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

April 4, 2005

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

Re: **Lois and Jerry Olsen v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 300 516

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $680,000.00.

2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Parks and Recreation.

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 Department of Parks and Recreation.

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

March 9, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MICHAEL MANNING
Michael Manning and Associates

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: **Lois and Jerry Olsen v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 300516

DATE OF INCIDENT: May 9, 2003

AUTHORITY REQUESTED: $680,000

COUNTY DEPARTMENT: Parks and Recreation

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 _____, 2005

HOA.284650.1

SUMMARY

This is a recommendation to settle for $680,000, a lawsuit filed by Lois and Jerry Olsen for injuries they sustained when Lois Olsen was hit by a vehicle driven by an employee of the Department of Parks and Recreation.

LEGAL PRINCIPLES

A public entity is liable for the negligent and intentional acts of its employees when the acts are done in the course and scope of employment.

A person has the right to use reasonable force in self defense. If a person uses more force than is required to defend himself, he may be liable for battery.

SUMMARY OF FACTS

On May 9, 2003, at approximately 1:00 p.m., Lois and Jerry Olsen were walking on the grounds of the Hollywood Bowl near the east entrance. At the same time, a Grounds Maintenance Worker from the Department of Parks and Recreation was on duty at the Hollywood Bowl driving a light duty County truck. As the employee began driving up a driveway toward the east entrance, the truck accelerated unexpectedly toward a parked car. When he veered to avoid the collision, the employee collided with a nearby building and then ricocheted into Mrs. Olsen. The employee claims that he tried to brake, but the brakes did not respond.

Mrs. Olsen was rushed to the hospital by ambulance, and was diagnosed with a fractured pelvis, a fractured femur, and various soft tissue injuries. She underwent surgery for the fractures and spent several months in a wheel chair, followed by several more months using a walker. Currently, she uses a cane to assist her walking.

An investigation of the incident revealed that the County's fleet maintenance contractor, Parking Company of America (PCA), had improperly installed the throttle valve cable on the light duty truck, which likely caused the throttle to stick in the open position, which resulted in a sudden acceleration.

Based on the improperly installed throttle valve cable, we tendered the County's defense to PCA, and PCA accepted under a reservation of rights, which means that it can later deny further coverage if it finds that the County, and not PCA, was at fault. PCA has payed all of our attorney fees since we tendered the defense.

However, PCA's retained expert has recently concluded that the defective throttle valve cable could not have caused an unexpected acceleration that would have overridden the braking system. According to the expert, the employee could have brought the vehicle to a stop by firmly applying the brakes.

On the other hand, the County's expert will testify that the defective throttle cable could have caused a sudden acceleration, and the braking system may have been ineffective to stop the vehicle. However, our expert acknowledges that the employee could have stopped the truck by turning off the ignition.

Because of its expert's opinion, PCA refused to cover the County's portion of the settlement as PCA attributes fault to the employee, and not to PCA.

DAMAGES

Should this matter proceed to trial, the potential damages could be as follows:

Lois Olsen's Medical expenses	$ 175,000
Pain and suffering	$ 750,000
Jerry Olsen's Loss of Consortium	$ 250,000
Emotional Distress	$ 250,000
Total	$1,425,000

The proposed settlement calls for the County to pay Lois and Jerry Olsen $680,000 for all of their claims for damages, costs, and attorney fees. In addition, PCA will contribute an additional $120,000 for a total settlement of $800,000.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this matter are attorney fees of $29,568 and $18,445 in costs.

EVALUATION

This is a case of probable liability. Although PCA improperly installed the throttle valve cable, the experts disagree on the practical effect of the faulty installation. In addition, our expert acknowledges that the employee could have stopped the truck by turning off the ignition.

A reasonable settlement at this time will avoid further litigation costs and a jury verdict that could exceed the proposed settlement.

We join with our private counsel, Michael Manning and Associates, and our third party administrator, Carl Warren and Company, in recommending a settlement in the total amount of $680,000. The Department of Parks and Recreation concurs in this recommendation.

APPROVED:

GARY N. MILLER
Assistant County Counsel
General Litigation Division

GNM:RHG:scr

County of Los Angeles
Department of Parks and Recreation

CORRECTIVE ACTION PLAN

LAWSUIT OF: Lois Olsen vs. County of Los Angeles, et.al
Superior Court of the State of California
Case No. BC300516

INCIDENT DATE: May 9, 2003, Approximately 1:10 p.m.

INCIDENT LOCATION: Hollywood Bowl Performing Arts Complex,
2301 North Highland Avenue, Los Angeles, CA 90068

RISK ISSUES: The County of Los Angeles is responsible for the acts of the Department of Parks and Recreation personnel when the employee's acts are committed within the course and scope of his or her duties. The Department of Parks and Recreation is responsible for providing its employees with safe equipment and/or motorized vehicles in order to minimize potential safety hazards to its employees and patrons or damages to property and equipment. In conjunction with this responsibility, the Department of Parks and Recreation regularly conducts facility, equipment, and vehicle inspections in an effort to prevent employee and/or patron injuries or monetary loss. Correction of these conditions contributes to the safety of the Department's operation and the people we serve.

