COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

April 16, 2007

MEMBERS OF THE BOARD

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

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

Re: **Glenn Shigematsu v. Melvin McNutt and County of Los Angeles, et al.**
Los Angeles Superior Court Case No. MC 016 921

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of $520,000.

2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works - Road Fund.

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 Public Works.

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

HOA.437635.1

MEMORANDUM

February 23, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ANN M. AGUILAR
Deputy County Counsel
General Litigation Division

RE: **Glenn Shigematsu v. Melvin McNutt and County of Los Angeles, et al.**
Los Angeles Superior Court Case No. MC016921

DATE OF INCIDENT: December 14, 2004

AUTHORITY REQUESTED: $520,000

COUNTY DEPARTMENT: DEPARTMENT OF PUBLIC WORKS

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 April 16, 2007

HOA.425514.2

SUMMARY

This is a recommendation to settle for $520,000 the lawsuit brought by Glenn Shigematsu seeking damages for the personal injuries he sustained in a two-vehicle accident on December 14, 2004.

LEGAL PRINCIPLE

The County may be held liable for damages caused or contributed to by a dangerous condition of public property, when it is established that there was a dangerous condition, the dangerous condition was created by County employees, the plaintiff's injury was caused by the dangerous condition and the dangerous condition created a risk of the kind of injury that the plaintiff sustained.

SUMMARY OF FACTS

On December 14, 2004, Glenn Shigematsu, age 47, sustained serious personal injuries in a two-vehicle accident with Defendant Melvin McNutt at the intersection of Sierra and Pearblossom Highways in unincorporated Los Angeles County.

Sierra Highway at this location is a four-lane County highway, with two additional lanes for the left turn pocket. Pearblossom Highway is also a four-lane County highway. The intersection is fully signalized with left turn signals for the left turn pocket, for northbound traffic. The roadway northbound at this location leads to the City of Palmdale, while southbound provides access to State Route 14, the Antelope Valley Freeway.

At the time of the accident, County workers were in the process of performing road maintenance at the intersection and were preparing to paint the crosswalks and roadway markings in the left turn pocket. Just before the accident, County workers had coned off the two left turn lanes in preparation to paint the roadway. They then briefly drove away from the site to reposition their vehicle. They did not place "No Left Turn" signs before leaving the work zone.

At the time of the collision, Mr. Shigematsu was driving a Toyota Corolla southbound on Pearblossom Highway, with a green signal, traveling at the speed limit of 60 miles-per-hour as he approached the intersection. The County workers were returning to the work zone and had stopped the County truck used for marking the highway in the median area immediately north of the intersection. Meanwhile, Melvin McNutt was proceeding northbound on Sierra Highway in his pickup truck, seeking to make a left turn at the intersection. As Mr. McNutt approached the intersection, he faced a green signal for northbound through traffic. In his depostion, he testified that the left turn arrow was dark. He proceeded to make a left turn, and, in the process, he collided with the southbound Shigematsu vehicle.

The California Highway Patrol investigated the accident and found that Mr. McNutt was the primary cause of the collision for failing to yield to oncoming traffic. However, the investigating officer reported that the left turn signals were not operational and testified at deposition that the left turn arrow was dark.

Mr. Shigematsu suffered a broken left femur, fractured right kneecap and lacerations to the head, face and left elbow. He was hospitalized for seven days following the accident, and underwent several surgeries including intramedullary rodding to insert a rod and screws into the left leg, open reduction and internal fixation of the right kneecap to insert screws into the kneecap and suture repair of multiple lacerations. After discharge from the hospital, he was confined to a wheel chair for over three months and was unable to work for over six months. He has residual numbness in his right knee and face, and he will require at least one knee replacement surgery in the future.

Mr. Shigematsu sued Mr. McNutt for negligence in making the left turn, and the County for creating a dangerous condition of public property at the intersection. With respect to the County, Mr. Shigematsu alleges that the intersection existed in a dangerous condition, because it lacked signs prohibiting left turns, and that the County truck created a sight obstruction at the intersection. Mr. McNutt is insured with a $50,000 liability limit.

DAMAGES

Mr. Shigematsu claims the following economic and non-economic damages:

Past medical treatment	$ 70,000
Future medical treatment	$ 150,000
Loss of income	$ 12,480
Future loss of income and earning capacity	$ 100,000
Pain and suffering (past and future)	$ 750,000
TOTAL	$1,082,480

STATUS OF CASE

Mr. Shigematsu's demand at mediation was $1,400,000. The parties negotiated this settlement at mediation on January 9, 2007, with trial set for February 16, 2007. The settlement calls for the County to pay Mr. Shigematsu $520,000. In addition, Mr. McNutt's insurer is contributing its full automobile insurance policy limit of $50,000, for a total settlement of $570,000.
Mr. Shigematsu will be responsible for negotiating and resolving any medical liens related to the injuries he received in this accident.

This case was roundtabled on several occasions, most recently on December 20, 2006, with representatives of the Department of Public Works, CAO Risk Management and County Counsel. The Department of Public Works Administration, including the Director, were further briefed on January 4, 2007, and settlement authority for the mediation was agreed to by all present. Expenses incurred by the County in the defense of this matter are attorneys' fees of $88,224.63 and costs of approximately $9,552.27.

EVALUATION

The parties dispute whether the left turn arrows at the intersection were operational at the time of the accident. However, the placement of "No Left Turn" signs in a temporary work zone is prescribed by the County's own policy and practice, and there is no dispute that such signs were not posted.

The County's position is compromised by the conflicting testimony of the County workers at the scene of the accident. Specifically, there is inconsistency as to where the County truck was situated at the scene, whether County workers witnessed the accident and whether equipment on the truck included "No Left Turn" signs. In addition, the County Supervisor on the job was new and testified that he had never been trained for this type of maintenance.

