

MEMORANDUM

September 6, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JOHN COLLINS, ESQ.
Collins, Collins, Muir & Stewart, LLC

BRIAN T. CHU
Principal Deputy County Counsel
General Litigation Division

RE: Luis Fernando Montes, et al. v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. PC036627 (consolidated with
PC036881 and PC037534)

DATE OF
INCIDENT: October 18, 2004

AUTHORITY
REQUESTED: \$268,000 plus waiver of medical lien of \$66,732

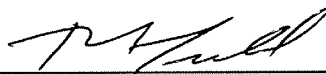
COUNTY Fire Department
DEPARTMENT: Special Districts Auto Liability Trust Fund

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of
Supervisors for Approval


_____, Chief Executive Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on September 17, 2007

SUMMARY

This is a recommendation to settle for \$268,000 in cash, plus a waiver of a Harbor-UCLA Medical Center medical lien in the amount of \$66,732, the lawsuit brought by Luis Fernando Montes and Paola Montes, seeking damages for personal injuries and loss of consortium as a result of a motor vehicle accident with an employee of the Fire Department on October 18, 2004.

LEGAL PRINCIPLES

A public entity is responsible for the negligent operation of a motor vehicle by its employee acting in the scope of employment. A public entity and its employee performing emergency services are immune from liability, unless such action is performed in a grossly negligent manner.

SUMMARY OF FACTS

This action arises from a pick-up truck versus utility truck rear-end collision occurring at approximately 2:05 p.m. on October 18, 2004, on the northbound Antelope Valley Freeway (State Route 14), just south of the San Fernando Road exit, City of Santa Clarita. At the time of the accident, visibility was limited to 60-75 feet due to rain and heavy fog conditions.

A County Fire Department employee driving a medium-duty fire utility truck was traveling northbound on the freeway when he came upon a non-injury automobile accident that had just occurred in the southbound carpool lane. The employee does not recall whether he activated the utility truck's overhead lights, though witnesses are evenly split on that factual issue. He then stopped the utility truck within the northbound carpool lane to render assistance to the motorists. Seconds later, however, the utility truck was rear-ended by a pick-up truck driven by Luis Fernando Montes. Mr. Montes had been driving at a speed of approximately 60-70 miles-per-hour with four of his co-workers as his passengers. The resulting collision caused major front-end damage to the pick-up truck and moderate damage to the utility truck. All of the occupants in the pick-up truck were seriously injured.

The California Highway Patrol investigated this incident and concluded that Mr. Montes was driving at an excessive and unsafe speed for the existing conditions. Additionally, the employee was determined to be an associated factor in causing the collision, because he unsafely stopped the utility truck in a position that blocked the carpool lane.

Mr. Montes contends that the County employee was solely negligent in causing the collision. The County contends that Mr. Montes caused the accident and the injuries received by him and his passengers.

DAMAGES

Mr. Montes was the driver of the pick-up truck and was wearing a seat belt at the time of the collision. As a result of the collision, Mr. Montes was rendered unconscious and received severe injuries that included a lacerated scalp, a fractured and dislocated pelvis, blunt abdominal trauma with liver laceration, a ligament tear in the left knee and vascular damage to the right leg. Mr. Montes was hospitalized at Northridge Hospital for nine days and then transferred to Harbor-UCLA Medical Center for further treatment. He will require left knee ligament repair and hip replacement surgery.

Should this matter proceed to trial, we anticipate Mr. Montes will offer evidence of damages as follows:

Past medical expenses	\$ 173,619
Future medical expenses	\$ 198,200
Pain and suffering	<u>\$1,000,000</u>
TOTAL	\$1,371,819

The County's share of Mr. Montes' damages would be offset by a credit in the amount of \$66,732 for the care provided at the County's expense and for which a medical lien has been asserted. The County would also seek an offset of approximately 25 percent to 30 percent for Mr. Montes' proportionate share of liability for economic damages in the four lawsuits that were filed by his passengers and previously settled. The amount of the proposed settlement is \$334,732, which includes a waiver of the County's medical lien and \$268,000 in cash.

