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

December 5, 2005

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

Re: **Kyan Tucker v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 082 952

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $3,500,000, plus assumption of the Medi-Cal Lien in the approximate amount of $983,407.66, plus waiver of the medical expenses incurred by the County.

2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

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

The Corrective Action Report is being transmitted to you under separate cover by the Department of Health Services.

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

Enclosure

MEMORANDUM

November 21, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DAVID WEISS, ESQ.
Law Offices of David Weiss

NARBEH BAGDASARIAN
Senior Associate County Counsel
Health Services Division

RE: **Kyan Tucker v. County of Los Angeles**
Los Angeles Superior Court, Central District Case No. BC 082952

DATE OF INCIDENT: October 31, 1992

AUTHORITY REQUESTED: $3,500,000.00, Plus Assumption of the Medi-Cal Lien in the Approximate Amount of $983,407.66, Plus Waiver of the Medical Expenses Incurred by the County.

COUNTY DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

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

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2005

HOA.332397.1

SUMMARY

This is a recommendation to settle for $3,500,000, the medical negligence lawsuit brought by Kyan Tucker, a minor, for the injuries he sustained on October 31, 1992, while hospitalized at LAC-USC Medical Center. The County, having provided medical care, has a claim for reimbursement which will be waived. The State, having paid approximately $983,407 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

This matter has been tried three times in the past. The first trial resulted in a hung jury in December 1996. The second trial was declared a mistrial due to the plaintiff's attorney's unavailability caused by a family emergency. The third trial which commenced in October 1998, resulted in a jury verdict being rendered against the County of Los Angeles in the amount of $6,688,066. Based on an issue arising from a specific jury instruction, the County appealed that verdict, the verdict was reversed, and the matter was referred back to the trial court.

After commencement of a fourth jury trial in June, 2005, settlement negotiations resulted in the recommended settlement.

LEGAL PRINCIPLE

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On October 14, 1992, Kyan Tucker, a twenty-three (23) month old child, was severely burned in an accident. Kyan was transferred to King-Drew Medical Center where he was stabilized. Subsequently, Kyan was transferred to the LAC-USC Medical Center Burn Intensive Care Unit ("Burn ICU"). He remained in critical condition due to his exposure to smoke and intense heat. As a part of managing his physical condition, a breathing tube was inserted in Kyan's airways to assist him with breathing.

On October 31, 1992, at approximately 11:00 a.m., the Burn ICU personnel began performing a dressing change for Kyan and also suctioning his airways. While performing these tasks, the staff noticed that Kyan's heart rate became slow and irregular. The staff immediately turned Kyan on his back and listened to his breathing sounds and visually inspected his breathing tube. Based on Kyan's breathing sounds and the visual inspection of the breathing tube, the hospital personnel concluded that Kyan's breathing tube was in place.

Since Kyan's heart rate continued to be slow, the staff then summoned additional personnel to the Burn ICU. Based on Kyan's breathing sounds, it was again concluded that Kyan's breathing tube was in place. At 11:15 a.m., the staff provided Kyan with some medications to regulate his heart rate.

Kyan's heart rate continued to remain slow and irregular. At 11:17 a.m., a Code Blue (an emergency situation where personnel are summoned to resuscitate a patient) was announced and various personnel were called to resuscitate Kyan. At about 11:20 a.m., a blood test was performed which indicated that Kyan's body was suffering from a shortage of oxygen.

At 11:40 a.m., one of the personnel who attended Kyan during the Code Blue, discovered that Kyan's breathing tube had been dislodged. No one was able to determine when the tube was dislodged. Since Kyan's breathing tube was dislodged, his brain did not receive sufficient amount of oxygen and as a result, suffered severe and irreversible injuries.

DAMAGES

If this matter again proceeds to trial, following items of damages will be sought against the County:

Future Medical Care	$ 7,500,000.00
Claimant's Pain and Suffering	$ 250,000.00
Future Wrongful Death Claim by Kyan's Mother	$ 250,000.00
Future Funeral Expenses by Kyan's Mother	$ 5,000.00
TOTAL	$ 8,005,000.00

The proposed settlement includes:

Cash Settlement to Kyan Tucker	$2,435,830.00
Attorney's Fee	$ 514,170.00
Cost of Litigation	$ 300,000.00
Future Wrongful Death Claim by Kyan's Mother	$ 250,000.00
Subtotal	$3,500,000.00
Amount of Medi-Cal Lien	$ 983,407.66
TOTAL	$4,483,407.66

The proposed settlement includes a cash payment for the total amount of $3,500,000. A portion of the recommended settlement may be directed by claimant to purchase an annuity. The precise amount and structure of the annuity have not been finalized at this time.

STATUS OF CASE

On June 20, 2005, the County began a new jury trial in the above matter in the Los Angeles Superior Court before Judge Ricardo Torres (Retired). Prior to trial, Kyan Tucker's attorney demanded $7,000,000, assumption of the Medi-Cal lien of approximately $983,407 and waiver of the medical expenses incurred by the County in providing care to Kyan Tucker. After negotiations, parties reached an agreement regarding settlement, and the trial date was vacated pending approval of this settlement. The plaintiff is represented by Michael J. Piuze, Esq. who is a very competent attorney with extensive experience in medical malpractice cases.

Expenses incurred by the County in the defense of this case from the time of initial assignment to defense counsel for the first trial through November, 2005 (which includes the costs related to all trials in this case), are attorney's fees and costs of $1,031,968.

The total cost to the County, as a result of this settlement, will be as follows:

Indemnity (Settlement Amount)	$ 3,500,000.00
County Attorney's Fees and Costs	$ 1,031,968.10
Medi-Cal Lien	$ 983,407.66
TOTAL	$ 5,515,375.76

EVALUATION

Medical experts will be critical of the failure of medical personnel on October 31, 1992, to timely appreciate that Kyan Tucker's breathing tube was dislodged. This failure fell below the standard of care, and is directly responsible for Kyan's injuries.

We join with our private counsel, David Weiss, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of $3,500,000, payment of the Medi-Cal lien in the approximate amount of $983,407 (not to exceed $1,000,000), and a waiver of the medical expenses incurred by the County. The County, through the Rancho Los Amigos National Rehabilitation Center, provided inpatient medical care to Kyan for over seven years which, calculated at the Medi-Cal rate, amounts to approximately $7,200,000.

The Department of Health Services concurs in this settlement.