# COUNTY OF LOS ANGELES

## CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

October 4, 2004

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Lottie Nelson v. County of Los Angeles**
**Los Angeles Superior Court Case No. BC 213 704**

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $495,000.00.

2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Georgene Salisbury, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-9910.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO:gs

Enclosures

# MEMORANDUM

August 31, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DENNIS M. GONZALES
Principal Deputy County Counsel
General Litigation Division

RE: **Lottie Nelson v. County of Los Angeles**
**Los Angeles Superior Court Case BC 213704**

DATE OF INCIDENT: September 13, 1998

AUTHORITY REQUESTED: $495,000

COUNTY DEPARTMENT: SHERIFF'S DEPARTMENT

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CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☐ Recommend to Board of Supervisors for Approval

_____, Chief Administrative Office
**ROCKY A. ARMFIELD**

_____, County Counsel
**JOHN F. KRATTLI**

_____, Auditor-Controller
**MARIA M. OMS**

on _____, 2004

## SUMMARY

This is a recommendation to settle for $495,000, the lawsuit brought by Lottie and Wallace Nelson seeking damages for the wrongful death of their son Dwayne Nelson, who died in the custody of the Los Angeles County Sheriff's Department on September 13, 1998.

## LEGAL PRINCIPLES

The County of Los Angeles is liable under the State of California wrongful death statutes when there has been a finding of negligence by a jury.

## SUMMARY OF FACTS

On September 13, 1998, Dwayne Nelson, age 41, was observed shooting a gun at passing vehicles. It was believed that he was under the influence of cocaine. After Sheriff's Deputies responded to the location, Mr. Nelson was handcuffed and placed in the backseat of their patrol vehicle without resistance. Mr. Nelson then began to kick at the back windows.

In order to restrain Mr. Nelson, the Sheriff's Deputies utilized the Total Appendage Restraint Procedure (TARP), which restrains an arrestee's arms and legs behind his back. During the application of this procedure, Mr. Nelson lost consciousness and died. The use of the TARP and the resulting death were videotaped by a Sheriff's Field Sergeant.

This lawsuit was tried before a downtown Superior Court jury in May 2002. The jury rendered a verdict in favor of Lottie and Wallace Nelson in the amount of $2 million.

The County of Los Angeles appealed the verdict. The Court of Appeals reversed the $2 million damage award as being excessive and returned the case back to the Superior Court to be retried solely on the issue of the damages.

## DAMAGES

Both Lottie and Wallace Nelson claim the following damages and losses:

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|---|---|
| Loss of love and affection | $1,600,000 |
| Funeral Expenses | $ 10,400 |
| Previously awarded costs | $ 54,000 |
| Total | $1,664,400 |

## STATUS OF CASE

A settlement conference was held on August 13, 16, and 17, 2004, before the Honorable Richard Freeman.

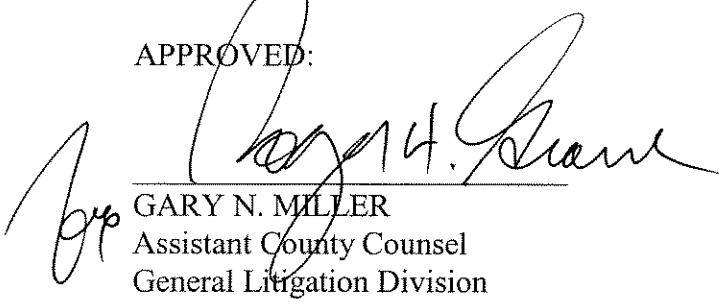
Judge Freeman expressed his opinion that the verdict range was between $600,000 and $750,000. Lottie Nelson, who bore the majority of the costs in the litigation, was agreeable to accepting $300,000, to settle this case. Wallace Nelson has agreed to $195,000 to settle the case. Both have agreed that the settlement includes the attorney's fees and costs.

## EVALUATION

We concur with Judge Freeman's opinion, and believe that a likely jury award of damages would exceed the recommended settlement amount.

We believe that settlement of this matter in the amount of $495,000 is in the best interests of the County. The Sheriff's Department concurs with the recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

DMG:js

**Los Angeles County Sheriff's Department**

**CORRECTIVE ACTION PLAN**

| | |
|---|---|
| **LAWSUIT OF:** | Lottie Nelson v. County of Los Angeles, et al.<br>Court Case # BC 213704 |
| **INCIDENT DATE:** | September 13, 1998 |
| **INCIDENT LOCATION:** | Imperial Hwy & Normandie Ave., Unincorporated Los Angeles County |

**RISK ISSUES:**

Under both state and federal law sheriff deputies may only use reasonable and necessary force to detain or arrest a person. The use of excessive force, which is any force that is beyond the amount of force needed to detain or arrest a person, is unlawful. In this case, the force used was considered appropriate.

