



COUNTY OF LOS ANGELES  
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February 28, 2019

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TO: CELIA ZAVALA  
Executive Officer  
Board of Supervisors  
  
Attention: Agenda Preparation

FROM: STEVEN H. ESTABROOK   
Litigation Cost Manager  
Executive Office

RE: **Item for the Board of Supervisors' Agenda**  
**County Claims Board Recommendation**  
**Dawn Soares v. County of Los Angeles, et al.**  
**United States District Court Case No. 2:17-CV-00924**

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary and the Summary Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, and the Summary Corrective Action Plan be placed on the Board of Supervisors' agenda.

SHE:scr

Attachment

## Board Agenda

### MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Dawn Soares v. County of Los Angeles, et al., United States District Court Case No. 2:17-CV-00924 in the amount of \$1,250,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff's Department's budget.

This wrongful death lawsuit concerns allegations of excessive force by Sheriff's Deputies during an attempted apprehension.

## CASE SUMMARY

### INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Dawn Soares, et al. v. County of Los Angeles, et al.
CASE NUMBER	CV 17-00924
COURT	United States District Court
DATE FILED	April 27, 2017
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 1,250,000
ATTORNEY FOR PLAINTIFF	Tristan Pelaye Wagner & Pelayes, LLP
COUNTY COUNSEL ATTORNEY	Millicent L. Rolon Principal Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$1,250,000 a wrongful death and federal civil rights lawsuit filed by Dawn Soares, et al., alleging that Sheriff's Deputies improperly deployed tear gas into the home of Leroy Varnedoe and caused his death.</p> <p>The Deputies deny the allegations and contend their actions were reasonable.</p> <p>Given the high risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. Therefore, a full and final settlement of the case in the amount of \$1,250,000 is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 47,337
PAID COSTS, TO DATE	\$ 4,900

Case Name: Dawn Soares, et al. v. County of Los Angeles, et al.



## Summary Corrective Action Plan

The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	February 5, 20115
Briefly provide a description of the incident/event:	<p><b><u>Dawn Soares, et al. v. County of Los Angeles, et al.</u></b> Summary Corrective Action Plan 2018-019</p> <p>On February 2, 2015, an Operation Safe Streets (OSS) gang investigator had obtained information about a "Watergate Crip" gang member nicknamed "Kaos" (later referred to as the decedent) who had absconded from court and was staying at the location, in the city of Lancaster.</p> <p><b>Note:</b> At the time, the decedent had an active felony no-bail warrant for his arrest.</p> <p>The decedent was known to be actively selling narcotics and was armed with a pump action shotgun, a black revolver, and a black semi-auto handgun. In addition, the decedent was allegedly in possession of a stolen black Toyota Camry at the location. The investigator obtained the decedent's active cell phone number.</p> <p>On February 4, 2015, the same OSS investigator was contacted by a bail agent who stated the decedent had threatened to assault any police or bail agents that attempt to arrest him for his warrant.</p> <p>The OSS investigator obtained additional information that the decedent had obtained a new "big gun." The decedent had told his associates that if anyone tried to stop or capture him, "it was on." Additionally, the decedent was known to be actively smoking methamphetamine, "like a chain smoker smokes cigarettes."</p> <p>On February 5, 2015, a Palmdale deputy sheriff contacted the OSS investigator and stated he had obtained information that the decedent was in possession of weapons and drugs.</p> <p>After consultation with the OSS Sergeant and the Special Enforcement Bureau (SEB), a plan was established to use available OSS and Lancaster Station personnel to conduct a "surround and call-out" operation. If during the operation the decedent barricaded himself, SEB would respond.</p> <p>On February 5, 2015, at approximately 4:00 p.m., a team of OSS investigators performed surveillance on the decedent's known location.</p> <p>At 4:30 p.m., a judge from the Michael Antonovich - Antelope Valley Courthouse signed a search warrant for the location.</p> <p>At approximately 4:45 p.m., a male and female were observed leaving the location in a gray Scion vehicle. A traffic stop was conducted on the</p>

vehicle and the decedent was not in the car. The male and female were later arrested for unrelated narcotics offenses.

At 5:45 p.m., A team of OSS detectives, the LANCAP (Lancaster Community Appreciation Project) team, and Aero Bureau contained the location and initiated a "surround and call-out" operation at the location.

Callout announcements were conducted via the public address (PA) systems in the sheriff radio cars. Three women and an infant came out after the first several announcements. The women all confirmed the decedent was inside the residence. One of the women confirmed the suspect had a shotgun in his bedroom, which was located in the southwest corner of the location.

