

96-147

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: April 16, 1996
AGENDA ITEM NO.: CA-3

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Authorize the Chairman to sign an order of the Board to reject Claim No. C96-5, which was filed with this Board on February 21, 1996, for an undetermined amount. Staff of the Public Works Department has thoroughly investigated the circumstances at the accident location and determined that the subject road was appropriately signed and the road surface was in excellent condition. Based on this information, Counsel does not believe that the County has any liability in this matter.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Claim would automatically be denied if no action was taken.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Claim No. C96-4.
Notice of Rejection of Claim.

CLERK'S USE ONLY:

Res. No.: 96-147 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____ Abstained: _____

Approved () Denied

Minute Order Attached () No Action Necessary

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: WJ

The foregoing instrument is a correct copy of the original on file in this office.

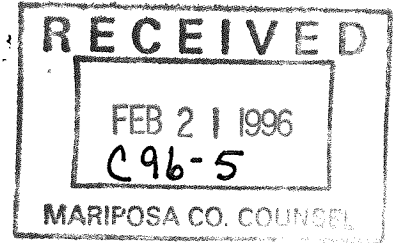
Date: _____

ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

1 PIUS JOSEPH
A PROFESSIONAL LAW CORPORATION
2 1918 W. Magnolia Boulevard, Suite 102
Burbank, California 91506
3 (818) 840-1600

4 Attorney for Plaintiff:
5 BRIAN KEITH ADAMS



6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIPOSA

10
11 BRIAN KEITH ADAMS,)
12)
13 Claimants,)
14 vs.)
15 COUNTY OF MARIPOSA, CITY OF)
16 MARIPOSA, STATE OF)
17 CALIFORNIA, and DOES)
18 1 through 50, Inclusive,)
Respondents.)

CLAIM NO.: _____
NOTICE OF CLAIM FOR PERSONAL
INJURY
{ CALIFORNIA GOVERNMENT CODE
§910; 911.2 }

19 TO RESPONDENTS, COUNTY OF MARIPOSA, UNINCORPORATED CITY OF
20 MARIPOSA, STATE OF CALIFORNIA:

21 YOU ARE HEREBY NOTIFIED that claims are made against County of
22 Mariposa, Unincorporated City of Mariposa, State of California, its
23 facilities and employees, representatives and agents:

- 24 1. Injured party/claimant:
25 Brian Keith Adams
26 3396 Ben Hur Road
Mariposa, California 93538

27 //

28 //

1 2. **Future Communications:**

2 All further correspondence, notices and communications should
3 be directed to:

4 PIUS JOSEPH, A PROFESSIONAL LAW CORPORATION
5 1918 W. Magnolia Boulevard, Suite 102
6 Burbank, California 91506
7 (818) 840-1600
8 Fax Number: (818) 840-1606

9 3. **Summary of Claim:**

10 This claim is based on investigation performed to date and
11 submitted prior to passing of the Statute of Limitations concerning
12 such governmental claims. Accordingly, claimant reserves the right
13 to amend this claim upon discovery of further and additional bases
14 of liability.

15 Claimant refers all public entities to the County of Mariposa
16 Police Report on file and attached hereto by reference
17 No. 95-08-0055. The accident at issue occurred on August 20, 1995,
18 at approximately 1210, p.m. It was a clear, dry day.

19 On or about August 20, 1995, Plaintiff Brian Keith Adams, was
20 driving his Kawasaki motorcycle eastbound on Ben Hur Road, in the
21 Unincorporated City of Mariposa, County of Mariposa, State of
22 California. As Plaintiff approached the sharp curve near Highway
23 49, Plaintiff was unable negotiate the curve and maintain control
24 of his vehicle. As plaintiff's vehicle skid off the right side of
25 the road, it struck a tree. Plaintiff was ejected from his vehicle
26 and rendered unconscious.

27 This section of the road curves to the left at approximately a
28 50 degree angle. Signs were not posted warning of the sharp angle
of the curve, in accordance with standards thus creating a
dangerous. Warning signs should have been placed at this location.

1 Additionally, the county failed to construct shoulders at this
2 location.

3 If said dangerous conditions would have been evaluated, BRIAN
4 KEITH ADAMS could have been protected on August 20, 1995.

5 Claimant contends that liability against said public entities
6 are based on the dangerous condition which existed on eastbound Ben
7 Hur Road, in the area of the County of Mariposa, Unincorporated
8 City of Mariposa, State of California, in which the claimant was
9 traveling on.

10 The County of Mariposa negligently failed to warn of the severe
11 sharpness of the angle of the left curve, as signs were not posted
12 in accordance with applicable engineering standards. Further, a
13 shoulder was not constructed to provide additional width that would
14 allow a vehicle to safely negotiate the sharp curve.

