MEMORANDUM

May 16, 2007

TO:	THE LOS ANGELES COUNTY CLAIMS BOARD
FROM:	MARC J. WODIN, ESQ. Law Offices of Marc J. Wodin BRIAN T. CHU Principal Deputy County Counsel General Litigation Division
RE:	**Keith Tinsley v. County of Los Angeles, et al. and City of Los Angeles v. County of Los Angeles (Complaint in Intervention) Los Angeles Superior Court No. YC050297**
DATE OF INCIDENT:	February 2, 2004
AUTHORITY REQUESTED:	$200,000
COUNTY DEPARTMENT:	Sheriff's Department

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 June 4, 2007

HOA.422729.7

SUMMARY

This is a recommendation to settle for $200,000 the lawsuit brought by Keith Tinsley, seeking damages for personal injuries sustained in a motor vehicle accident with a Sheriff's Department patrol unit on February 2, 2004.

LEGAL PRINCIPLE

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

SUMMARY OF FACTS

This action arises from an auto-versus-auto collision occurring on February 2, 2004, at approximately 11:30 p.m., on Manchester Boulevard, east of Harvard Boulevard, in the City of Los Angeles. Manchester Boulevard has two traffic lanes and a parking lane running in each of the westbound and eastbound directions and is divided by a striped center median. At the time of the accident, the street was well lighted by street lights, traffic conditions were light, and the street surface was wet due to recent rain. The posted speed limit was 35 miles-per-hour.

Keith Tinsley and his partner, who were on-duty Los Angeles Police Department ("LAPD") officers, were driving in a marked LAPD patrol unit eastbound on Manchester Boulevard, when they saw a Sheriff's patrol unit traveling westbound with its overhead lights and siren activated. The Sheriff's Deputy and his partner were responding to a radio call for immediate assistance by Deputies involved in a running gun battle. Officer Tinsley heard the same radio call and decided to respond. He made a U-turn to follow the Sheriff's unit and intermittently activated his lights and siren as he drove through intersections.

Officer Tinsley continued in the number one westbound lane following the Sheriff's Deputy from a distance of 24 to 50 yards and a speed of 45 to 50 miles-per-hour. The Sheriff's Deputy then overshot a turn and slowed down at a mid-block location to a speed of approximately 15 miles-per-hour before preparing to make a U-turn. Witnesses differ in their accounts regarding from which of the three westbound lanes the Sheriff's Deputy started his U-turn, and the Sheriff's Deputy has no recollection of the incident. Officer Tinsley, however, continued to approach the Sheriff's Deputy from behind in the number one lane. Though witnesses also differ as to whether the Sheriff's Deputy had his lights and siren activated at the time of the u-turn, the prevailing testimony is that the siren was activated, but the lights were deactivated. The LAPD unit had both its lights and siren deactivated.

In the middle of the Sheriff's Deputy's U-turn, Officer Tinsley collided head-on into the driver's door of the Sheriff's unit. Officer Tinsley had applied his brakes and swerved in an attempt to avoid the collision, however,

there was insufficient distance to do so. There is a factual dispute about whether the precise location of impact between the two units was within the westbound number one lane or the center median. Officer Tinsley, the Sheriff's Deputy and his partner were injured as a result of the collision. The LAPD investigated this incident and concluded that the Sheriff's Deputy was at fault for making an unsafe U-turn. In a confidential internal investigation of the accident, the Sheriff's Department also concluded that the Sheriff's Deputy was at fault.

Officer Tinsley contends that the Sheriff's Deputy negligently caused the collision by failing to look for conflicting traffic behind him before making the U-turn. The County contends that Officer Tinsley contributed to his own injuries by following too closely and too quickly behind the Sheriff's unit.

DAMAGES

Officer Tinsley received a concussion, abrasions to his head and right knee, a cut on his shin, and soft tissue injuries to his left elbow, right knee, neck and back. He was transported to Cedars-Sinai Hospital Emergency Room, where he was examined and later discharged. He was later diagnosed with right knee tendinitis that subsequently developed into chondromalacia. He underwent arthroscopic knee surgery in May 2005. MRIs of his cervical spine revealed two disc protrusions and a disc bulge for which he underwent surgeries for a discectomy and a neck fusion. In April 2006, he also underwent surgery for a left elbow cubital tunnel release. As of this date, Officer Tinsley's condition is not permanent and stationary.