STATUS OF CASE

Mr. Montes' lawsuit is the last of the five lawsuits that were filed and settled. The trial was taken off the court's calendar to allow for action on the proposed settlement.

We attempted to settle all five lawsuits against the County over a series of mediations. The County and Mr. Montes unsuccessfully mediated this case on November 14, 2006. At that time, Mr. Montes demanded over \$900,000 to settle. In order to reach a more favorable settlement amount with Mr. Montes, the County opted to conduct discovery, settle with the passengers first and use the threat of credit offsets to diminish the value of Mr. Montes' damages.

Four roundtable discussions in this consolidated lawsuit have been conducted in this case involving representatives of Carl Warren & Company, the Fire Department, CEO Risk Management, County Counsel and outside counsel. All issues concerning liability, the ranges of damages and settlement

values were addressed and explored. The proposed settlement is below that which was authorized by the Department.

Approximate expenses incurred by the County in defense of all five lawsuits are attorneys' fees of \$183,014 and costs of \$87,953. These expenses include the work required to prepare and file a motion and writ petition to strike non-economic damages, numerous depositions, independent medical examinations, retention and consultation with accident reconstruction, human factors and biomechanics experts, as well as a neurologist, an orthopedist and a facio-maxillary physician to evaluate the severity of injuries to all five occupants in Mr. Montes' pick-up truck.

EVALUATION

This is a case of adverse liability. Under Vehicle Code section 17001, a public entity is liable for an injury to a person caused by the negligent operation of its vehicle by its employee, even if its employee may be immune from such liability. While such liability seems to conflict with the general immunity provision of Government Code section 815.2, case law firmly states that the specific liability provision of Vehicle Code section 17001 supersedes the Government Code immunity provisions. The County will not be immune from liability under the Vehicle Code.

Under Health and Safety Code section 1799.107, a public entity and its employee acting as emergency personnel performing emergency services are immune from liability, unless those services are performed in a grossly negligent manner. It is undisputed that, while the employee has prior training as an EMT, he was not employed by the Fire Department in that capacity. His employment and duties were limited as a utility truck driver, which duties did not encompass those of a first responder. Furthermore, the accident on the southbound side of the freeway did not involve an injury. While the employee could not know that the accident did not involve injuries before he stopped the utility truck, he was still required to operate and position the vehicle in a safe manner. The utility truck was stopped in severely limited visibility conditions due to heavy rain and fog and within a carpool lane of a high-speed freeway. It is disputed whether the utility truck's overhead lights were activated so as to increase its visibility. A moderate right-hand curve leading up to the collision area also limited the sight distance to the utility truck. Finally, the employee did not receive training on how to position a utility truck as a first responder upon an emergency scene. Based on these facts, we believe the employee operated the vehicle in a grossly negligent manner and neither the employee nor the County will be immune.

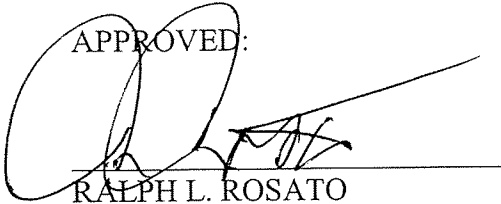
If this case proceeds, the County will contend that Mr. Montes was comparatively negligent within the range of 25 percent to 35 percent by driving at a speed excessive for the conditions. The degree to which he may be found

comparatively negligent, however, will be left to a jury. The County's potential exposure ranges from \$617,000 to \$745,000 and includes the offsets for the County's medical lien and Mr. Montes' share of comparative liability. A settlement of this action at this time will avoid further litigation costs to prepare for and litigate an estimated 10- to 15-day jury trial 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, Collins, Collins, Muir & Stewart, LLP, in recommending a total settlement of this matter in the amount of \$268,000 plus a waiver of the Harbor-UCLA Medical Center lien in the amount of \$66,732. The Fire Department concurs in this settlement recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'R. Rosato', is written over a horizontal line. The signature is stylized and includes a large loop on the left side.

