovereign immunity from liability from many claims made in personal injury lawsuits; and

**WHEREAS**, the County Attorney's Office often asserts the defense of sovereign immunity, when it applies, at the earliest stages of litigation to protect the County from the burdens and expenses of unnecessary litigation; and

**WHEREAS**, when a motion to dismiss that raises sovereign immunity as a defense is improperly denied, the County Attorney's Office seeks to have the decision reviewed immediately by an appellate court; and

**WHEREAS**, there is a case pending in the Florida Supreme Court, *Citizens Property Insurance Corporation v. San Perdido Association, Inc.* that questions whether trial court denials of sovereign immunity may be reviewed immediately by an appellate court as opposed to after a judgment is entered in the trial court; and

**WHEREAS**, neither party in the *Citizens* case has an interest in preserving the right to seek immediate review of adverse trial court rulings on the sovereign immunity defense; and

**WHEREAS**, the petitioner in the *Citizens* case has made arguments that could undermine the County's ability to seek immediate review of adverse trial court rulings on the sovereign immunity defense; and

**WHEREAS**, a ruling in favor of the petitioner for the reasons articulated in its brief could compromise the County's ability to seek immediate review of denials of sovereign immunity, which could negatively impact the County Attorney's Office's ability to resolve cases early and avoid the unnecessary burdens and expenses of litigation; and

**WHEREAS**, the Florida Supreme Court allows non-parties to a case to, once leave is granted, appear before it as an Amicus Party for the purpose of assisting the Court in understanding cases of public interest or cases involving difficult issues,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that the County Attorney's Office is directed to seek leave and appear as an Amicus Party in *Citizens Property Insurance Corporation v. San Perdido Association, Inc.*, a case pending before the Florida Supreme Court, for the limited purpose of requesting that the Court refrain from ruling on the issue of whether governmental entities can seek immediate review of a denial of sovereign immunity as the issue is not essential to resolution of the case before it.

The Prime Sponsor of the foregoing resolution is Chairman Joe A. Martinez. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	

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The Chairperson thereupon declared the resolution duly passed and adopted this 17<sup>th</sup> day of May, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



R. A. Cuevas, Jr.