

MEMORANDUM

June 5, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DEREK YEE, ESQ.
Albright, Yee, and Schmit, LLP

TIGHE F. HUDSON
Principal Deputy County Counsel
General Litigation Division

RE: Robert Duarte v. County of Los Angeles
Los Angeles Superior Court Case No. MC 016631

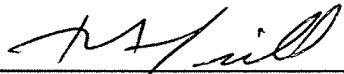
DATE OF INCIDENT: November 17, 2004


AUTHORITY REQUESTED: \$95,000

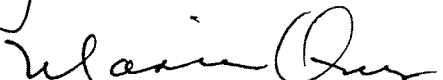
COUNTY DEPARTMENT: Department of Public Works

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 June 18, 2007

SUMMARY

This is a recommendation to settle for \$95,000 the wrongful death lawsuit brought by Robert Duarte concerning the death of his wife, April Duarte, who sustained fatal injuries in an automobile accident which occurred on November 17, 2004.

LEGAL PRINCIPLE

The County may be held liable for injuries caused or contributed to by a dangerous condition of County roadways and property.

SUMMARY OF FACTS

This action arises from a vehicle traffic accident which occurred on November 17, 2004, in the intersection of 45th Street West, a secondary County road, and Avenue N, a high speed major highway, in the Antelope Valley. A Toyota 4 Runner operated by April Duarte entered the intersection southbound on 45th Street West, and was struck by a Peterbuilt truck that was traveling westbound on Avenue N, Ms. Duarte, 26 years of age, sustained fatal injuries in the accident.

The intersection is bounded by the City of Lancaster, the City of Palmdale and Los Angeles County. Specifically, the east approach to the intersection is located in the City of Lancaster. The west and south approaches are located in the unincorporated area of the County. The north approach is located in the City of Palmdale. All jurisdictions share control of the intersection itself.

At the time of the accident, the intersection had stop signs posted on 45th Street West at both approaches. There were no traffic controls on Avenue N, and it is not posted with a regulatory speed limit at this road segment. The speed limit on 45th Street West is 45 mph.

Traffic conditions in the area were evaluated by the County in 2002, at which time the County suggested installation of a four-way stop sign for the intersection. The City of Palmdale evaluated traffic conditions differently, and no additional traffic controls were installed at that time. Further traffic study in the spring of 2004, prior to the accident, resulted in joint recommendation for signalization of the intersection. Traffic signals were later installed in the spring of 2005.

The California Highway Patrol investigated the accident, and placed fault for the accident on the decedent herself, for failing to obey the stop sign on 45th Street West.

Robert Duarte, 27 years of age, was married to Ms. Duarte for four years. She was employed in a real estate development office earning an annual salary of \$48,900 at the time of the accident.

A wrongful death lawsuit was brought by Mr. Duarte against Stephen Diaz, the driver of the truck, as well as the County of Los Angeles, the City of Palmdale and the City of Lancaster, among others. As to defendant Diaz, Mr. Duarte alleges vehicle negligence; against the public agencies, he alleges that numerous accidents had occurred at the location in the recent past and that the intersection constituted a dangerous condition of public property. Specifically, he claims that the intersection lacked additional traffic controls and this was a contributing factor in the accident.

DAMAGES

If the matter proceeds to trial, Mr. Duarte will likely seek the following:

General damages for loss of care, comfort, and society	\$ 1,000,000
Past wage loss 11/17/04 to present	\$ 114,100
For loss of decedent's future earnings and support	<u>\$ 1,500,000</u>
Total	\$ 2,614,100

The proposed settlement calls for the County to pay Mr. Duarte a total of \$95,000, on condition that the Court approves this disposition as a good faith settlement pursuant to Code of Civil Procedure section 877, which immunizes the County from any liability to indemnify non-settling defendants.

STATUS OF CASE

In December 2006, the County received an offer to compromise from Mr. Duarte pursuant to CCP section 998 in the amount of \$334,000. The same offer was made to the other public agency defendants. A roundtable was held on December 18, 2006, with the Department of Public Works representatives, private defense counsel and our third party administrator, Carl Warren and Company, at which time the case was evaluated with a unanimous recommendation to reject the offer.

A pre-mediation roundtable with representatives of CAO Risk Management, Department of Public Works administration, private defense counsel, our third party administrator, Carl Warren and Company, and County Counsel was conducted on January 26, 2007, prior to the February 16, 2007, mediation, at which time the Department of Public Works provided authority up to \$100,000 to settle the litigation.

At the February 16, 2007, mediation, Mr. Duarte made a demand for \$250,000 from each public agency defendant. The case was mediated by private mediator Jeffrey Kravis, and, with mediator recommendation, Mr. Duarte accepted a settlement with the County for the amount indicated. The case is proceeding to trial against the other defendants.

Expenses incurred by the County in the defense of this matter are \$118,293 in attorney fees' and \$11,827 in costs.

EVALUATION

Whether Ms. Duarte obeyed the stop sign on 45th Street West prior to entering the intersection is disputed. In either event, the fault for this accident lies principally with the decedent herself for failing to yield to through traffic on Avenue N.

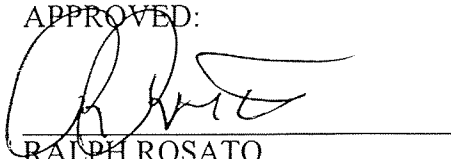
This notwithstanding, the location had a history of accidents, specifically after 2002. This is largely attributed to development in this area of the Antelope Valley and increased traffic volumes. There also were citizen complaints concerning traffic conditions at the location which were presented to the field office for the Board of Supervisors in 2003. The County's own recommendation concerning four-way stop signs years before substantially discounts the position of the public agency defendants that additional traffic controls were not appropriate. Additionally, the intersection was eventually identified for traffic signalization several months before the accident.

Under these circumstances, there exists the likelihood that a trier of fact could apportion some degree of fault on the County and the other public agency defendants, in which event a verdict would result against the County in an amount far in excess of the proposed settlement. An order of good faith settlement will preclude any indemnification which could be sought from the County by the other public agencies.

RECOMMENDATION

We join our third party administrator, Carl Warren & Company, and our private counsel, Albright, Yee, and Schmit, LLP, in recommending a total settlement of this matter in the amount of \$95,000. The Department of Public Works concurs in this settlement recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'R. Rosato', is written over a horizontal line.

RALPH ROSATO
Assistant County Counsel
General Litigation Division

RLR:TFH:bh