After multiple "call-outs" via several PA systems and multiple non-answered phone calls to the decedent's cell phone, it was determined that the decedent was refusing to peacefully surrender. SEB was requested to respond to the location for a barricaded suspect.

While awaiting the arrival of SEB, they continued PA announcements, advising the decedent of the Sheriff's Department's presence and to exit the location and surrender. The decedent refused to surrender.

The OSS team sergeant directed his team to use the stun bag shotguns to break the bedroom windows of the location, to ensure the announcements were not muffled by the windows and to improve the possibility of establishing contact with the decedent.

For the nearby residents' safety, OSS and LANCAP personnel evacuated the adjacent homes on the north, south, east and west sides of the suspect's location.

At 7:48 p.m., SEB arrived at the location and began relieving OSS and LANCAP team members from their containment positions.

At 8:30 p.m., OSS detectives obtained an arrest warrant for the decedent for a felon in possession of a firearm (a violation of 29800 PC).

At 8:54 p.m., Los Angeles County Fire Department and AMR Ambulance services were requested to stage near the location, pending the need for emergency medical personnel.

At one point, a light and sound diversionary device (flash bang) was deployed near the exterior of the residence to further inform the decedent of the presence of law enforcement. There was still no response from inside the location.

A SEB robot was sent into the residence and evidence was seen that heightened the danger to the tactical team and the surrounding community. The robot relayed video evidence that the access panel to the attic was removed and fiberglass insulation was found on the ground below the attic door. If the decedent had accessed the location's attic space, it would give him a tactical advantage by having high ground and considerable cover and concealment to both persons inside and outside the location.

	<p>During the entire incident, the decedent never answered his cell phone and he did not make any movement indicative of someone intending to surrender.</p> <p>In an attempt to have the decedent exit the location and surrender, the decision was made to introduce chemical agents into the residence. One of the chemical dispersal devices utilized hot gas. The chemical dispersal device releases the chemical agent for approximately 15 seconds. To reduce the risk of the chemical dispersal device from damaging or burning any nearby objects, it was placed inside a separate metal container called a "burn safe." The burn safe was attached to a retrieval tether cord made of nylon. The tether cord enabled the device to be removed when the chemical agent had finished dispersing.</p> <p>The intended effect of introducing chemical agents into the location was to make the environment irritating and uncomfortable to the point it would encourage the decedent to peacefully exit the residence.</p> <p>Within seconds of the burn safe device being deployed into the location, a fire was seen burning inside the residence and the flames spread rapidly. An attempt to retrieve the burn safe device failed, as the flames had weakened the nylon cord and caused it to sever from the device.</p> <p>Recognizing the need to control the fire and evacuate the decedent from the structure, SEB deputy sheriffs made entry and simultaneously attempted to suppress the active fire while attempting to locate the decedent. The deputy sheriffs were unable to locate the decedent prior to having to evacuate themselves from the residence due to the intense fire, heat, and smoke.</p> <p>The nearby staged Los Angeles County Fire Department personnel responded and performed an aggressive attack on the fire. After the fire was contained, the decedent was found deceased on the floor of the kitchen. The decedent's body was covered in fiberglass insulation. Directly above his body, the ceiling had a large hole with drywall pieces hanging down. It appeared that during the fire, the decedent had fallen through the ceiling from the attic and landed on the floor of the kitchen.</p> <p><b>Note:</b> In the post incident investigation, a pistol gripped, pump-action shotgun was located in a bedroom of the location.</p>
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1. Briefly describe the root cause(s) of the claim/lawsuit:

<p><b>A Department</b> root cause in this incident was after a chemical dispersal device was deployed into the location a structure fire quickly erupted in the front room of the residence.</p> <p>Another <b>Department</b> root cause in this incident was the failure of the nylon tether for the "burn safe" chemical dispersal device. The tether failure eliminated the ability to quickly retrieve the device as it was igniting a fire inside the location.</p> <p>A <b>non-Department</b> root cause of this incident was the decedent's refusal to follow the lawful orders of the on-scene deputy sheriffs and peacefully surrender and exit the location.</p>
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2. Briefly describe recommended corrective actions:  
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

Criminal Investigation

The Los Angeles County Sheriff's Department Arson and Explosives Detail responded to the location. Investigators determined the fire originated in the entry hallway by the front door.

On February 7, 2015, Arson and Explosives Detail utilized an accelerant detection canine for ignitable liquids, but the canine did not alert to the presence of any ignitable liquids inside the residence. The criminal investigation was subsequently handed over to Homicide Bureau.

The incident was investigated by the Sheriff's Department's Homicide Bureau to determine if any criminal misconduct occurred. Their investigation was presented to the Los Angeles County District Attorney's Office for filing consideration.