All of Officer Tinsley's medical services and treatment have been paid by workers' compensation benefits conferred through the City. The City has filed a complaint-in-intervention seeking reimbursement of these benefits and the property damage to the LAPD unit. Should this matter proceed to trial, we anticipate the City will offer evidence of damages as follows:

Past medical expenses	$ 83,579
Temporary disability pay	$ 67,864
Injured-On-Duty ("IOD") pay	$ 64,262
Property damage	$ 15,329
SUBTOTAL	$231,034

Because Officer Tinsley's IOD pay and temporary disability benefits have not provided him with compensation equivalent to his salary, he claims loss of earnings at a rate of $28,512 annually through September 2006, in addition to non-economic damages for pain and suffering. As of October 2006, he has been on light duty status. He also claims damages for increased insurance premium costs as a result of having to pay for alternate coverage while disabled.

We anticipate Officer Tinsley will offer evidence of damages as follows:

Pain & suffering	$300,000
Past loss of earnings (to October 2006)	$ 18,000
Insurance premium loss	$ 17,352
SUBTOTAL	$335,352
City of L.A. Claim	$231,034
TOTAL	$566,386

The County's liability for the total damages may be mitigated by its contention that Officer Tinsley was comparatively negligent. The extent of the liability will be determined by a jury.

STATUS OF CASE

In addition to Officer Tinsley's lawsuit against the County, which includes the City's complaint-in-intervention, each of the Sheriff's Deputies filed related lawsuits against the City for their personal injuries, grounded on the alleged motor vehicle negligence of Officer Tinsley. The CAO Workers' Compensation Unit will assert the County's right to reimbursement if the Deputies recover settlements from the City.

This case was unsuccessfully mediated on April 5, 2006. The County reached the proposed settlement at a second mediation on December 1, 2006, with Officer Tinsley and the City of Los Angeles. Officer Tinsley and the City have negotiated an apportionment of the proposed settlement amount between themselves. This proposed settlement was reached before the County's motion for summary judgment was heard. Both the motion and the trial date were vacated to allow action on the proposed settlement.

Three roundtable discussions in this lawsuit were conducted involving Carl Warren representatives, the Department, CAO Risk Management staff, and private and County Counsel attorneys. All issues concerning liability, the ranges of damages and settlement values were addressed and explored. The proposed settlement represents a mid-range of settlement value.

Approximate expenses incurred by the County in defense of this matter are attorneys' fees of $63,388 and costs of $47,611. These expenses reflect the cost of a multi-party lawsuit that included taking eight depositions; consultation with an accident reconstruction expert, neurologist and orthopedist; two defense IMEs; preparation and filing of a summary judgment motion; and, attendance at two mediations and three roundtable meetings.

EVALUATION

This is a case of adverse, but shared, liability. The Sheriff's Deputy's precise starting point from the westbound side of the roadway and the precise collision location are disputed. Witnesses differ in their recollections about the position of the Sheriff's unit prior to the collision. But the likelihood that a jury will find the Sheriff's Deputy negligent increases, if it finds that he started his U-turn from other than the number one lane. Even if a jury finds that the Deputy started from the number one lane, the Deputy still made a U-turn in violation of Vehicle Code section 21460. Vehicle Code sections 21055 and 21056, however, provide that the driver of an emergency vehicle, such as a patrol unit, may make a mid-block U-turn across a center median, but must do so with due regard for the safety of other motorists on the road and only if both lights and siren are activated. The Sheriff's Deputy has no recollection of his actions immediately before the collision, so a jury may find that he did not take adequate precautions before making his U-turn by ensuring that his overhead lights were activated. If the unit's overhead lights were not activated, the Sheriff's Deputy was not authorized to make the U-turn across the center median and would be found negligent.

The County contends that Officer Tinsley was comparatively negligent by driving faster than the posted speed limit of 35 miles-per-hour and too close to the Sheriff's unit. He admitted driving at a speed of 45-50 miles-per-hour with neither lights nor siren activated. He was not, therefore, exempt from the speed laws and may be found negligent. And, by following the Sheriff's unit too closely, he did not afford himself the opportunity to take effective evasive maneuvers to avoid the collision as he approached the slowing Sheriff's unit.

Allocation of liability, however, will be more heavily weighted against the Sheriff's Deputy than Officer Tinsley. Officer Tinsley's speed was not so excessive so as to avoid a finding that the Sheriff's Deputy violated one or more sections of the Vehicle Code. A jury will determine that the Sheriff's deputy was the primary collision factor and Officer Tinsley's actions merely an associated factor that would justify a smaller liability allocation to Officer Tinsley.

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

RECOMMENDATION

We join our third party administrator, Carl Warren & Company, and our private counsel, Marc J. Wodin, Esq., in recommending a total settlement of this matter in the amount of $200,000. The Sheriff's Department concurs in this settlement recommendation.

APPROVED:

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:BTC:ac