15 **PLEASE TAKE NOTICE OF THE ADDITIONAL BASES OF GOVERNMENTAL**
16 **LIABILITY:**

17 a) The subject public roadway and public streets and
18 highways compromising same, were dangerous and defectively planned
19 designed, drafted, engineered, constructed and positioned, and were
20 either not approved in accordance with regulations and statutes
21 (thereby violating same) or could not have reasonably have been
22 approved by any appropriate and responsible governmental entity or
23 any delegates and agents thereof.

24 To the extent said design was approved, if any approval
25 was requested and given, the requesting and responding
26 authority(ies)/delegate(s) and agent(s) were incompetent or failed
27 to possess the requisite skills and expertise to render a
28 reasonable evaluation of the benefits, risks and dangers of the

1 | plan as submitted or amended and approved.

2 | The extent the said design was approved, said approval was
3 | patently unreasonable and constituted a manifest abuse of
4 | discretion, indicating negligence, recklessness and a conscious
5 | disregard of applicable engineering standards and conditions then
6 | existing or contemplated to exist in the future, once said design
7 | was implemented.

8 | b) The subject Ben Hur Road and public streets and
9 | highways compromising same, was dangerous, improperly and
10 | defectively maintained, managed, inspected, reviewed and evaluated,
11 | if in fact it was maintained, managed, inspected, reviewed and
12 | evaluated. To the extent such functions were not performed they
13 | should have been and to the extent they were performed, they were
14 | done improperly, negligently, recklessly and violated applicable
15 | engineering standards and regulations pertaining to similarly
16 | situated roadways and intersections.

17 | c) The subject Ben Hur Road and public street and
18 | highways compromising same, were not equipped with adequate and
19 | appropriate traffic lights, signs and other devices that resulted
20 | in the setting of a trap to automobile operators thereabouts,
21 | allowing same to reasonably believe they had the right-of-way, when
22 | in fact they did not.

23 | d) The subject Ben Hur Road and public streets and
24 | highways compromising same, were equipped with traffic lights,
25 | signs and other devices that of improper size and/or improperly and
26 | wrongly designated Ben Hur Road and/or were defectively,
27 | negligently and dangerously positioned, including height and
28 | direction, and or all of which resulted in the setting of a trap to

1 automobile operators thereabouts, allowing same to reasonably
2 believe they had right-of-way, when in fact they did not.

3 e) Ben Hur Road should have either limited speed of
4 travel, or possessed a reasonable means of allowing same under
5 certain circumstances controlled traffic by separation of lanes and
6 barriers, or advised drivers thereon attempting same that they had
7 to yield right-of-way to oncoming vehicles on Ben Hur Road,
8 proceeding from the opposite direction.

9 f) The rate of speed allowed and estimated and actual
10 volume of traffic at the subject Ben Hur Road was in the excess of
11 reasonable standards at the time of design, construction and the
12 date of the accident and caused/contributed to the trap and
13 dangerous and defective condition of Ben Hur Road and its
14 compromising public roadways.

15 g) The unreasonably dangerous and defective nature of
16 Ben Hur Road cut off and public streets and highways compromising
17 same, as contended above, was known to the responsible governing
18 authority(ies) and their agents and delegates. Said notice
19 provided ample opportunity for correcting all known deficiencies,
20 but no reasonable corrections were undertaken or completed.

21 h) The investigating authorities, County of Mariposa,
22 and DOE OFFICERS thereof, violated affirmative regulations and
23 departmental procedures and were grossly negligent, reckless,
24 careless and abused discretion, if any, in investigating and
25 reporting on major vehicular interjectional accidents and the
26 incident which is the subject matter of this Claim. Said DOE
27 OFFICERS failed to, among other things, ascertain and record the
28 positions of the vehicles upon impact and at rest with accuracy;

1 failed to diagram said intersection and photograph same, while
2 knowing of the high probability of litigation and claims against
3 governmental entities concerning same.

4 4. Damages:

5 Claimant, BRIAN KEITH ADAMS sustained multiple injuries as
6 a result of this roadway accident at issue in this matter. Medical
7 specials have not been calculated to date but are believed to be in
8 excess of \$ 200,000.00. Future medical expenses have not been
9 calculated at this time but, on information and belief, will likely
10 exceed \$ 500,000.00.

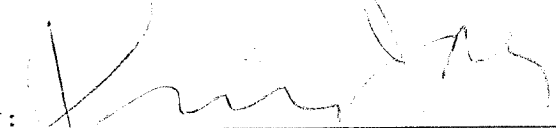
11 General Damages are claimed at \$ 5000,000.00.

12 Loss of earnings and earnings capacity damages have not
13 been fully ascertained or calculated at this time but are believed
14 to be in excess of \$ 1000,000.00.