On January 1, 2016, the Los Angeles County District Attorney's Office concluded there was no criminal liability by any Department member in this incident. The fire was ruled as accidental as a result of the responsible use of hot gas.

Administrative Review

The details of this incident were evaluated by the SEB operations and executive personnel. Upon careful review, the involved deputy sheriffs were found to have used proper tactics and their actions were within policy.

Policy Review and Evaluation

Operations staff at SEB conducted a review of the following Los Angeles County Sheriff's Department Manual of Policy and Procedures:

- 5-06/040.45 – Use of Chemical Agents
- 5-06/040.50 – Authorization For Use of CS Chemical Agents
- 3-10/150.00 – Tactical Incidents
- 5-06/110.05 – Barricaded Suspect
- 5-06/110.65 – Special Weapons Team

After reviewing the related policies, SEB determined that the existing policies were relevant, applicable, and did not need revision.

Burn Safe Testing

After this incident, the Department had two experts in fire dynamics and fire investigations conduct tests in an attempt to understand how the chemical dispersal device would react with common household materials. Using the same burn safe and hot gas deployed in this incident, the tests showed the surface temperatures and time of the hot gas flow were lower than published hot surface ignition temperatures for synthetic and natural materials common to residential furnishings.

The first fuel in this incident is not known with certainty but the experts opined that the rapid fire growth during the incident was not consistent with expected hot surface ignition behaviors of typical synthetic or natural fibers or fabrics commonly found in residential settings.

Although there was no evidence of an accelerant found at the location, the unknown first fuel and rapid fire growth behavior are not consistent with any prior deployments of this chemical dispersal device. This specific fire safe used in this incident had been used several times in the same manor without resulting in any structure fires.

Based on a review of this incident, Department executives at Special Operations Division formed the opinion that the chemical dispersal device apparently landed on an accelerant which ignited the structure fire in the front room of the residence.

Chemical Dispersal Device Evaluation and Replacement

After this incident, SEB conducted a review of the chemical agents and devices used to carry/deliver the chemical agents.

For barricaded suspect situations, cold dispersal chemical agents have proven to be a less effective chemical dispersal method to hot gas methods. Cold gas has lower level of chemical agent concentration and is far less effective for location penetration. In contrast, hot dispersal gas creates a smoke that has a higher chemical agent concentration, has better area penetration, and has proven to be more effective in terms of causing subjects to voluntarily surrender. As a result, hot gas is still an industry standard for use in barricade suspect situations.

In this incident, some issues were identified in the hot gas dispersal method. To reduce future potential issues, the following changes were made:

- The burn safe chemical dispersal device used during this incident was removed from service and a new burn safe is now in use.
- The chemical agents used during this incident were removed from service and a new chemical agent is now in use.
- The nylon tether used for the burn safe retrieval was replaced with a plastic-encased, metal cable.

The new burn safes utilized by the Department have gone through rigorous testing and have been proven to maintain surface temperatures insufficient to cause ignition of common synthetic and organic materials that might be found in a residence. During testing, the only time a fire occurred was when the burn safe was applied to an area doused with liquid accelerant.

Although all hot gas chemical agent dispersal devices pose a risk of fire when they are used, the new chemical agent and a new chemical dispersal device afford a greater margin of safety.

Training of New Equipment

On June 18, 2018, SEB conducted recurrent training and a re-brief on chemical agent and gas deployment procedures.

All members of Special Enforcement Bureau were present for the training course, which included the use of the new chemical agent and new burn safe chemical dispersal device.

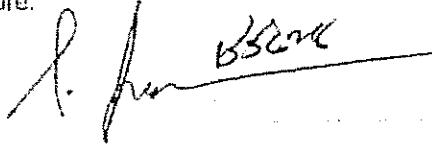


3. Are the corrective actions addressing Department-wide system issues?
- Yes – The corrective actions address Department-wide system issues.
- No – The corrective actions are only applicable to the affected parties.

Los Angeles County Sheriff's Department  
Name: (Risk Management Coordinator)

Scott E. Johnson, Captain  
Risk Management Bureau

Signature:



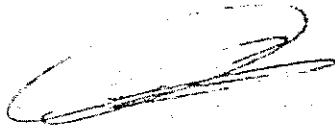
Date:

10.24.18

Name: (Department Head)

Alicia E. Aut, Chief  
Professional Standards and Training Division

Signature



Date

10/30/18

**Chief Executive Office Risk Management Inspector General USE ONLY**

Are the corrective actions applicable to other departments within the County?

- Yes, the corrective actions potentially have County-wide applicability
- No, the corrective actions are applicable only to this Department.

(ME: Risk Management Inspector General)



12/30/18