Florida Gulf Coast University Board of Trustees
January 20, 2009

SUBJECT: Ratification of Lawsuit Settlement – Morris v. FGCU Board of Trustees

PROPOSED BOARD ACTION

Ratification of actions of President Bradshaw, undertaken in consultation with Chairman Lutgert, involving the settlement of the litigation filed by Wendy Suzanne Morris against Florida Gulf Coast University Board of Trustees.

BACKGROUND INFORMATION

In April 2008 a lawsuit was filed against Florida Gulf Coast University Board of Trustees by Wendy Suzanne Morris. The Board of Trustees entered into an Executive Session on August 22, 2008 to discuss the pending litigation with legal counsel. That meeting resulted in the Board unanimously authorizing the President, in consultation with Chairman Lutgert, to “make necessary determinations” related to the aforementioned litigation. This item is to ratify the actions untaken and the agreements made to settle the Wendy Morris lawsuit.

Supporting Documentation Included: Settlement Agreement with Wendy Suzanne Morris

Prepared by: General Counsel Vee Leonard

Legal Review by: N/A

Submitted by: General Counsel Vee Leonard
SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE (sometimes referred to as the "Agreement") is entered into by and between the Board of Trustees of Florida Gulf Coast University, its trustees, directors, executives, officers, employees, former employees, predecessors, agents and legal representatives (herein collectively referred to as "the Board"), and Wendy Suzanne Morris, her heirs, executors, administrators, representatives, attorneys, agents and assigns ("Morris").

WHEREAS, Morris filed a civil action which is pending in the United States District Court for the Middle District of Florida, Ft. Myers Division, styled Wendy Suzanne Morris v. Board of Trustees of Florida Gulf Coast University, case no: 2:08-cv-00315-MMH-DNF; and

WHEREAS, the Board has filed a complaint against Morris in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, styled Board of Trustees of Florida Gulf Coast University v. Wendy Suzanne Morris, case no: 08-CA-011580; and

WHEREAS, Morris and the Board have agreed to settle all disputes and disagreements they may have between them, including, but not limited to, full and completely settling Morris' above-referenced civil action as well as the Board's pending lawsuit against her; and

WHEREAS, Morris and the Board have determined that their respective interests would be best served by resolving all grievances, disputes, and claims Morris has or may have against the Board, including, but not limited to, all grievances, disputes and claims arising out of Morris' employment as the General Counsel of Florida Gulf Coast University and for all times thereafter, up to, and including, the date of her execution of this Agreement, and

WHEREAS, the Board has determined that it is in the their best interest to resolve all grievances, disputes and claims they may have or believe they have against Morris, including, but not limited to, all grievances, disputes and claims arising out of Morris' employment as General Counsel to Florida Gulf Coast University, as well as any events that have intervened since that date about which the Board is aware or through the exercise of due diligence could have become aware, up to, and including the date of the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants exchanged and other good and valuable consideration as set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, Morris and the Board, intending to be legally bound, hereby acknowledge and agree to the following:

Morris agrees that she will immediately dismiss with prejudice her pending Federal civil action against the Board styled Wendy Suzanne Morris v. Board of Trustees of Florida Gulf Coast University and the Board will immediately dismiss with prejudice its pending State civil action against Morris styled Board of Trustees of Florida Gulf Coast University v. Wendy Suzanne Morris.
I. Definitions

For purposes of this Agreement, the following Definitions will apply:

A. Effective Date. The “Effective Date” of this Agreement is the eighth (8th) calendar day after Morris’ execution of this Agreement, as set forth in Paragraph II D(4) below, provided that Morris does not exercise her right to revoke as set forth within that paragraph.

B. Released Parties.

(1) The “Released Parties” are as to the pending Federal lawsuit, the Board and its present or former trustees, directors, executives, officers, employees, predecessors, agents and legal representatives.

(2) The “Released Parties” are, as to the pending State lawsuit, Morris, her heirs, executors, administrators, representatives, attorneys, agents and assigns.

C. Releasing Parties.

(1) The “Releasing Parties” are as to the current Federal lawsuit Morris, her heirs, executors, administrators, representatives, attorneys, agents and assigns.

(2) The “Releasing Parties” as to the pending State lawsuit are the Board, its present or former trustees, directors, executives, officers, employees, predecessors, agents and legal representatives.

