

# MEMORANDUM

January 24, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ANN M. AGUILAR  
Deputy County Counsel  
General Litigation Division

RE: **Corry Hong v. County of Los Angeles et al.**  
**Los Angeles Superior Court Case No. BC 339971**

DATE OF INCIDENT: Various incidents between October 2003 and September 2004

AUTHORITY REQUESTED: \$39,950

COUNTY DEPARTMENTS: Department of Public Works/Department of Parks & Recreation

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CLAIMS BOARD ACTION:



Approve



Disapprove



Recommend to Board of Supervisors for Approval



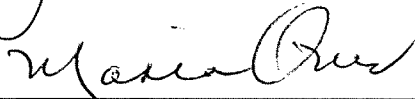
, Chief Administrative Office

**ROCKY A. ARMFIELD**



, County Counsel

**JOHN F. KRATTLI**



, Auditor-Controller

**MARIA M. OMS**

on February 15, 2007

## SUMMARY

This is a recommendation to settle for \$39,950 the lawsuit brought by Corry Hong after his real property was damaged during a construction project at an adjacent County property between October 2003 and September 2004.

## LEGAL PRINCIPLE

The County may be held liable for failing to defend, indemnify and hold harmless a homeowner who signed a temporary construction permit, granting the Department of Public Works access to his property during a County construction project, when the property is damaged while the project is underway.

## SUMMARY OF FACTS

Mr. Hong filed suit after his real property at 1032 Cove Way, Beverly Hills, California, was damaged by workers engaged in a County construction project at the adjacent Robinson Estate and Gardens. The project generally involved rebuilding a dilapidated retaining wall separating the County property from the adjacent residential properties. The project was financed by the Department of Parks and Recreation and managed by the Department of Public Works.

The project commenced in October 2003, and was completed sometime in December 2004. Pursuant to its contract with the County, Defendant Malibu Pacific Tennis Courts, Inc., ("Malibu Pacific") was the General Contractor responsible for completing the project work. Malibu Pacific retained Defendant American Standard Concrete Pumping, Inc., ("American Standard") and various other subcontractors to assist.

From the project's inception through its completion, Mr. Hong wrote multiple letters to the Department of Public Works, complaining about the project and related noise, dust, debris and property damage. Several other adjacent landowners made similar complaints to the Department during the project, and their concerns were addressed satisfactorily.

Representatives from the Departments of Public Works and Parks and Recreation visited Mr. Hong multiple times and attempted to address his concerns during the project. However, they ultimately learned that Mr. Hong and Malibu Pacific had a contentious history, and that Mr. Hong withheld payment from Malibu Pacific for work it performed when Mr. Hong hired it to resurface his tennis court. On learning this information, both Departments and the County inspector on the project site assumed an increased role in attempting to control the working hours and other details related to the daily project work in an attempt to address Mr. Hong's concerns.

Mr. Hong's lawsuit alleges that: 1) project workers generally created and maintained a nuisance throughout the course of the project from its start in October 2003; 2) a hose belonging to subcontractor American Standard

failed and sprayed concrete on portions of his residence, garage and driveway in March 2004; and, 3) County workers sprayed "sticky green paint" (hydroseed) on Mr. Hong's yard, landscaping, jacuzzi, deck and fence in September 2004.

After Malibu Pacific failed to defend and indemnify the County pursuant to the contract, the County filed a Cross-Complaint against Malibu Pacific for breach of contract, express and implied indemnity, contribution, comparative fault and declaratory relief. Malibu Pacific has also filed a Cross-Complaint against the County and American Standard.

## DAMAGES

Mr. Hong claims a total of \$191,794 in property damage. This total represents the cost of repairing or replacing damaged property, as well as the cost of cleaning those portions of the property that were sprayed with concrete and/or hydroseed, and replacing the landscaping that was destroyed by the project.

At the claim stage, before the lawsuit was filed and the construction permit was examined more closely, the County took the position that it was only responsible for the landscaping damage. Accordingly, the Department of Public Works met with Mr. Hong and two other adjacent landowners whose landscaping and backyard structures were damaged by the project. Estimates were obtained of the cost to repair and/or replace damaged items, and all the work was done except that involving Mr. Hong's property.

The Department of Public Work's 2004 estimate of the cost to repair the hydroseed damage, re-build the hardscape and re-landscape Mr. Hong's yard was \$20,544. This estimate did not include the cost of repairing the damage to the house, garage and driveway, or the cost of cleaning or replacing the structures that were sprayed with concrete. Mr. Hong's 2004 estimate for comparable work by a local contractor was \$36,275. In April 2006, in light of the two-year delay and resulting increased cost of materials, Mr. Hong obtained a second estimate of \$47,320.

Although the County could be found liable for the entire \$191,794 pursuant to the terms of the permit, Mr. Hong has agreed to accept the County's settlement in order to finance pursuing the remainder of the litigation against Malibu Pacific.

## STATUS OF CASE

The parties negotiated this settlement at mediation on August 16, 2006, and trial is set for March 5, 2007. The settlement calls for the County to pay Mr. Hong \$39,950 in full satisfaction of his claims.

This case was roundtabled, and this settlement authority was agreed to by all present. Expenses incurred by the County in the defense of this matter are attorneys' fees of approximately \$44,000 and costs of \$1,500.

## EVALUATION

This is a matter of clear County liability, subject only to the County's right to seek contribution from Malibu Pacific and American Standard, as well as indemnification from Malibu Pacific's insurer. Unfortunately, tender efforts have been unsuccessful with respect to Malibu Pacific, because of the County's active role in inspecting the project site, its communication and inter-action with Mr. Hong throughout the course of the project, and its releasing Malibu Pacific's retention bond while Mr. Hong's government claim was pending. Efforts to tender the case to the insurer have been similarly unsuccessful due to the high, per occurrence, self-insured retention, and the multiple occurrences that allegedly caused the damage. American Standard is no longer in business.

At the claim stage, the Departments of Public Works and Parks and Recreation reviewed Mr. Hong's claims and repair estimates and drafted a letter offering \$20,000 to settle his claims. The offer was apparently never conveyed to Mr. Hong before he filed suit. However, \$25,000 of the amount budgeted for the contract with Malibu Pacific, was set aside and remains unspent, in anticipation of settlement with Mr. Hong.

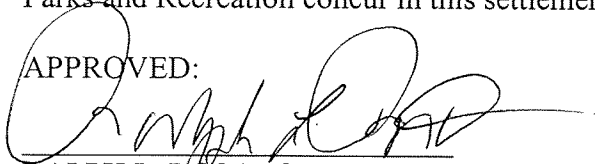
Although the County is liable for all damages, Mr. Hong is enthusiastic about pursuing recovery against Malibu Pacific and has agreed to settle with the County to finance the rest of the litigation against Malibu Pacific.

A settlement at this time will avoid a likely jury verdict well in excess of the recommended settlement amount, as well as further litigation costs in seeking contribution from Malibu Pacific and/or its insurer. We are still in discussion with the Departments regarding the feasibility of filing an action against the insurer and/or pursuing the County's Cross-Complaint against Malibu Pacific.

## RECOMMENDATION

We believe that settlement of this matter in the amount of \$39,950 is in the best interest of the County. The Departments of Public Works and Parks and Recreation concur in this settlement recommendation.

APPROVED:



RALPH L. ROSATO  
Assistant County Counsel  
General Litigation Division

RLR:AMA:ac