With specific regard to the Total Appendage Restraint Procedure ("TARP"), the Sheriff's Department has reviewed the policy and procedure regarding the utilization of this devise. This review showed that the policies in place at the time of the incident were inadequate. A change in the TARP policy was implemented in October of 1999.

**INVESTIGATIVE REVIEW:**

On September 13, 1998, Dwayne Nelson (MB/41) was observed shooting a gun at passing vehicles. Deputies from Lennox Station responded, at which time Nelson dropped his gun. He was subsequently handcuffed and placed in the back seat of a radio car without incident. The radio car was moved to an adjacent parking lot so that deputies could conduct their investigation. At this time, Nelson began to kick and scream in the back of the radio car and the field sergeant ordered that the TARP be applied to Nelson. During the procedure, it was determined that Nelson was no longer breathing. CPR was initiated, paramedics responded and Nelson subsequently died at the scene. The entire procedure was videotaped by Sheriff's personnel.

The lawsuit contended that Nelson died as a direct result of the application of the TARP. The Coroner's report determined that Nelson died as a result of a congenital heart abnormality, complicated by the ingestion of cocaine. The jury found for the Plaintiff at trial. An internal administrative review regarding the use of force found the actions of the deputies were within policy at the time of the incident.

While the Department contends that the use of the TARP did not cause the death of Mr. Nelson, a review of the policy resulted in changes in the procedure unitized by personnel.

APPROVED
William J. Stoneck

**TRAINING ISSUES:**

The Total Appendage Restraint Procedure consists of simultaneously securing all of a person's limbs. The individuals arms are immobilized with handcuffs and their legs are immobilized with a Ripp Hobble device. The clip end of the Ripp Hobble is connected to the chain on the handcuff. All sheriff's deputies receive training in the use of force, and in the use of TARPing procedures in the academy before they are assigned to patrol.

At the time of this incident the Sheriff's Department's Force Training Unit was involved in reassessing the procedure used when utilizing the TARP. As a result, training on the TARP was updated and several changes were made in the Department's Policy and Procedures Manual. Use of the TARP is now considered a "significant use of force" by the Department and all force reporting procedures are mandated. A training video was produced by the training staff and shown to all Department members regarding the new policy which also included a demonstration of the new restraint procedure. This video is still in use for station briefings.

The training staff was also involved in a joint study with the Coroner's Office on post exercise recovery while in the TARP'd position. It was determined that placing an individual on their left side or in the seated position produced a faster heart rate recovery. The Department has changed the procedure for hooking the Ripp Hobble to the handcuffs to allow the individual to be placed in the seated position.

**POLICY ISSUES:**

On October 29, 1999, Department Policy concerning TARPing procedures was updated. The new policy includes the following procedures:

Except for Department-approved training purposes, only those personnel who have received Department-authorized training in the use of the TARP may employ it on a person,

When possible, a Field Supervisor shall respond to the scene, prior to the TARP being applied. Otherwise, the Field Supervisor shall immediately be summoned to the scene whenever a person has been TARPed,

A person who has been TARPed shall remain TARPed until it appears their behavior no longer poses a serious or significant threat to their own safety, the safety of others or the potential of damage to property,

Personnel shall continuously monitor the respiratory status and level of consciousness of all persons restrained with the TARP,

Every effort shall be made to ensure that a TARPed person either remains on their side (the left side is preferable) or is seated upright,

When possible, emergency medical services personnel shall be requested to the scene, prior to the TARP being applied. Otherwise, emergency medical services personnel (e.g., paramedics, jail medical staff, etc.) shall immediately be requested to the scene whenever a person has been TARPed. This includes situations in which the person has been removed from the TARP prior to the summoning or arrival of emergency medical services personnel,

Medical clearance for booking the TARPed person may be obtained from the emergency medical services personnel on scene, unless they recommend the TARPed person be evaluated at a medical facility. In these instances, the TARPed person shall be transported to a medical facility for a booking clearance,

Every effort shall be made to videotape a TARPing incident including, but not limited to, the person's behavior prior to the TARPing, the actual application of the TARP and the person's position and behavior after they have been TARPed,

If a TARPed person stops breathing, they shall be removed from the TARP and the handcuffs taken off their wrists, leaving only the legs hobbled. Cardiopulmonary Resuscitation (CPR) procedures shall immediately be started and continued until relieved by emergency medical services personnel. Sufficient back-up Deputies should be present in case the person regains consciousness and becomes violent,

If a person must remain TARPed, they shall be transported via ambulance. Deputy personnel shall always follow the instructions of the emergency medical services personnel when securing a TARPed person for ambulance transport. A Deputy should either remain in the ambulance to provide security or, if this is not possible, follow the ambulance via radio car.

**CORRECTIVE ACTION:**

As a result of both the investigative review and ongoing training reassessment, the Sheriff's Department's Policy regarding TARP was changed in October of 1999, three months after this lawsuit was filed. These changes are outlined in the Policy Issues and Training Issues section of this report.