D. Administrative Proceeding. An “Administrative Proceeding” includes any charge or complaint or other action instituted with a federal, state or local governmental agency other than the U.S. Equal Employment Opportunity Commission (“EEOC”).

E. The Florida Bar. The Florida Bar includes any local committee, including grievance committees or subcommittees of the Florida Bar or any representative or designee of the Florida Bar.

II. Terms

A. Benefits. In consideration for Morris’ execution of this Agreement, and her release of claims as set forth below, the Board will provide to Morris or on her behalf the following benefits:

(1) The Board will pay $800,000 to Morris in three payments over the next two years in the following manner:
   a) $300,000.00 paid October 1, 2008.
   b) $300,000.00 paid January 31, 2009.
   c) $200,000.00 paid January 31, 2010.
(2) The Board will contribute an additional $50,000.00 towards the attorneys’ fees and costs incurred by Morris in her Title IX action. That amount will be paid directly to the law firm of Avera & Smith, LLP, 2814 SW 13th Street, Gainesville, Florida 32608. Said payment shall be made not later than October 1, 2008.

(3) The Board will agree to indemnify and hold harmless Morris for any costs or fees, including attorneys’ fees incurred in any pending or future actions which arise out of her employment as General Counsel with Florida Gulf Coast University. The indemnification will be as provided in the coverage provision of the Department of Financial Services of the State of Florida.

(4) The Board will direct that those documents maintained by the Board directly related to Morris’ separation of employment be marked and deemed “VOID” and shall be destroyed in accordance with State laws governing the retention of documents.

(5) Morris will tender and the Board shall accept her resignation from her position as General Counsel of Florida Gulf Coast University effective July 25, 2007. (See attached)

(6) The Board acknowledges that all releases contained herein are binding upon former interim President Richard C. Pegnetter, whose signature is affixed hereto. All parties acknowledge that they are fully discharging the other from any and all claims that could have been asserted against the other to the date of the Agreement for any matters arising out of either Pegnetter or Morris’ employment by the Board.

(7) The Board and Morris each agree to refrain from any future charges against the other with any state or federal administrative agencies, courts or the Florida Bar for any acts or omissions of which either was, or by due diligence could have become, aware as of the effective date of this Agreement.

B. The parties agree that, apart from this Agreement, neither is entitled to any payments or other consideration from the other. The benefits described in Section II (A) are contingent upon the parties fully executing this Agreement, Morris’ not exercising any rights she may have by statute or otherwise to revoke her agreement, and the Boards’ and Morris’ continued compliance with all of the terms of this Agreement.

C. Morris agrees that except as otherwise provided specifically herein, she has been paid all earned and accrued compensation due to her, less applicable deductions, through the effective date of this Agreement.

D. Acknowledgements. Morris acknowledges that she has read and understands this Agreement and moreover she specifically acknowledges the following:
(1) That she is a member in good standing of the Florida Bar and is well trained in matters related to the drafting of settlement agreements; and

(2) That Morris has been at all times advised by an attorney and has had a sufficient opportunity to consult with her attorney Rod Smith of the Law Firm of Avera & Smith, LLP before she signed this Agreement; and

(3) That Morris has been given twenty-one (21) days to decide whether to sign this Agreement; and

(4) That Morris understands that upon signing this Agreement, she has seven (7) calendar days in which to revoke her signature and that this Agreement will not become effective or enforceable until after the Effective Date (in other words, the revocation period must have expired, and Morris must not have exercised her right to revoke). Specifically, Morris understands that she will not receive the payments referred to herein until after the Effective date. To revoke this Settlement Agreement, Morris must send a written notice either personally or through her attorney to Aaron Behar, of the Law Firm of Lydecker, Lee, Behar, Berga & De Zayas, LLC, 1201 Brickell Avenue, 5th Floor, Miami, Florida 33131 no later than the eighth calendar day after Morris’ signature is affixed hereto. Both parties acknowledge that by signing this Agreement, they are not waiving or releasing any claims based on actions or omissions that occur after the effective date of the signing of this Agreement.

