MEMORANDUM

May 22, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JERRY M. CUSTIS
Principal Deputy County Counsel
General Litigation Division

RE: **Gregory H. Gocke v. City of Santa Monica, et al.**
Los Angeles County Superior Court No. SC090248

DATE OF INCIDENT: August 2, 2005

AUTHORITY REQUESTED: $240,000.00

COUNTY DEPARTMENT: Office of the Chief Executive Officer

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 28, 2007

HOA.444738.1

SUMMARY

Gregory H. Gocke sued for personal injuries sustained in a fall on a cracked sidewalk in front of the Santa Monica Superior Courthouse. At mediation, the County tentatively agreed to settle the lawsuit for $240,000.

LEGAL PRINCIPLES

The County's liability was predicated on the existence of a dangerous condition in the sidewalk, namely a height differential caused by the raised crack. Also at issue was whether the raised crack was of such a height to avoid its being deemed a trivial defect, whether the County had prior notice of the condition of the sidewalk and whether it had adequately inspected that area.

SUMMARY OF FACTS

Mr. Gocke, a partner in a law firm, tripped over the raised crack on his way to a court appearance on August 2, 2005. He said that, as he tripped, he turned to his right to avoid falling on his face and landed on a briefcase he was carrying, breaking his right femur. He underwent surgery to repair the fracture, remained in a hospital five to six days thereafter, missing a total of seven months of employment.

Mr. Gocke claims that he suffered intense pain from his fracture and from efforts to realign his leg before surgery. He asserts that he now walks with a limp and cannot sit for substantial periods. He has stated that his medical expenses were greater than $130,000. He also claims that the injury led to his retirement from the practice of law. He has testified that his law practice provided him with a minimum monthly income of $16,400. He, thus, claims a loss of income of at least $100,000. This loss resulted in the dissipation of his law practice because of his inactivity during the time he was disabled. He also seeks compensation for a total of $29,000 to $39,000 in continuing office overhead expenses paid to his law firm during his disability.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages as follows:

Medical specials	$130,000
Loss of income–past	$144,800
Loss of income–future	$400,000
Payment of overhead	$ 35,000
Pain and suffering	$200,000
TOTAL	$909,800

STATUS OF CASE

This lawsuit was originally filed on June 30, 2006, against the City of Santa Monica and the County. Mr. Gocke dismissed the City from the case in December 2006.

At a pre-mediation roundtable attended by representatives of the Internal Services Department and attorneys from this office, issues of liability exposure and potential damages were discussed. The participants agreed that efforts should be made to settle the case for up to $300,000.

An unsuccessful mediation was conducted in February 2007, but Mr. Gocke and the County agreed to mediate further in April 2007, before a different mediator. In the meantime, trial had been set to start on June 29, 2007. At the April 17, 2007, mediation, the parties agreed to settle for $240,000, subject to approval by the Claims Board and the Board of Supervisors. Expenses incurred by the County in defending the case include attorneys' fees of $52,630.39 and costs of $1,598.00.

EVALUATION

We evaluated Mr. Gocke as an effective and sympathetic witness in his own behalf, with a strong chance of prevailing on liability. There is little doubt that he was injured in the manner he claimed, and we have not found any evidence contradicting his account that his injury, surgery and recuperation were painful. Of greater concern to us was his assertion that his injury destroyed his law practice, thereby opening the way to a very high damage potential.

Given this potentially large verdict, we evaluated the case as meriting settlement at between $250,000 and $300,000. This evaluation took into consideration the County's defenses that the sidewalk crack was not so dangerous as to cause Mr. Gocke's fall and that the County had an adequate inspection program. In the end, we succeeded at mediation in obtaining a settlement slightly below the low side of the settlement range that we considered appropriate.

RECOMMENDATION

There is a potential for a verdict considerably in excess of the agreed settlement amount, because of the loss of his law practice that Mr. Gocke blames on his injury.

We believe that settlement of this litigation for $240,000 is in the best interest of the County. The Office of the Chief Executive Officer concurs in our recommendation.

APPROVED:

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:JMC:jm