

MEMORANDUM

Agenda Item No. 13(A)(1)

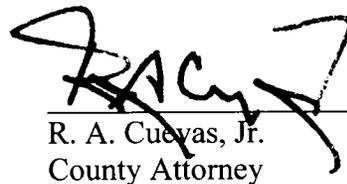
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: June 7, 2011

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

SUBJECT: Resolution authorizing the
Mayor or Mayor's designee
to execute the settlement
agreement settling all claims
between Miami-Dade County
and Carmen Lunetta

The accompanying resolution was placed on the agenda by the County Attorney.



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: June 7, 2011

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

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

Agenda Item No. 13(A)(1)

Alina T. Hudak
County Manager

Subject: Resolution approving the settlement of the remaining claims in the lawsuit:
Metropolitan Dade County v. Fiscal Operations, Inc., et al, Circuit Court Case No. 97-15083 CA 40 ("Lawsuit")

Recommendation

We hereby recommend execution of the attached settlement agreement, settling the remaining claims in the action styled Metropolitan Dade County v. Fiscal Operations, Inc., et al. No. 97-15083 CA 40 ("Lawsuit"). By Resolution R-394-11 adopted May 3, 2011, this Board approved a settlement agreement settling all claims and counterclaims between the County, on the one hand, and Fiscal Operations, Inc., Fiscal Funding, Inc., Calvin Grigsby, and John Tiddes (collectively the "Fiscal Parties"), on the other hand. At that point, the County's claims against its former Seaport Director Carmen Lunetta remained pending for trial.

The complaint by the County against Mr. Lunetta and the Fiscal Parties, and the Counterclaim by the Fiscal Parties, were filed in 1997, following termination of Fiscal Operations in connection with the operation of the cranes at the Port of Miami. Under the proposed settlement, Mr. Lunetta would agree to pay the County \$50,000 ("Settlement Payment") in two installments of \$25,000 each, with the first installment being due November 1, 2011, and the second installment being due November 1, 2012. The Settlement Payment would be guaranteed by a letter of credit or other instrument acceptable to the County to guaranty that the Settlement Payments will be made. In exchange, the County agrees to stipulate to the dismissal of the Lawsuit, and to exchange mutual releases with Mr. Lunetta.

Background

In 1988, in connection with the County's purchase of gantry cranes for the Port of Miami, the County entered into a restated and amended operating agreement with Fiscal Operations, a subsidiary of Fiscal Funding, Inc. owned by Calvin Grigsby (the "Operating Agreement"). Under the terms of the Operating Agreement, Fiscal Operations was to operate and maintain the gantry cranes, collect revenues from users, and remit payments to the County. Fiscal Operations was obligated to submit yearly operating and maintenance budgets to the County. The County later was to approve the budget after making any modifications deemed by the County to be appropriate and reasonable. The Operating Agreement contained no express requirement for the deposit of crane fees in segregated trust accounts.

Commencing in the year 1997, a number of irregularities were identified by the County in connection with the use of gantry crane revenues. Fiscal Operations used crane revenues for a large series of expenditures wholly unrelated to crane operation, use or maintenance. Some of the expenditures were directed by the Port Director, such as political contributions, cars and employment in manner circumventing County personnel rules and practices. Some benefited the Port or the County either directly or indirectly. Some of the expenditures were directed by Mr. Grigsby strictly for his personal benefit such as Super Bowl tickets, payments to the symphony and expenses for his boat.

The Port Director, Mr. Lunetta, resigned in the wake of these events.

On January 16, 1998, the Audit and Management Services Department of the County issued an audit report with detailed findings of the irregularities in the handling of the Operating Agreement. It recommended that the County immediately sever its relationship with Fiscal Operations.

The County terminated Fiscal Operations in 1998, banning the company from Port Facilities. The County turned over operation of the facilities to a successor operator. The County sued, among other, Fiscal Operations and Mr. Lunetta. The Fiscal Parties counterclaimed against the County.

The Courts

In 1998, Mr. Lunetta, and Mr. Grigsby were charged by the federal government with the theft of the crane revenues from an entity, the County, which received federal funds. A federal trial was held commencing April 1999, lasting approximately one month. The Court received testimony from dozens of witnesses and reviewed thousands of pages of documents.

In June of 1999, the Court entered a judgment of acquittal. It found that the government had presented "substantial evidence of greed and public corruption, the placement of private interests over those of the public. Accountability was non-existent; financial controls were ignored, indeed disdained." However, it concluded as a matter of law that

the crane funds were not owned by the County at the time they were spent by Fiscal within the meaning of the federal statute.