E. Release. In exchange for the Benefits described in Section II (A) above, the Releasing Parties fully release and discharge the Released Parties from any and all claims of any nature, which either may have arisen out of or in connection with Morris’ employment through the Effective Date of this Agreement. Morris represents that she has filed no other suit, charge, claim, complaint or action against the Board with respect to her employment or any aspect thereto (other than that relating to the present lawsuit which is now being settled) and has not authorized anyone else to do so on her behalf; and further agrees that she waives the right to recover any monetary award should either she, the Equal Employment Opportunity Commission, or the Florida Commission on Human Relations, subsequently file a suit, charge, claim, or action against the Board with respect to her employment with the Board up to the Effective Date of this Agreement. In further exchange for the consideration provided herein, Morris agrees never to commence, prosecute, or except as required to do so by law, testify, against the Board regarding any action or any proceeding based upon any matter arising out of her employment as General Counsel, occurring at any time in the past up to the Effective Date of this Agreement, or involving any continuing effects of any acts, practices or omissions which occurred or arose prior to the Effective Date of this Agreement.

et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (except such rights as may be vested under the Florida Retirement System); any claims under the Florida Civil Rights Act of 1992, as amended, Section 760.01 et seq., Florida Statutes (2006); the Florida Whistleblower’s Act, Section 112.3187 et seq., Florida Statutes (2006); the Florida Workers’ Compensation Act, the Federal Civil Rights Act of 1991 P.L. 103-50; the Family and Medical Leave Act of 1993; 29 U.S.C. Section 2601 et seq.; the Federal Rehabilitation Act of 1973, as amended 29. U.S.C. Sections 793 and 794; the Florida and/or United States Constitutions, as amended; the Civil Rights Act of 1866 and 1871, 42 U.S.C. Sections 1981, 1983, 1985 and 1986; any claims for wrongful discharge, discrimination, retaliation, harassment, breach of contract, intentional or negligent infliction of emotional distress, false arrest, assault, battery, defamation, interference with contract, or any other cause of action based on federal, state, or local law or the common law, whether in tort or in contract. Both Releasing Parties agree that they will not institute any legal or Administrative Proceeding (as defined in Paragraph I.D, above) against the other as to any matter based upon, arising out of, or related to Morris’ employment or compensation with the Board through the Effective Date of this Agreement. The Board agrees that it will not file or cause to be filed any complaint against Morris with the Florida Bar for any activity of which it is aware, or through due diligence could become aware, arising out of her employment with the Board. If Morris files a charge with the U.S. Equal Employment Opportunity Commission that would otherwise have been released by this paragraph, Morris shall be limited to non-monetary relief. Morris further represents that she has not and will not file any charge, claim, complaint or action with the U.S. Equal Employment Opportunity Commission (“EEOC”) arising out of the events and circumstances giving rise to her separation from FGCU and this action.

F. Non-Admission of Liability. Morris and the Board agree that they have entered into this Agreement in compromise of disputed claims they may have against one another and that entry into this Agreement by either may not be construed as admission of liability or wrongdoing on the part of the Board or Morris.

G. Nondisparagement; No Communication to Third Parties. The Board and Morris agree not to disparage one another in any way. The Board and Morris agree that they will not comment on or provide any information to anyone (including but not limited to any newspaper, television, radio, media representative or blogs) about any matter concerning Morris’ employment or separation of employment with the Board.

Morris further agrees that she will not talk about or otherwise communicate to any third parties in a malicious, disparaging or defamatory manner regarding the Board or any aspect of her prior employment therewith. Morris will not make or authorize to be made any written or oral statement that may disparage or damage the reputation of the Board or its past or present employees, officers or other representatives.

The Board agrees that it will not make any derogatory or disparaging statement to anyone regarding Morris and moreover, the Board specifically acknowledges that in the future should any entity of any type contact the Board seeking a reference regarding Morris’ employment the response of the Board will be to limited to providing the dates of Morris’ employment, the date she tendered her resignation from her employment and the rate of salary and benefits she was being paid at the time she left said employment.
Notwithstanding the foregoing, in connection with seeking future employment with a third party, Morris may discuss her prior work experience with the Board, so long as she does not disparage or damage the reputation of the Board or its past or present employees, officers, or other representatives in the course of such discussions.

