



OFFICE OF THE COUNTY COUNSEL

COUNTY OF SANTA CRUZ

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DEBORAH STEEN SAMUEL TORRES, JR. CHIEF ASSISTANTS

GOVERNMENT TORT CLAIM RECOMMENDED ACTION

Agenda March 23, 1999

ASSISTANTS

To: The Board of Supervisors

Re: Claim of John Kovarik, No. 899-097

Original Document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

X 1. Deny the claim of John Kovarik, No. 899-097 and refer to County Counsel.

Deny 2 the application to file a late claim on behalf of and refer to County Counsel.

Grant 3 the application to file a late claim on behalf of and refer to County Counsel.

4. Approve the claim of in the amount of and reject it as to the balance, if any, and refer to County Counsel.

5. Reject the claim of as insufficiently filed and refer to County Counsel.

RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

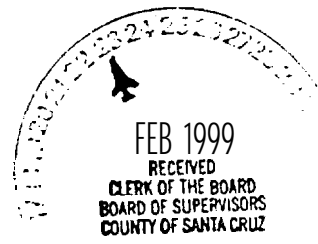
By Ellen Lewis

cc: Dwight Herr, County Counsel

LTR9 WPT

899-097

1 DAVID GREEN BASKIN, SB No. 63553
2 CYNTHIA MARIE MARTIN, SB No. 175394
3 BASKIN & GRANT
4 730 Mission Street
5 Santa Cruz, CA 95060
6 Telephone: (831) 425-8999
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8 Attorneys for Claimant, JOHN KOVARIK

9 Claim of JOHN KOVARIK

CLAIM FORM

10 v.

(GOVERNMENT CODE §910)

11 COUNTY OF SANTA CRUZ

12 _____ /
13
14
15 TO THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ:

16
17 You are hereby notified that JOHN KOVARIK whose address is P.O. Box 812,
18 Aromas, California 95004, claims damages from the County of Santa Cruz.

19 This claim is based on breach of contract and rights of indemnification arising
20 out of a Cross-Complaint filed by William McGrath, Peter Segura, and Mary Segura
21 against JOHN KOVARIK in that certain lawsuit known as **Frances Kovarik v. William**
22 **McGrath**, et al. filed in the Superior Court of the State of California, County of Santa
23 Cruz, Case No. 132808, under the following circumstances:

24 1. On May 2, 1997, Frances Kovarik, as plaintiff, filed a complaint in the Superior
25 Court of the State of California, County of Santa Cruz, Case No. 132808, against
26 Defendants William McGrath, Peter Segura, and Mary Segura. Frances Kovarik and
27 William McGrath are sister and brother. They inherited adjoining properties from their
28 mother, Leola McGrath, after her death in 1994. JOHN KOVARIK and Frances Kovarik

1 are husband and wife. JOHN KOVARIK is employed as an agricultural inspector for
2 the County of Santa Cruz.

3 2. After probate closed in the spring of 1995, Frances formed a Revocable Family
4 Trust to hold the assets she had inherited from her mother. However, Frances
5 complied with Leola's wishes that the property devised to her not pass on to anyone
6 who was not a blood relation (i.e., no spouses). Therefore, Frances included a clause
7 in the Trust document that the property Frances had inherited from Leola was to be
8 Frances' separate property, notwithstanding that it was owned by the Trust.

9 3. There was also a provision in Leola's handwritten Will that provided that the
10 well on Frances' parcel was to be shared by both Frances and William. Another
11 provision, added in different handwriting, stated that William was to be granted an
12 easement to care for the pipes leading from the well. After Leola's death, various
13 disputes arose between Frances and William regarding the use of their adjoining
14 parcels which culminated in Frances filing the above-referenced lawsuit in May 1997.
15 Frances' suit alleged causes of action for ejectment, fair rental value, breach of
16 contract, fraud, and for injunctive and declaratory relief.

17 4. Subsequent to Frances' filing of her lawsuit, Defendants William McGrath, Peter
18 Segura, and Mary Segura filed a Cross-Complaint in that action, in or around
19 December 15, 1997, naming both Frances and JOHN KOVARIK as cross-defendants.
20 The Cross-Complaint named JOHN KOVARIK as a cross-defendant in his individual
21 capacity and as a Trustee of the Kovarik Family Trust. In that action, the Cross-
22 Complainants alleged that **JOHN KOVARIK used his position as an agricultural**
23 **inspector for the Santa Cruz County Agricultural Commission to "harass, intimidate**
24 **and annoy " William and that William desired to have a restraining order issued to**
25 **prevent simifar actions on the part of JOHN KO VARIK during the duration of that case**
26 **and in the future.**

27 5. The specific allegations in the Complaint alleging that JOHN KOVARIK used his
28 position as agricultural inspector to harass the plaintiff included, but was not limited

1 to, the following allegations:

2 "John Kovarik is an agricultural inspector for the County of Santa Cruz
 3 and thus has control or influence over approval of agricultural inspections
 4 or the McGrath orchards Because of prior incidents of concerning
 5 purchase and use of the McGrath family residential assets and other
 6 incidents over agricultural inspections, McGrath has and continues to fear
 7 vengeful and retaliatory acts and motives by John Kovarik concerning
 8 McGrath family matters and concerning the McGrath orchard business.
 9 This lawsuit against McGrath and Seguras stems, at least in part, from
 10 said acts and motives by John Kovarik (emphasis in original quote)."
 11 Page 5, lines 9 through 15 of Cross-Complaint. A true and correct copy
 12 of pertinent portions of the Cross-Complaint are attached hereto as
 13 Exhibit "A" and incorporated herein by reference.