In reaching that conclusion, the Court found that Fiscal Operations was not required to maintain the funds in a segregated account, was allowed to, and did, commingle the funds with other funds of Fiscal Operations, and controlled the use of the funds with the knowledge of the County. It also found that the financial statements and tax returns of Fiscal showed the crane user fees as revenues of Fiscal Operations. At the same time, the Port's and County's audited financial statements reflected only the net revenues received from Fiscal, and did not report the gross crane user fees as income to the Port.

The civil action between the parties, now spanning fourteen years, has involved substantial discovery, including the deposition of the parties and all major witnesses, and the filing of numerous dispositive motions. Recently, by Resolution R-394-11 adopted on May 3, 2011, the County amicably settled all claims and counterclaims between the County and Fiscal Operations, Inc., Fiscal Funding, Inc., Calvin Grigsby and John Tiddes.

Earlier this year, on January 31, 2011, the Court ruled on a number of these dispositive motions filed by both the County and Fiscal Operations.

With respect to the dispositive motions filed by the Fiscal Parties, using the federal criminal case as well as several state law court decisions as precedent, the Court dismissed the County's claims for conversion and civil theft against, among others, Mr. Grigsby and Mr. Tiddes personally. Significantly, the County has made those same claims of civil theft and conversion against Mr. Lunetta, and the Court likely will dismiss those claims against Mr. Lunetta, upon motion by him, if litigation were to continue.

Therefore, with respect to Mr. Lunetta, the County's remaining claims at trial likely would be for breach of fiduciary duty and fraud. Those claims are essentially based on the factual contentions that Mr. Lunetta (1) failed to properly perform his duties in managing the Fiscal Operations contract, particularly with respect to the control of budgets, expenses, and collection of revenues, and (2) that Mr. Lunetta failed to inform this Board of budgeting of expenses and revenues under that contract. The County seeks approximately \$6 million on those claims. However, the vast majority of that amount is based on the improper payment of county related expenses using crane revenues, and on expenses incurred by Fiscal Operations which the County contends were improperly approved by Mr. Lunetta. The County calculates that the personal benefit to Mr. Lunetta was only approximately \$46,000.

After numerous delays related to a number of different reasons the case currently is set for trial against Mr. Lunetta commencing in October, 2011. The trial is expected to last two weeks. Significant costs will be attendant to the trial in the form of transcripts, exhibits and expert witness fees. In anticipation of the trial, the Court ordered the County and Mr. Lunetta to mediation in a last ditch effort to settle the case after the passage of time.

The mediation was held on May 19, 2011 before a mediator appointed by mutual agreement, Mr. George Knox. Mr. Knox was chosen for his extraordinary competence as a practitioner, and with particular relevance to this case for his sound judgment, outstanding ethics and intimate understanding of government. Mr. Knox also mediated this dispute on November 2, 2010 and April 18, 2011. Mr. Knox recommended that the County and Mr. Lunetta adopt the attached settlement, and put an end to fourteen years of litigation.

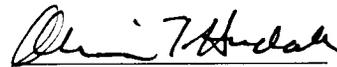
The Recommended Settlement

The settlement recommended settlement requires Mr. Lunetta to pay the County \$50,000.00 in two equal installments of \$25,000 each, with the first being due on November 1, 2011, and the second being due on November 1, 2012. The settlement also requires Mr. Lunetta to provide an irrevocable letter of credit, or other security, payable to the County upon presentation to the issuing institution if either of the two payments above is not timely made. This settlement payment exceeds the amount of money that the County can allege with reasonable certainty that Mr. Lunetta personally benefitted from his alleged wrongful acts.

Among other reasons, the settlement is recommended because of the factual and legal difficulties presented by this controversy, which extends to over fourteen years in litigation. These include (1) the need to convince a jury to hold Mr. Lunetta, who is 80 years old, personally responsible for most of his actions in light of evidence upon which a jury could conclude that Mr. Lunetta acted with the knowledge of, and sometimes at the direction of, other higher ranking County officials,, (2) the fact that certain legal issues have been resolved against the County, most notably the ownership of crane user fees at the time of collection, (3) the majority of the expenses were for a myriad of County sponsored events or otherwise directly or indirectly benefitted the Port, and (4) the transaction from which the County believes Mr. Lunetta benefitted personally appears to be legal on its face, and the main witness contending otherwise is deceased.

