



COUNTY OF LOS ANGELES  
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County Counsel

March 4, 2010

TO: SACHI A. HAMAI  
Executive Officer  
Board of Supervisors

Attention: Agenda Preparation

FROM: JOHN F. KRATTLI   
Senior Assistant County Counsel

RE: **Carolina Silva, et al. v. County of Los Angeles**  
**United States District Court Case No. CV 08-07934**

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary, Summary Corrective Action Plan, and the Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisor's agenda.

JFK:rfm

Attachments

## Board Agenda

### MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Carolina Silva, et al. v. County of Los Angeles, United States District Court Case No. CV 08-07934, in the amount of \$350,000, and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff's Department's budget.

This lawsuit contends that the decedent's death was caused by the use of excessive force by Sheriff's Deputies.

## CASE SUMMARY

### INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Carolina Silva. v. County of Los Angeles
CASE NUMBER	CV 08 07934
COURT	United States District Court, Central District of California
DATE FILED	December 2, 2008
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 350,000
ATTORNEY FOR PLAINTIFF	Peter Williamson, John Burton, M. Lawrence Lallande
COUNTY COUNSEL ATTORNEY	Gordon W. Trask
NATURE OF CASE	<p>Plaintiff's allege that their decedent's death was caused by the use of excessive force by Sheriff's Deputies.</p> <p>The Deputies contend that the use of force was reasonable and in response to the decedent's resistance, and also contend that the force did not cause the death.</p> <p>Due to the risks and uncertainties of litigation, and in light of the fact that a prevailing plaintiff in a federal civil rights lawsuit is entitled to an award of reasonable attorneys' fees, a full and final settlement of the case in the amount of \$350,000 is recommended.</p>

PAID ATTORNEY FEES, TO DATE \$ 103,363

PAID COSTS, TO DATE \$ 138,657

## Summary Corrective Action Plan



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	<p><b><u>Carolina Silva et al. v. County of Los Angeles</u></b>                  (Summary Corrective Action Plan #2009-028CR)</p> <p>Friday, November 30, 2007; 11:01 p.m.</p>
Briefly provide a description of the incident/event:	<p>The plaintiff, surviving spouse of Cesar Silva, alleges that on Friday, November 30, 2007, at approximately 11:01 p.m., on-duty Los Angeles County deputy sheriffs violated her husband's civil rights when they deployed an electronic immobilization device (TASER) on him and beat him with a flashlight, causing his death. The plaintiff also alleges the deputies failed to timely summon medical care to treat his injuries.</p>

1. Briefly describe the root cause of the claim/lawsuit:

A public entity is responsible for the acts of its employees when the acts are committed in the course and scope of employment. A public entity and its employees also may be held liable for a violation of an individual's federal civil rights for an arrest without probable cause or the use of unreasonable force to effect an arrest.

The plaintiff and her daughter claim damages for the wrongful death of their husband and father, costs, and attorneys' fees.

2. Briefly describe recommended corrective actions:  
 (Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

The Los Angeles County Sheriff's Department had relevant policies and procedures/protocols in effect at the time of the incident.

The Los Angeles County Sheriff's Department's training curriculum sufficiently addresses the circumstances which occurred in this incident.

Despite the lack of a direct causal relationship, one Los Angeles County Sheriff's Department policy was revised.

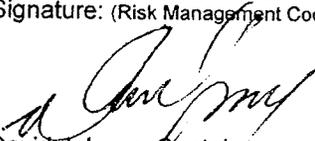
On November 3, 2008, Los Angeles County Sheriff's Department Manual of Policy and Procedures section 5-06/040.95, Electronic Immobilization Device (TASER) Procedures was revised to include the following statement:

"Application of the Taser shall be discontinued once the suspect does not pose an immediate threat to themselves, Department personnel, or the public."<sup>1</sup>

The Department's administrative review of the incident revealed no employee misconduct. Consequently, no additional corrective action measures are recommended or contemplated.

3. State if the corrective actions are applicable to only your department or other County departments:  
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- Potentially has County-wide implications.
- Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- Does not appear to have County-wide or other department implications.

Signature: (Risk Management Coordinator)  David J. Long, Captain Risk Management Bureau	Date:  1-22-10
Signature: (Department Head)  Larry L. Waldie Undersheriff	Date:  01-26-10

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<sup>1</sup> This statement is among several revisions to this policy section. A copy of Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 5-06/040.95, Electronic Immobilization Device (Taser) Procedures in its entirety (as revised) is attached to the corrective action plan.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
RISK MANAGEMENT BUREAU

CORRECTIVE ACTION REPORT

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**Corrective Action Plan (CAP) Number:** 2009-028CR

**Lawsuit:**

Name: **Carolina Silva, et al. v. County of Los Angeles**  
Case/Docket Number: United States District Court Case No. CV 08-7934

Investigator: Richard W. Debruijn, Deputy  
Risk Management Bureau  
Leadership and Training Division

**Incident:**

Date/Time: Friday, November 30, 2007; 11:01 p.m.