15 DATED: February 16, 1996

16 Respectfully Submitted,

17 PIUS JOSEPH
18 A PROFESSIONAL LAW CORPORATION

19 By: 
20 PIUS JOSEPH, ESQ.,
21 Attorney for Claimants
22 BRIAN KEITH ADAMS
23
24
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PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

1
2 I am employed in the county of Los Angeles, State of California. I am over the
3 age of 18 and not a party to the within action; my business address is 1918 West
4 Magnolia Boulevard, Suite 102, Burbank, California 91506.

5 On February 16, 1996, I served the foregoing document described as **NOTICE OF**
6 **CLAIM FOR PERSONAL INJURY**, on the interested parties in this action

7 _____ by placing the true copies thereof enclosed in sealed envelopes addressed
8 as stated on the attached mailing list;

9 X by placing _____ the original X a true copy thereof enclosed in sealed
10 envelopes addressed as follows:

11 STATE OF CALIFORNIA
12 STATE BOARD OF CONTROL
13 630 Kay Street, 4th Floor
14 Sacramento, CA 95814

15 COUNTY OF MARIPOSA
16 MARIPOSA COUNTY ADMINISTRATION
17 5100 Bullion Street
18 Mariposa, California 95338

19 Attn: Jeff Green- County Counsel

20 X BY MAIL

21 _____ *I deposited such envelope in the mail at Burbank, California.

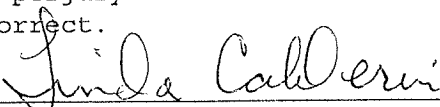
22 The envelope was mailed with postage thereon fully prepaid.

23 X As follows: I am "readily familiar" with the firm's practice of
24 collection and processing correspondence for mailing.

25 Under that practice it would be deposited with U.S. postal service on that same
26 day with postage thereon fully prepaid at Burbank, California in the ordinary
27 course of business. I am aware that on motion of the party served, service is
28 presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

Executed on February 16, 1996 at Burbank, California.

X (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.


LINDA CALDERIN

1 JEFFREY G. GREEN
2 County Counsel
3 P. O. Box 189
4 5100 Bullion St.
5 Mariposa, CA 95338

6 BEFORE THE BOARD OF SUPERVISORS

7 OF

8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9 In the Matter of:)
10 CLAIM FOR DAMAGES PURSUANT)
11 TO GOVERNMENT CODE § 911.6)

CLAIM NO. C96-5

12 Brian Keith Adams
13 c/o Pius Joseph, Esq.
14 1918 W. Magnolia Blvd., Suite 102
15 Burbank, CA 91506

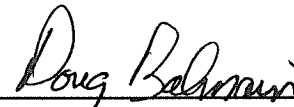
16 having filed with this Board on February 21, 1996 a claim for damages in the amount of
17 \$Undetermined;


18 **NOW, THEREFORE**, it is ordered by the Board of Supervisors that the claim is
19 hereby **REJECTED**.

20 The foregoing order was passed by the following vote of the Board:

21 AYES: Reilly, Balmain, Stewart, Parker, and Taber
22 NOES: None
23 ABSENT: None
24 ABSTAINED: None

25 Dated this 22nd day of April, 1996.

26 
27 DOUG BALMAIN, Chairman
28 Board of Supervisors

29 ATTEST:
30 
31 MARGIE WILLIAMS, Clerk of the Board

TO: Brian Keith Adams
c/o Pius Joseph, Esq.
1918 W. Magnolia Blvd., Suite 102
Burbank, CA 91506

RE: CLAIM FOR DAMAGES (Claim No. C96-5) AMOUNT OF CLAIM: \$ Undetermined
NOTICE OF REJECTION

NOTICE IS HEREBY GIVEN that the claim, which you presented to the Board of Supervisors of Mariposa County on February 21, 1996, was rejected by action of the Board on April 16, 1996.

WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." (See Government Code Section 945.6)

"NOTE: This six-month filing period applies only to State Court actions. If your action is based on federal law and/or you intend to file it in Federal Court, a shorter or longer period within which to file the action may apply."

"You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

JEFFREY G. GREEN
Mariposa County Counsel

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)


STATE OF CALIFORNIA, COUNTY OF MARIPOSA:

I am a citizen of the United States and a resident of the County aforesaid. I am over the age of eighteen years and not a party to the within entitled action; my business address is 5100 Bullion Street (P. O. Box 189), Mariposa, CA 95338. On May 24, 1996 I served the within Notice of Rejection of Claim No. C96-5 on the claimant in said action by placing a true copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing a copy into an inter-office delivery receptacle located in Counsel's office:

Brian Keith Adams
c/o Pius Joseph, Esq.
1918 W. Magnolia Blvd., Suite 102
Burbank, CA 91506

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 24, 1996 at Mariposa, California.



Sandra V. Adams