Further, Mr. Lunetta is an individual who appears, after reasonable investigation by the County, to have few if any resources, or attachable assets, to pay a large judgment. It should also be noted that Mr. Lunetta has made an offer of judgment in the amount of \$40,000, which is approximately the amount of money the County calculates Mr. Lunetta personally benefitted from the alleged wrongful acts. If this settlement is not accepted, and the offer of judgment is rejected, the County likely would be held responsible for Mr. Lunetta's costs and reasonable attorneys fees in the event the County fails to obtain a judgment against Mr. Lunetta in at least the amount of \$30,000. Those costs and fees could exceed \$100,000.


Robert A. Cuevas, Jr.
County Attorney


Alina T. Hudak
County Manager



MEMORANDUM

(Revised)

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

DATE: June 7, 2011

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

SUBJECT: Agenda Item No. 13(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. 13(A)(1)
6-7-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR OR THE
MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT
AGREEMENT SETTLING ALL CLAIMS BETWEEN MIAMI-
DADE COUNTY AND CARMEN LUNETTA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by this reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the terms of and authorizes the Mayor or the Mayor's designee to execute the Settlement Agreement between Miami-Dade County and Carmen Lunetta substantially in the form attached to this resolution and the accompanying memorandum.

The foregoing resolution 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
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of June, 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.



Richard C. Seavey

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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this ____ day of May, 2011, by and between the following, sometimes referred to hereafter collectively as the "Parties" and individually as a "Party": Miami-Dade County, Florida (f/k/a Metropolitan Dade County, Florida) (the "County"), and Carmen Lunetta ("Mr. Lunetta").

Whereas, the County, Fiscal Operations, Inc. ("Fiscal"), Fiscal Funding, Inc. ("Fiscal Funding"), and other third parties entered into a number of agreements in connection with a commercial transaction occurring in or about May 1982 including, but not limited to, an Operating Agreement dated May 1, 1982 (collectively "1982 Agreements");

Whereas, the County and Fiscal Funding entered into a Ground Lease dated July 31, 1984 ("Ground Lease");

Whereas, a wholly owned subsidiary of Fiscal Operations, Inc. known as Fiscal Management, Inc. entered into an agreement dated June 15, 1985 ("1985 Agreement"), and a License Agreement dated June 15, 1985 ("License Agreement");

Whereas, there is a Contract of Sale dated as of November 1, 1988 between Dade County and the Connecticut Bank and Trust Company, National Association in which the County purchased gantry cranes 1 and 2 at the Port of Miami (the "Contract of Sale");

Whereas, the County, Fiscal, Fiscal Funding and other third parties entered into a number of agreements in connection with a commercial transaction occurring on or about November 1988, including, but not limited to, a Restated and Amended Operating Agreement dated as of November 1, 1988 (collectively the "1988 Agreements") (collectively with the 1982 Agreements, the Ground Lease, the 1985 Agreement, the License Agreement, the Contract of Sale, the 1988 Agreements and any other agreement between any of the Parties referred to as the "Agreements");

Whereas, there is currently pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Court"), Case No. 97-15083 CA40, an action entitled *Metropolitan Dade County Florida v. Fiscal Operations, Inc., et al* (the "Lawsuit") asserting claims by the County against Mr. Lunetta, and formerly asserting now settled claims against Fiscal Operations, Fiscal Funding, Grigsby, Tiddes, and Mr. Lunetta;

Whereas, Fiscal Operations, Fiscal Funding, Grigsby and Tiddes assert counterclaims and cross-claims in the Lawsuit;

Whereas, Mr. Lunetta served as an employee of the County from 1959 through 1997, and as the acting and official Director of the Seaport Department from 1976 through 1997 ("Mr. Lunetta's County employment")

Whereas, the Parties, each of whom is represented by counsel, recognize their respective rights and obligations, and are desirous of settling – fully and finally – the Lawsuit as well as any

47 and all claims and counterclaims which were or could have been brought in the Lawsuit and
48 Appeals, or which were, could have been, or could be brought in connection with the
49 Agreements and Mr. Lunetta's County Employment";

50
51 **Whereas**, prior to signing this Agreement, each Party had an opportunity to and in fact
52 has had counsel review this Agreement and explain that Party's rights and obligations under and
53 the legal effect of this Agreement; and

54
55 **Whereas**, the Parties have signed this Agreement of their own free will and volition, with
56 the full recognition and understanding of their rights and obligations under and the legal effect of
57 this Settlement Agreement;

58
59 **Now Therefore**, for and in consideration of the following covenants and agreements, or
60 other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and
61 conclusively established, the Parties covenant and agree as follows:

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63 1. **Recitals**: The foregoing recitals are true and correct and incorporated herein.