The County of Los Angeles is liable for personal injuries as a result of the traffic collision involving a Grounds Maintenance Worker employed by the Department of Parks and Recreation. Plaintiffs filed suit in Superior Court against the County of Los Angeles and Parking Company of America Management, LLC (PCA), the County's fleet maintenance contractor. The employee was driving a County of Los Angeles Department of Parks and Recreation 1985 GMC S15 (light truck) when the vehicle suddenly and without warning began to accelerate, eventually striking the plaintiff and causing significant injuries. The Department of Parks and Recreation contends that the accident occurred as a result of a mechanical malfunction and subsequently filed a first amended cross-complaint against PCA.

INVESTIGATIVE REVIEW: On May 9, 2003, at approximately 1:10 p.m., Mrs. Lois Olsen and her husband, Mr. Gerald Olsen, were walking on the Hollywood Bowl grounds when the County employee, driver of a 1985 GMC S15 pickup truck, accidentally struck Mrs. Olsen. The employee was in the course and scope of his employment and was making his rounds to check on his crew when the collision occurred. The employee began to ascend the driveway towards the East entrance to the Bowl Stadium. Based on the testimonies of the employee and several witnesses, the vehicle suddenly and without warning began to accelerate towards the Bowl entrance. At the same time, the engine made a *"racing"* or *"revving"* sound. The

employee maneuvered his vehicle to the left to avoid colliding with another parked vehicle. The employee's vehicle collided with the "Rooftop Grill" building and adjacent handrail, ricocheting the vehicle into Mrs. Olsen who was exiting the Bowl.

Initial investigation of the incident revealed that the sudden acceleration likely occurred as a result of a mechanical malfunction on the subject vehicle, a 1985 GMC S15 pickup truck. The carburetor on the truck had been removed, rebuilt, and reinstalled improperly by PCA. Components like the Throttle Valve Cable (TVC) were improperly installed and additional discovery revealed a frayed and kinked throttle control cable. The jamming of the TVC in conjunction with the improperly installed connector caused the throttle to "stick open". This "sticking" is the likely cause of the sudden and unintended acceleration of the vehicle without the operator's intervention. Even though it appears that the throttle was stuck in the open position, the employee could have avoided the collision by turning off the ignition when he realized that he did not have control of the vehicle.

Mrs. Olsen sustained major injuries and paramedics were called to provide immediate care and transportation to Cedars Sinai Hospital. She has undergone major surgeries and hospitalization since the incident.

Due to the injuries sustained in the collision, the plaintiffs, Mrs. Lois Olsen and Mr. Gerald Olsen, subsequently filed a lawsuit against the County of Los Angeles. The plaintiffs were seeking $1.4 million in damages that included medical bills, pain, suffering, and emotional distress.

On Thursday, January 13, 2005, the County settled with the plaintiffs for $680,000 and PCA settled with the plaintiffs for an additional $120,000. PCA also agreed to carry the legal fees incurred by the County and waived the right to any cross-complaint against the County on this particular case.

TRAINING ISSUES: At the time of this accident, the County of Los Angeles Department of Parks and Recreation had in place a wide variety of written policies and procedures concerning the safe operation and inspection of motor vehicles. These written policies and procedures include the following:

- Drivers Selection/License Class
- Defensive Driving Training
- Annual Driver's License Verification
- Vehicle Operator's Records
- Enforcement of mandatory wearing of seat belts on all trips
- Employee Driver Performance

POLICY ISSUES: Carl Warren & Co., County of Los Angeles Claims Management-Claims Adjusters and the Department of Parks and Recreation's Safety Office investigated this accident involving a County employee/property and a patron. Although the subject vehicle had undergone a vehicle safety inspection less than a month prior to

the accident, this accident may have been prevented had PCA conducted a thorough vehicle safety inspection.

CORRECTIVE ACTION: As a result of this incident and the subsequent follow-up investigation, this Department is expeditiously implementing the following corrective measures and action plan designed to mitigate the possibility of this type of incident from reoccurring in the future.

1. All similar vehicles will be immediately identified and sent in for a safety inspection by March 31, 2005. Johnson Controls, Inc., the County's current fleet maintenance contractor, will perform this safety inspection.

2. In addition to the Department's existing policy requiring annual defensive driving training for all employees, both permanent and temporary, who are required to drive a County vehicle as part of their job or who are approved as a mileage permittee, the Department will include an "Off-Road Defensive Driving" component to this annual training effective calendar year 2005. This program is unique to employees of Parks and Recreation due to the scope of work performed while driving off-road around patrons and pedestrians. The program will also include information on measures that employees can utilize in the event that a vehicle becomes unresponsive to the operator's maneuvering.

SUMMARY: This Department is committed to ensuring safe driving practices and all related driving policies and procedures are strictly enforced and followed by all Department staff. The Department has already completed the first corrective action and has begun to implement the additional training.