In the absence of signalized traffic controls, the placement of "No Left Turn" signs is necessary to preclude drivers from making turns at the intersection. Against that backdrop, Mr. Shigematsu's case finds substantial support in the testimony of the California Highway Patrol officer that the left turn arrow at the location was "black" and "not in operation," and that there were no signs prohibiting left turns. The placement of such signs when closing left turn pockets is prescribed by County policy and practice. However, this testimony conflicts with the sequence and recording records of the signal itself, which, according to the County's expert, was functioning and cycling properly.

Also, the location of the County truck is alleged to have created a sight distance problem, raising substantial questions as to causation. As such, Mr. McNutt testified that he made his left turn as safely as possible, given the sight obstruction created by the County truck. Mr. Shigematsu has similarly testified that the County truck blocked his view of Mr. McNutt, who was waiting to turn left, such that Mr. Shigematsu did not see him until the moment of impact.

A settlement at this time will avoid further litigation costs and a potential jury verdict well in excess of the recommended settlement amount.

RECOMMENDATION

We believe that settlement of this matter in the amount of $520,000 is in the best interest of the County. The Department of Public Works concurs in this settlement recommendation.

APPROVED:

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:AMA:ac

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

LAWSUIT OF: Glenn Shigamatsu

INCIDENT DATE: December 15, 2005

INCIDENT LOCATION: Intersection of Sierra Highway South and Pearblossom Highway

RISK ISSUE:

Dangerous condition of the roadway created by the actions of Public Works employees. The failure of the employees to place "No Left Turn" signs, and the position of their vehicle in the intersection created the Dangerous Condition.

INVESTIGATIVE REVIEW:

Sierra Highway is a 44 to 54 feet wide north-south highway and is striped for two travel lanes in each direction with a double yellow centerline separating the directions of travel. The incident location was at the intersection with Pearblossom Highway where Sierra Highway curves to the left for northbound travel. The incident location is a signalized intersection with two left turn lanes for northbound travel and two through lanes unto Pearblossom Highway. The left turn is protected.

On December 15, 2004 a two person Public Works painting crew was in the process of painting the crosswalks and roadway markings for the left turn lanes. The Public Works employees had coned off the two left turn lanes in preparation to paint the roadway and were in the process of repositioning their vehicle in the work zone. The employees had not placed "No Left Turn" signs. They vacated the work zone to turn their vehicle around and reenter the work zone when the accident occurred. In preparing to re-enter the work zone the employees had placed their vehicle in the median area immediately north of the intersection on Pearblossom Hwy.

Mr. Shigematsu was driving a Toyota Corolla and was proceeding southbound on Pearblossom Highway. He had a green signal and was traveling at the speed limit approaching the intersection. The other driver and defendant Mr. McNutt, was driving a Ford F150 truck and proceeding northbound on Sierra Highway desiring to make a left turn at the intersection. As McNutt approached the intersection, he testified that a green signal was displayed for northbound through traffic and that the left turn signal was dark. He proceeded to make a left turn from the number one lane and in the process collided with Mr. Shigamatsu.

The CHP report found Mr. McNutt to be the primary factor in the collision for failing to yield to oncoming traffic. However, the officer also reported the left turn signals were

inoperable. Public Works disputes the contention that the signal was dark(inoperable).

Mr. Shigamatsu suffered a broken right leg and fractured left knee along with facial injuries and nerve damage. He was hospitalized for several weeks and convalesced for 6 months. He will require future medical treatment and surgery.

There are conflicting statements by the two Public Works employees as to the position of their vehicle in the intersection, whether they witnessed the accident and if there were "No Left Turn" signs on the truck. There is a question wether the employees were repositioning their vehicle to place the signs or not, and if they were placing the signs, why were they not placed prior to the cones. There is a question as to who was supervisor/senior person on the crew and had responsibity for directing its actions.

POLICY ISSUES

At the time of the incident December 15, 2004, Public Works was transitioning to new standards for the establishment of work zones. The State of California adopted the latest federal standards in 2004. Local agencies are required to place themselves in conformance with the new standards. The procedural impacts of the new standards were being investigated and employee training was ongoing.

Since 1993 an internal memorandum made the deployment of "No Left Turn" signs standard practice whenever equipment would prevent vehicles from making left turns. At the time of the incident, the left turn pocket was closed by cones, but "No Left Turn" signs had not been deployed and the equipment was not preventing vehicles from making left turns. Factors such as the prevailing speed of traffic, its composition, and its volume may have warranted additional precautions at this location.

CORRECTIVE ACTION

Following the incident, Public Works has expedited the training of all remaining Traffic Painting & Sign Posting Unit staff on the new standards for the establishment of work zones. The training was completed on January 30, 2007.

By May 1, 2007 complete a review of existing bi-monthly tailgate safety meetings and make recommendations to strengthen traffic safety topics.

By June 1, 2007 procedures will be established for the training of new unit employees and the cyclical training of existing unit employees on the latest standards for the establishment of work zones.

By June 1, 2007 complete a revision of the 1993 memorandum to clarify and strengthen its intent. It will include language to ensure all pavement marking maintenance vehicles are equipped with proper work zone safety materials before conducting field operations.

By November 1, 2007 complete an inventory identifying roadways where additional precautions are warranted. These precautions may include

- using additional high visibility vehicles,
- implementing work zones based on pre-engineered drawings,
- setting nearby traffic signals to an all-way red flash,
- limiting work activities to outside of peak traffic hours,
- requiring supervisory presence on the job site,
- deploying more extensive traffic control.