Location: 1348½ East 70<sup>th</sup> Street  
Los Angeles  
(Unincorporated Los Angeles County)

Station, Bureau, or Facility: Century Station  
Field Operations Region II

**Executive Summary:**

On Friday, November 30, 2007, at approximately 11:01 p.m., Los Angeles County sheriff's deputies drove to 1348½ East 70<sup>th</sup> Street, Los Angeles (Unincorporated Los Angeles County) in response to a call for service of a suspicious man following a woman to her home. Upon their arrival, the deputies saw Mr. Silva who matched the description of the man described in the call.

Mr. Silva initially complied with the deputies' instructions to lay down on the driveway of the apartment complex. As the deputies attempted to handcuff him, however, Mr. Silva grabbed the leg of one deputy sheriff and a physical altercation ensued. Deputies were able to free Mr. Silva's grasp of the deputy's leg, however, he continued to fight with the deputy and ignored their orders to stop struggling.

CORRECTIVE ACTION PLAN 2009-028CR  
**CAROLINA SILVA, ET AL. V. COUNTY OF LOS ANGELES**  
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An electronic immobilization device (TASER) was deployed on Mr. Silva. Unfortunately, the device had little or no effect.<sup>1</sup> The deputies were eventually able to handcuff Mr. Silva, but he continued to resist. He was placed in a hobble restraint device, but the deputies were unable to secure the line from his ankles to his handcuffs. He was placed in the back seat of a patrol car under the direct supervision of a deputy sheriff.

Minutes later, the deputy sheriff guarding Mr. Silva noticed he appeared to be unconscious, but still breathing. He received treatment by paramedics (who had already responded to the scene) and was transported to a local hospital. He later died.

The autopsy report found that Mr. Silva was under the influence of cocaine and methamphetamine and died as a result of agitated delirium caused by the drug use. The plaintiff's medical expert is of the opinion that Mr. Silva died as a result of positional asphyxia from being restrained.

The plaintiff, the surviving spouse of Mr. Silva (decedent), alleges that on-duty Los Angeles County deputy sheriffs violated her husband's civil rights when they deployed an electronic immobilization device (TASER) on him and beat him with a flashlight, causing his death. The plaintiff also alleges the deputies failed to timely summon medical care to treat his injuries.

**Risk Issue(s):**

A public entity is responsible for the acts of its employees when the acts are committed in the course and scope of employment. A public entity and its employees also may be held liable for a violation of an individual's federal civil rights for an arrest without probable cause or the use of unreasonable force to effect an arrest.

**Damages:**

The plaintiff and her daughter claim damages for the wrongful death of their husband and father, costs, and attorneys' fees.

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<sup>1</sup> It was later determined the electronic immobilization device was not fully charged.

**Administrative Review:**

Was a formal Risk Management Bureau (RMB) Critical Incident Analysis (CIA) conducted? No  
If yes, what is the date the meeting was held? N/A

Was another formal administrative review/investigation initiated? Yes  
If yes, was discipline imposed or other appropriate administrative action taken as a result? No

**Policy Issues:**

The Los Angeles County Sheriff's Department had relevant policies and procedures/protocols in effect at the time of the incident.

**Training/Curriculum Issues:**

The Los Angeles County Sheriff's Department's training curriculum sufficiently addresses the circumstances which occurred in this incident.

**Evaluation:**

This is a case of disputed liability.

Mr. Silva fought with the deputy sheriffs and was under the influence of drugs at the time of the incident. There are, however, numerous independent witnesses who said Mr. Silva was compliant and the deputies' use of force was unnecessary.

**Corrective Action:**

Was a formal administrative review of the incident initiated? Yes  
If yes, was appropriate administrative action taken? N/A

Despite the lack of a direct causal relationship, one Los Angeles County Sheriff's Department policy was revised.

