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 3, 2006

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

Re: **Marilyn & Kevin H. v. County of Los Angeles and Martin A. v. County of Los Angeles**
Los Angeles Superior Court Case Nos. BC 319 625 and BC 327 883

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $230,000.00.

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

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

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

Return the executed, adopted copy to Georgene Salisbury, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1803.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO:gs

Enclosures

MEMORANDUM

February 27, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MONROY, AVERBUCK & GYSLER
CLAY AVERBUCK

ANDREW W. OWENS
Assistant County Counsel
Social Services Division

RE: **Marilyn & Kevin H. v. County of Los Angeles, and Martin A. v. County of Los Angeles**
Los Angeles Superior Court Case Nos. BC 319625 and BC 327883

DATE OF INCIDENT: December 2002

AUTHORITY REQUESTED: $230,000

COUNTY DEPARTMENT: Department of Children and Family Services

---

CLAIMS BOARD ACTION:

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

ABSENT, Chief Administrative Office
ROCKY A. ARMFIELD

John F. Krattli, County Counsel
JOHN F. KRATTLI

Maria Oms, Auditor-Controller
MARIA M. OMS

on April 3 2006

HOA.349933.1

SUMMARY

This is a recommendation to settle for $230,000, the County's portion of liability in two lawsuits involving children allegedly abused while in foster care. The anticipated settlement for all defendants would be $775,000. Thus, if this recommendation is adopted, the County share would be 29.6 percent of the total settlement amount.

The lawsuits were brought by Marilyn H., Kevin H., and Martin A. against the County of Los Angeles ("County")/Department of Children and Family Services ("DCFS") for the alleged negligence of its social workers in the supervision and monitoring of these children during placement in a Foster Family Agency ("FFA") certified home. While placed with this foster family, the three plaintiffs were allegedly sexually, physically, and emotionally abused by the foster parent's biological children. The family members in that FFA home and the FFA are co-defendants in this litigation.

All plaintiffs seek damages for severe emotional distress, compensatory damages for future medical and psychological expenses, and future loss of earnings capacity. They also seek punitive damages against the individually named foster parents and their biological children based on sexual battery and intentional infliction of emotional distress.

The settlement provides for a division of the County's portion of the settlement between the plaintiffs as follows:

Marilyn H.	$ 80,500
Kevin H.	$ 74,750
Martin A.	$ 74,750
Total	$230,000

The co-defendants' amounts due are in addition to the sums listed above. All plaintiffs will annuitize their portions of the settlement and the settlement of this case is subject to approval by the Court of a Petition for Minor's Compromise for all minors.

Dr. Sanders was fully briefed on this case prior to the mediation and fully concurs with the proposed settlement.

LEGAL PRINCIPLE

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

SUMMARY OF FACTS

These cases present claims for personal injury by siblings Marilyn H., Kevin H., and their half sibling, Martin A., related to their placement with a certified foster family for approximately five and a half years. During that time, it is alleged the County/DCFS, through its social workers, failed to properly visit and supervise these children to ensure they were adequately protected from physical and sexual abuse and neglect.

In March 1996, DCFS, following a report from law enforcement that a murder had occurred and that the three plaintiffs had been orphaned as a result, detained the minors. Thereafter, a petition was filed and ultimately sustained by the Juvenile Court. The children were initially placed in a temporary shelter and later with a foster family. They remained in that initial placement for approximately one year, until April 1997, when they were all replaced with a certified foster family, which is the family involved in these cases. That foster family was certified through a FFA. The family members and the FFA are co-defendants in the cases.

In December 2002, another foster child stayed with the subject foster family for several weeks while his foster parents were unavailable. That foster child, who is not a party to these actions, disclosed to his therapist allegations of physical abuse of the three plaintiffs at the hands of the foster parents' biological children. The physical abuse consisted of being locked in a closet for hours, being required to take cold showers and baths while clothed, as well as being frequently beaten. Law enforcement reported these allegations to DCFS, which immediately removed all three plaintiffs.

Approximately eight months after removal, the female plaintiff, Marilyn H., disclosed allegations of sexual abuse. The sexual abuse included sexual intercourse and being forced to re-enact sexually explicit scenes that she was made to watch on the internet. She was also forced to engage in sexual acts with her brother, Kevin, while the foster parents' children watched and she was forced to watch as the biological children sexually abused Kevin.

The minor son of the foster parents pled guilty to one count of prohibited conduct with a minor and was placed on probation. The adult son of the foster parents pled guilty to one count of continuous sexual abuse of a child and lewd or lascivious acts with a child. He was sentenced to prison. The foster mother pled nolo contendere to a charge of child endangerment and she was placed on probation as part of the plea agreement. The State of California Community Care Licensing revoked the foster care certification of the foster parents and confirmed the physical abuse allegations. The County also confirmed the physical abuse allegations.

The significance of the foster mother's nolo contendere plea is the plaintiffs could not use her plea to prove their case against her. However, had these cases gone to trial, plaintiffs would have been able to use the guilty pleas of the foster parents' children, and the evidence obtained during the law enforcement investigation, including the "confession" given by the adult son, to establish liability.

LIABILITY

The primary factor creating liability for the County/DCFS is the missed visits by social workers, which are required by Division 31 Regulations, as well as by the DCFS' internal policy. Failure to visit as mandated by regulation and policy would result in a Negligence Per Se instruction to the jury. This instruction coupled with the criminal findings, the pleas taken, and the evidence obtained by law enforcement, all of which the jury would be advised of, would strongly suggest a causal connection between DCFS' failure to visit and the harm that occurred.

DAMAGES

Plaintiffs claim non-economic and economic damages against the County, which include psychological counseling, now and in the future, loss of earnings capacity, and compensatory damages for pain and suffering.

STATUS OF CASE

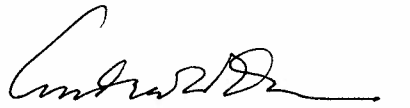
Expenses incurred by the County in defense of this action include attorney fees of $75,594 and $3,293 in costs.

EVALUATION

We believe a jury would find the County/DCFS liable for negligent supervision of the plaintiffs for failing to comply with the mandatory visitation requirements.

Thus, we join with our private counsel, Monroy, Averbuck & Gysler, and our third-party administrator, Carl Warren and Company, in recommending this settlement. The Department concurs in the recommendation.

APPROVED:



ANDREW W. OWENS
Assistant County Counsel
Social Services Division

AWO:RLR:jv