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:BTC:rh

County of Los Angeles Fire Department

Corrective Action Plan

Lawsuit: Montes, et al. vs. County of Los Angeles
Claim No: 04-1034048
Date of Incident: October 18, 2004 (1405 hrs)
Location of Incident: NB SR-14 Freeway near San Fernando Road

Incident Summary:

A Fire Department utility vehicle¹ was rear-ended in the northbound HOV (carpool) lane on State Route 14 Freeway. Visibility was limited due to moderate rain and fog and the roadway was wet. The Fire Department driver (medium truck driver) was driving northbound on the freeway when he came upon a vehicle accident that had occurred on the opposite, southbound, side of the freeway in the carpool lane. He stopped the vehicle along the center dividing wall to render assistance. Some witnesses indicated the emergency lights on top of the cab as well as the emergency flasher lights were activated prior to the accident. Other witnesses claim the lights were not on. That issue remains contested. At the location where the vehicle came to stop, there was minimal space between the innermost HOV lane line and the concrete, center barrier. As a result, the utility vehicle was blocking most of the HOV lane.

Within seconds after the Fire Department driver stopped the utility vehicle, a Ford F150 pick-up with five individuals struck the rear of the utility vehicle at high speed causing extensive damage to the pick-up and serious injuries to its driver and his passengers. The Fire Department driver was unconscious for a period of time and has no memory of the accident or the events immediately prior. The five individuals in the pick-up suffered injuries ranging from moderate to severe.

¹ A Fire Department utility vehicle is a Ford F-450 (GVWR 15,000 lbs) stake bed commercial chassis with a metal lift gate along the back.

Risk Management Issues:

Issue #1 - The Department employee stopped his vehicle in an unsafe location which was a contributing factor to the accident. According to the CHP, the employee violated *Vehicle Code* section 22400(a) which states, "no person shall bring a vehicle to a complete stop upon a highway, so as to impede or block the normal and reasonable movement of traffic."

Issue #2 -The employee was not subject to discipline as a result of his actions. The employee saw an accident on the other side of the freeway, with no police or fire on scene, and his intention was to provide assistance to members of the public. The handbook for utility drivers directs them to, "take whatever action is necessary within his/her limitations, training and knowledge" if first on scene of any emergency. The mission and core values of the Department direct all employees to provide assistance to members of the public if they come upon an emergency. In this situation, this was the intent of the employee. However, it is recognized that the use of emergency lights and positioning of the utility vehicle did not address the highway safety needs of that situation. Therefore, the Department determined that additional safety training for this employee and all utility drivers was the most appropriate corrective action in response to this incident.

Corrective Action Summary:

1. The employee was counseled by the acting Deputy Chief on issues of safely providing assistance to members of the public.

Completed: January 2005

2. A safety meeting with all utility truck drivers, headed by the Deputy Chief of Support Services, was held to review and emphasize safe driving operations and expectations.

Completed: November 2004

3. All utility vehicles to have large, chevron style, reflector panels installed across the lift gate such that it increases the visibility of the vehicle when the gate is up in the normal position when driving.

Completed: March 2005

4. The Department will revise and develop a more comprehensive Utility Drivers' Training Manual.

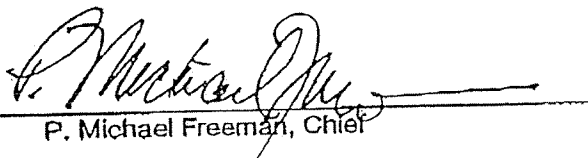
Completed: February 2007

5. Distribute a Safety Bulletin to all Department employees emphasizing safe vehicle parking and employee expectations if they determine it is necessary to stop and assist at a traffic accident.

Completed: February 2007

6. The Department will schedule additional, updated training for all utility drivers on revised Utility Driver Training Manual issues related to safe operation of the vehicles, as well as other relevant safety subjects.

Pending – Class Scheduled For March 2007


P. Michael Freeman, Chief


Date

montes_CAPv5