CORRECTIVE ACTION PLAN 2009-028CR  
**CAROLINA SILVA, ET AL. V. COUNTY OF LOS ANGELES**  
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On November 3, 2008, Los Angeles County Sheriff's Department Manual of Policy and Procedures section 5-06/040.95, Electronic Immobilization Device (TASER) Procedures was revised to include the following statement:

"Application of the Taser shall be discontinued once the suspect does not pose an immediate threat to themselves, Department personnel, or the public."<sup>2</sup>

The Department's administrative review of the incident revealed no employee misconduct. Consequently, no additional corrective action measures are recommended or contemplated.<sup>3</sup>

**Risk Review/Compliance Audit:**

Will this corrective action plan (and/or implementation of any corrective action measures) require the notification to, or the assistance from, other County of Los Angeles departments or public agencies?	No
If yes, what is the name and title of the individual contacted?	N/A
How/when was the person contacted?	N/A
Will a formal Risk Management Bureau audit be required?	No
If yes, what is the date the audit will be performed?	N/A
Name of person/unit performing audit?	N/A

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<sup>2</sup> This statement is among several revisions to this policy section. A copy of Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 5-06/040.95, Electronic Immobilization Device (Taser) Procedures in its entirety (as revised) is attached to this corrective action plan.

<sup>3</sup> This case is tentatively scheduled to be heard by the members of the Los Angeles County Sheriff's Department's Executive Force Review Committee (EFRC) on February 25, 2010. Following that meeting, this corrective action plan will be revised accordingly (if necessary).

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PAGE FIVE

**Prepared:** Patrick Hunter, Lieutenant *PH*  
Risk Management Bureau

**Submitted:** David J. Long, Captain *DJL*  
Risk Management Bureau

**Reviewed:** Eric B. Smith, Commander *EBS*  
Leadership and Training Division

**Approved:** Roberta A. Abner, Chief *RAA*  
Leadership and Training Division

**Authorized:** Larry L. Waldie, Undersheriff

Signature: *Larry L. Waldie* Date: 01-26-10



## **5-06/040.95 ELECTRONIC IMMOBILIZATION DEVICE (TASER) PROCEDURES**

The Taser is a less lethal hand held electronic immobilization device used for controlling assaultive/high risk persons. The purpose of this device is to facilitate a safe and effective response and minimize injury to suspects and deputies.

### Use of the Electronic Immobilization Device

The following policy guidelines shall be adhered to at all times:

- Only Departmentally approved Tasers shall be utilized by personnel,
- Tasers shall be issued to and used only by those who have completed the Department's Taser Training Program,
- Members authorized to carry Tasers on duty, may purchase Departmentally approved Tasers for on and off duty use,
- Prior to the use of the Taser, whenever practical, Department personnel shall request a supervisor,
- Any individual subjected to an application of the Taser, in either the "probe" or the "touch/drive stun" mode, shall be taken to a medical facility prior to booking, for appropriate medical treatment and/or removal of the probes,
- Application of the Taser shall be discontinued once the suspect does not pose an immediate threat to themselves, Department personnel or the public.
- Except in emergent circumstances, the Taser should not be applied to the following or used in any other situation where there is a reasonably foreseeable likelihood of severe injury or death. In the extraordinary instance that a Department member feels compelled to activate the Taser in the following circumstances, the conduct of the involved personnel shall be evaluated in accordance to the Use of Force policy with sound tactical principles.
  - Handcuffed persons,
  - Persons detained in a police vehicle,
  - Persons detained in any booking or holding cell,
  - Persons in control of a motor vehicle,
  - Persons in danger of falling or becoming entangled in machinery or heavy equipment which could result in death or serious bodily injury,
  - Persons near flammable or combustible fumes,
  - Persons near any body of water that may present a drowning risk,
  - Persons known to have a pacemaker or known to be pregnant,
- The Custody Division Manual may define criteria for a unique application of the Taser within a custodial setting.

### Reporting the Use of the Electronic Immobilization Device

- Authorized Department personnel discharging a Taser shall request the response of a supervisor if not already en route or on-scene,
- The use of the Taser, either by utilizing the probes or the touch/drive stun mode, shall be reported as a "significant" use of force as defined in the Department Manual of Policy and Procedures, section 5-09/430.00, "Use of Force Reporting and Review Procedures,"
- Whenever a use of a Taser requires force reporting, a download of the Taser's stored data and video shall be conducted and submitted with the force package.

Personally owned Tasers

Authorized Department members shall only carry on and off-duty Department authorized Electronic Immobilization Devices (Taser). Personally owned Tasers shall be available for computer download upon the request of a supervisor. The device shall meet the specification of the Weapons Training Center, and shall be used in accordance with section 5-06/040.95.

Department members shall record all personally owned Department-authorized Tasers (carried on-duty and off-duty) with Personnel Administration by submitting an Employee's Personnel Information form (SH-AD 395), as required in the Personnel Chapter, MPP, when such devices are:

- Purchased or obtained in any other way,
- Sold or disposed of,
- Stolen or lost.

Distribution of this form shall be as follows:

- Original to Personnel Administration,
- Copy to unit file,
- Copy to member for his personal record.

**Revised 11/03/08**

**Revised 08/10/05**