H. Confidentiality. Morris and the Board agree that they will not voluntarily disclose the fact and/or the contents of this Agreement or the circumstances surrounding Morris’ separation from the Board and this subsequent litigation, including the amount of monetary payments, to anyone other than their attorneys or financial advisers, or pursuant to an appropriate order or lawful subpoena from a court or other agency with competent jurisdiction, and that neither will display, discuss or make public in any manner whatsoever the fact of the Agreement, the terms or the contents of this Agreement unless otherwise required to disclose same by state or federal law. This provision is not intended to prevent Morris or the Board from testifying truthfully if compelled to do so by subpoena or order of a court of competent jurisdiction.

I. Entire Agreement; Modification. The parties agree that this is the entire agreement between the parties. This Agreement overrides and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about the subject matter of this Agreement. No modification of this Agreement shall be valid unless it is in writing identified as an Amendment to the Agreement and is signed by Morris and an authorized executive of the Board.

J. Governing Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of Florida. Venue for bringing any action regarding a breach of this Agreement shall be in the State Circuit Court in and for Lee County Florida.

K. Remedies for Breach.

1) In the event that Morris should bring and prevail in an action against the Board based on any claim under the ADEA during the revocation period and as released in Section II (D), the Board will be entitled to offset any recovery by the amounts paid under this Agreement or the amount recovered by Morris, whichever is less. In the event that the Board should prevail in such action, the Board will be entitled to all remedies authorized by applicable law.

2) In the event that either the Board or Morris bring an action against the other based on any claims released herein, the Released Parties, may, at their option and as applicable (a) demand the return of any payments that have been made under this Agreement; (b) plead this Agreement in bar to any such action; and (c) seek any and all remedies available, including but not limited to injunctive relief and monetary damages, costs and reasonable attorneys’ fees.

3) Breach by the Board. In the event that Board should breach this Agreement, Morris will be entitled to bring an action for breach of this Agreement but not for any claims released within the Agreement. In the event that Morris shall prevail in such an action to enforce the terms of this Agreement she will be entitled to
recover as appropriate and applicable, monetary damages, injunctive relief, costs and reasonable attorneys' fees.

(4) Liquidated Damages for Breach of Confidentiality. The parties agree and acknowledge that any breach of the confidentiality provision of this Agreement shall cause the other party irreparable injury and as a result, each party understands that should either breach the confidentiality provision of this Agreement, the breaching party will owe in liquidated damages the amount of $25,000.00 to the party that has been irreparably harmed. Nothing contained in this liquidated damages provision is intended to prevent Morris or the Board from testifying truthfully if compelled to do so by subpoena or any order of any court of competent jurisdiction.

L. Duty of the Board to Assert Privilege. It is understood by the Parties that it is the obligation of the Board, in response to Morris being served with any subpoena or any other legal process that would require her to violate the confidentiality provision of this Agreement or in any circumstance in which any person seeks to obtain the testimony of Morris in any fashion, to assert all claims of privilege, work product, or the like and that absent such a claim of privilege, work product or the like, Morris will have no obligation to independently seek a protective order regarding possible testimony arising out of her employment with Florida Gulf Coast University, however Morris will have an obligation to notify the Board within forty-eight (48) hours of being served any such subpoena or legal process.

M. Tax Consequences. Neither party has entered this Agreement based upon any representations by the other or by their own advisers, agents or attorneys regarding any sums paid pursuant to this Agreement being exempt from taxation under applicable federal tax laws.

N. Severability. Each provision of this Agreement is intended to be fully severable. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable in any manner, the remainder of this Agreement will remain in force.

THE BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY
WENDY SUZANNE MORRIS ACKNOWLEDGES THAT SHE HAS CAREFULLY READ THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE AND KNOWS AND UNDERSTANDS ITS CONTENTS AND VOLUNTARILY SIGNS IT OF HER OWN FREE WILL BELIEVING IT TO BE IN HER BEST INTEREST.

IN WITNESS WHEREOF, the parties sign this Agreement on the date indicated below with the intent to be bound by its terms and conditions.

Wendy Suzanne Morris  
Date: September 17, 2008

BOARD OF TRUSTEES OF FLORIDA GULF COAST UNIVERSITY

By: [Signature]
Printed Name: Wilson A. Bradshaw
As its: President
Date: 9/24/08

Richard C. Pegnetter
Richard C. Pegnetter, as Former Interim President of Florida Gulf Coast University
Date: Sept 24, 2008