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65 2. **Nothing In This Agreement To Act As Admission**: Neither this Agreement nor
66 anything in it shall act as or constitute an admission by any Party that any Party, or any of their
67 respective past or present officers, directors, shareholders, agents, employees, independent
68 contractors, agents, accountants or attorneys, committed any wrongful act, or violated or
69 breached the terms of any agreement or duty owed, whether statutory or otherwise to any other
70 Party.

71
72 3. **Settlement of Lawsuit**: In settlement of the Lawsuit, including but not limited to
73 any and all claims, counterclaims and cross-claims which were or could have been asserted in the
74 Lawsuit, and any and all claims which could have been, or could in the future be, asserted in
75 connection with the Agreements and Mr. Lunetta's County Employment:

76
77 (a) Mr. Lunetta promises to pay to the County the total sum of Fifty Thousand
78 Dollars (\$50,000.00) in two (2) equal yearly installments, the first of which is due
79 November 1, 2011, and second of which is due November 2, 2012. (the "Settlement
80 Payment"). Mr. Lunetta shall make the payments by check made payable to Board of
81 County Commissioners of Miami-Dade County, Florida. Within five (5) business days
82 of the Effective Date of the Resolution of the Miami-Dade County Board of County
83 Commissioners approving this Agreement, Mr. Lunetta shall deliver an irrevocable letter
84 of credit, bond, or other instrument in favor of the County, in the amount of \$50,000.00,
85 and in a form acceptable to the County, which shall guarantee full payment of
86 \$50,000.00 to the County upon presentment, if payment is not made by Mr. Lunetta on
87 the dates set forth above ("Letter of Credit").

88
89 (b) Within five (5) business days from the receipt of the Letter of Credit referenced in
90 Section 3(a) of this Agreement, the Parties agree to file in the Lawsuit a Stipulation for
91 Dismissal pursuant to Rule 1.420 of the Florida Rules of Civil Procedure dismissing all

92 claims, counterclaims, and cross claims in the Lawsuit with prejudice, with each party
93 bearing its own costs and fees.

94
95 4. **Mutual Release:** the Parties hereby remise, release, acquit, satisfy and forever
96 discharge each other (including each of their respective past and present parent, subsidiaries,
97 affiliates or predecessor entities, and any and all of their respective past and present officers,
98 directors, agents, attorneys, accountants, insurers, servants, employees, and shareholders, and
99 their respective heirs and personal representatives, all of the foregoing hereinafter collectively
100 referred to as the "Party Releasees"), of and from any and all, and all manner of, claims, actions,
101 causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies,
102 agreements, promises, damages, and demands whatsoever, in law or in equity, which any Party
103 had or now has, or which any successor or assign of any Party hereafter can, shall or may have,
104 against the Party Releasees, for, upon, or by reason of any matter, cause or thing whatsoever,
105 from the beginning of the world to the date of this Settlement Agreement, whether known or
106 unknown, direct or indirect, vested or contingent. Without limiting the generality of the
107 foregoing, the Parties' release also specifically includes the release of any and all claims, rights,
108 and causes of action, of any type or kind whatsoever, which were or could have been raised or
109 asserted in the Lawsuit or in any separate action filed in any court arising out of or relating
110 (directly or indirectly) to the Agreements and Mr. Lunetta's County Employment.
111 Notwithstanding the foregoing, the Parties do not release each other from the terms and
112 conditions of this Settlement Agreement.

113
114 5. **Attorneys' Fees:** The Parties agree that each of them will be responsible for
115 paying their own attorneys' fees, costs and expenses arising out of or connected with the Lawsuit
116 and any interlocutory appeals filed therein, including but not limited to the preparation and
117 execution of this Settlement Agreement.

118
119 Mr. Lunetta agrees that he shall be responsible for payment of the reasonable County's
120 Attorneys' fees and costs in the event that County must file any motion, pleading, or other action
121 to enforce the promissory note described in Paragraph 3(a) above.

122
123 Otherwise the Parties do not agree to pay any other Party's attorneys' fees in connection
124 with enforcement of this Agreement.

