



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

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July 21, 2003

LLOYD W. PELLMAN

County Counsel

TDD

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TELEPHONE

TELECOPIER

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **David and Eunice Auner v. County of Los Angeles**
United States District Court Case No. CV 02-3238 GHK (PJWx)

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$200,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

July 14, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: STEVEN D. BLADES, ESQ.
Manning & Marder, Kass, Ellrod, Ramirez LLP

ROGER GRANBO, ESQ.
Principal Deputy County Counsel
General Litigation Division

RE: David and Eunice Auner v. County of Los Angeles
U. S. District Court Case No. CV-02-3238 GHK (PJWx)

DATE OF INCIDENT: April 23, 2001

AUTHORITY REQUESTED: \$200,000

COUNTY DEPARTMENT: Sheriff's Department

CLAIMS BOARD ACTION:

Approve Disapprove Recommend to Board of Supervisors for Approval

ROCKY A. ARMFIELD Chief Administrative Office

LLOYD W. PELLMAN County Counsel

MARIA M. OMS Auditor-Controller

on _____, 2003

SUMMARY

This is a recommendation to settle for \$200,000, the federal civil rights and defamation lawsuit filed by David and Eunice Auner against the County and several Sheriff's Deputies, and a Deputy District Attorney.

LEGAL PRINCIPLES

A public entity and its employees may be liable for defamation, if an employee makes a false assertion of fact that accuses a plaintiff of committing a criminal act.

Under federal civil rights law, public employees are immune from liability for allegations of malicious prosecution unless the employee provides false information to the District Attorney's Office, and that information forms the basis for the prosecution.

A prevailing plaintiff in a federal civil rights lawsuit is entitled to an award of reasonable attorney's fees.

SUMMARY OF FACTS

In March 1999, David Auner was a field training officer at the Century Station. His trainee, at the time, reported to a supervisor that David Auner had falsified several police reports. Based on the trainee's report, the Sheriff's Department initiated an Internal Criminal Investigation.

October 7, 1999, at the conclusion of the investigation, the matter was presented to the District Attorney's Office. On May 2, 2000, the D.A.'s Office filed three counts of filing a false report, and three counts of falsification of public records against David Auner. At his preliminary hearing on September 7, 2000, David Auner was held to answer on all six counts. However, on April 23, 2001, a jury acquitted David Auner of all charges.

David Auner contends that the Sheriff's Department submitted false information to the District Attorney's Office, and defamed him by reporting to others within the Sheriff's Department that he was guilty of the charges brought against him. He also contends that the investigation and prosecution prevented him from being promoted to Sergeant. Eunice Auner is David Auner's wife and she is also a Los Angeles County Sheriff's Deputy.

DAMAGES

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

David Auner's loss of income	\$ 80,000
David Auner's emotional distress	\$500,000
Eunice Auner's emotional distress	\$100,000
Civil Rights attorney's fees	<u>\$200,000</u>
Total	<u>\$880,000</u>

The settlement in this matter calls for the County to pay David and Eunice Auner \$200,000 for all claims for damages, costs, and attorney's fees. In addition, the Sheriff's Department will promote David Auner to Sergeant.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this action are \$11,652 in attorney's fees and \$156 in costs.

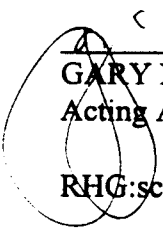
EVALUATION

This is a case of contested liability. We believe the evidence would show that the Sheriff's Department did not submit false information to the District Attorney's Office to support the criminal prosecution. However, we believe that a jury could conclude that members of the Sheriff's Department defamed David Auner by making comments to other employees implying that David Auner was guilty of the charges filed against him, and that these comments contributed to the failure to promote David Auner to Sergeant.

A settlement at this time will avoid further litigation costs and a jury verdict that could exceed the proposed settlement.

We join with our private counsel, Manning & Marder, Kass, Ellrod, Ramirez, in recommending a settlement of this matter for \$200,000. The Sheriff's Department concurs in this recommendation.

APPROVED BY:


GARY N. MILLER
Acting Assistant County Counsel

RHG:scr

Los Angeles County Sheriff's Department

CORRECTIVE ACTION PLAN

LAWSUIT OF: David Auner et al., v. County of Los Angeles
United States District Court Case No.: CV-02-3238 GHK

INCIDENT DATE: April 24, 2001

INCIDENT LOCATION: Sheriff's Training Center, Whittier

RISK ISSUES: A public entity is responsible for the negligence and wrongful acts of its employees when the acts are committed during the course and scope of their duties. Department personnel are required to adhere to Department Policy regarding ongoing investigations and failure to adhere to these policies may expose the Department to civil liability.

INVESTIGATIVE REVIEW: At the time of the incident the plaintiff, Deputy David Auner, was under investigation by the Sheriff's Internal Criminal Investigations Bureau. During the pendency of this investigation, at least one Sheriff Department executive identified Deputy Auner by name and indicated that he was currently under investigation during a lecture to a Department supervisory training class. Deputy Auner was eventually tried for a number of criminal charges but was acquitted of all charges he had been accused of. He brought this lawsuit alleging the investigation against him has been a malicious prosecution and that his reputation had been damaged by comments made by Department executives. Deputy Auner alleged that he had been denied a timely promotion to Sergeant because of the alleged defamation of his character.

TRAINING ISSUES: The Department's review of this incident determined that there were no specific training issues to be identified from this case. However, briefings for executives have been prepared and distributed to remind them not to discuss the substance of ongoing criminal or administrative matters.

POLICY ISSUES: At the time of this incident it was, and still remains, the policy of the Sheriff's Department that internal affairs and criminal investigations are confidential in nature. Department personnel may not discuss personnel investigations with any unauthorized persons. Any/all conversations regarding ongoing internal investigations must be limited to only those Department members who must be involved. All investigations are to be conducted fairly, objectively and without bias or interference.

CORRECTIVE ACTION: Investigation revealed that the criminal investigation of Deputy Auner's case was conducted appropriately and was presented for independent review by the District Attorney's office. That office determined that there was sufficient evidence to file criminal charges against Deputy Auner. In addition, a Superior Court Judge who heard the evidence in a preliminary hearing determined that the evidence was sufficient to bind Deputy Auner over for trial. However, the investigation did reveal that at least one Department executive mentioned Deputy Auner's name and discussed the pending criminal case at a training class for supervisors. This executive admitted making the comment, but said that he was simply making a point to encourage the new supervisors in attendance of the need for strong supervision of line personnel. Another executive who was also alleged to have discussed Deputy Auner's case during training sessions could not be located to question. Both of these executives have since retired from the Sheriff's Department.

While the Department's policy was sufficient to cover the behaviors in this matter, this lapse has pointed out the need to remind executives not to discuss these matters regardless of their intent for doing so.

William J. Stovich

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W. STOVICH
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