125
126 6. **Paragraph Headings:** The headings of the paragraphs of this Agreement are
127 inserted only for the purpose of convenience of reference, and the Parties recognize and agree
128 that these headings may not adequately or accurately describe the contents of the paragraphs
129 which they head. Such headings shall not be deemed to govern, limit, modify, or in any manner
130 affect the scope, meaning, or intent of the provisions of this Agreement or any part or portion
131 thereof, nor shall they otherwise be given any legal effect.

132
133 7. **Parties:** This Settlement Agreement, as well as the obligations created and the
134 benefits conferred hereunder, shall be binding on and inure to the benefit of the Parties as well as
135 their personal representatives, heirs, past and present representative officers, directors, agents,
136 attorneys, accountants, insurers, employees, and any subsidiary, affiliated and parent
137 corporations, collateral corporations, or other business entities controlled directly or indirectly by

138 the Parties. Each Party hereby represents and warrants, with respect to any and all claims and
139 counterclaims which were or could have been asserted in the Lawsuit against the other Party,
140 that: (a) no other person or entity is entitled to assert any such claims or counterclaims against, or
141 to recover any monetary, declarative, injunctive, equitable, or any other form of relief from, the
142 opposing Party; and (b) no Party has assigned, transferred, hypothecated, or in any other way
143 disposed of all or any portion of any of claims or counterclaims which were or could have been
144 asserted in the Lawsuit against the opposing Party.

145
146 8. **Authority:** Each person signing this Agreement on behalf of a Party represents
147 and warrants that he or she has full power and authority to enter into this Agreement and to fully,
148 completely, and finally settle the Lawsuit, including but not limited to any and all claims and
149 counterclaims which were or could have been asserted in the Lawsuit.

150
151 9. **Neutral Reference:** Each Party agrees that if any inquiry is made by third
152 persons with respect to any other Party that each Party shall make only the statement that the
153 “matter has been resolved between the parties.”

154
155 10. **Governing Law and Venue:** This Agreement shall be enforceable and construed
156 according to the laws of the State of Florida without regard to its conflict of laws provisions.
157 The Parties agree that any action to enforce this Agreement shall be brought in the Court in the
158 Lawsuit.

159
160 11. **Entire Agreement:** The Parties acknowledge that this Agreement contains the
161 full and complete agreement between and among them, and that there are no oral or implied
162 agreements or understandings not specifically set forth herein. Each Party acknowledges that no
163 other Party, or agent or attorney of any other Party, or any person, firm, corporation or any other
164 entity has made any promise, representation, or warranty, whatsoever, express, implied, or
165 statutory, not contained herein, concerning the subject matter hereof, to induce the execution of
166 this Agreement. Each signatory also hereby acknowledges that he or she has not executed this
167 Agreement in reliance on any promise, representation, or warranty not contained herein. The
168 Parties further agree that no modifications of this Agreement may be made except by means of a
169 written agreement signed by each of the Parties. Finally, the Parties agree that the waiver of any
170 breach of this Agreement by any Party shall not be a waiver of any other subsequent or prior
171 breach. From time to time at the request of any of the Parties to this Agreement, without further
172 consideration and within a reasonable period of time after request hereunder is made, the Parties
173 hereby agree to execute and deliver any and all further documents and instruments and to do all
174 acts that any of the Parties to this Agreement may reasonably request which may be necessary or
175 appropriate to fully implement the provisions of this Agreement.

176
177 12. **Further Action:** Each of the Parties hereto agrees to execute and deliver all
178 documents, provide all information and take or forbear from all such action as may be reasonable
179 necessary or appropriate to achieve the purposes of this Agreement, each party to bear its own
180 costs and fees.

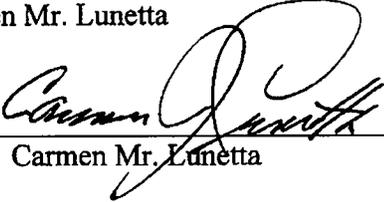
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182 IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this
183 Agreement the day first above written.

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Carmen Mr. Lunetta

BY: 
Carmen Mr. Lunetta

Date: _____

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
County Mayor or Designee

DATE OF EXECUTION: _____

ATTEST:

Deputy Clerk

APPROVED AS TO FORM & LEGAL SUFFICIENCY:
MIAMI-DADE COUNTY ATTORNEY

By: _____
Richard C. Seavey
Assistant County Attorney