14 "Said motive and wrongful eviction are based upon conduct which
 15 includes the following matters: ... Continuing efforts by Kovariks in
 16 response to McGrath exercising his rights to complain or report to the
 17 Santa Cruz County Agricultural Commissioner's Office, and John
 18 Kovarik's supervisors in his employment at the Santa Cruz County
 19 Agricultural Commissioner's Office, regarding John Kovarik's handling of
 20 inspections for McGrath orchard apples for shipping at various times
 21 when time and delay were critical to McGrath agricultural operations."
 22 Page 7, lines 6 and 7, and 18 to 24 of Cross-Complaint (Exhibit "A").

23 "John Kovarik is employed by the Santa Cruz County Agricultural
 24 Inspector. His office inspects apple shipments. William McGrath is an
 25 apple grower. In or about 1992, McGrath had a shipment of apples
 26 destined for Holland. Kovarik performed the inspection, and then refused
 27 to amend the inspection form to enter the correct number of apples per
 28 container, as per normal operating procedure between growers and the
 inspectors. The delay placed at risk a line of credit that was relied on by
 several different growers, shippers and marketers. McGrath was told by
 one of the businesses in the transaction that if John Kovarik was going
 to cause trouble for McGrath, this business would not be able to risk
 doing business with McGrath. Since that incident, and continuing since
 the lawsuit was filed, McGrath has been told by several of his business
 contacts that their relationship with McGrath has affected their
 relationship with the apple inspectors. The actions taken by Kovarik
 include delays in necessary inspections being performed, and the denial
 of inspections or paperwork on the basis of mere technicalities, when
 these same technicalities are routinely overlooked for other growers.
 William McGrath has lost at least one long time business relationship due
 to the actions of John Kovarik, and another business contact has
 expressed concern about continuing to do business with McGrath." Page
 16, line 26 through Page 17, line 13 of the Cross-Complaint (Exhibit
 "A").

25 6. McGrath also claimed damages based in part on losses alleged to have been
 26 suffered due to acts performed by JOHN KOVARIK in his official capacity as an
 27 agricultural inspector for the County of Santa Cruz. Additionally, McGrath subpoenaed
 28 KOVARIK'S personnel record with the County of Santa Cruz in investigating those

1 allegations. A true and correct copy of the Subpoena and related documents are
2 attached hereto as Exhibit "B."

3 7. As a result of the above allegations made against him, JOHN KOVARIK
4 requested that the County of Santa Cruz defend and indemnify him in connection with
5 the above Cross-Complaint. In particular, JOHN KOVARIK was a member of S.E.I.U.
6 415 which had a Memorandum of Understanding with the County of Santa Cruz which
7 provided that the County of Santa Cruz would "protect, indemnify, and hold harmless"
8 its employees from civil suits arising out of their actions while acting as agents of the
9 County of Santa Cruz. Further, Government Code § § 825 and 995-996.6 specifically
10 require the County of Santa Cruz to defend the action.

11 8. However, on September 11, 1998, Ellen Lewis, Assistant County Counsel,
12 refused to defend JOHN KOVARIK in the Cross-Complaint. A true and correct copy
13 of the September 11, 1998, correspondence by Ellen Lewis is attached hereto as
14 Exhibit "C" and incorporated herein by reference.

15 9. Ellen Lewis again refused to defend the matter in correspondence dated October
16 22, 1998. A true and correct copy of the October 22, 1998, correspondence by Ellen
17 Lewis is attached hereto as Exhibit "D" and incorporated herein by reference.

18 10. In his effort to have the County of Santa Cruz provide him with a defense
19 regarding the Cross-Complaint, JOHN KOVARIK and his attorney, David Beck, drafted
20 letters of correspondence which are attached hereto as Exhibit "E" and incorporated
21 herein by reference.

22 11. Additionally, JOHN KOVARIK telephoned the County Counsel's Office and
23 spoke with Harry Oberhelman. Mr. Oberhelman informed JOHN KOVARIK that the
24 County Counsel's Office would not intervene because the charges against JOHN
25 KOVARIK were not specific as to his role as an agent for the County and because the
26 statute of limitations with regard to naming the County as a defendant in the Cross-
27 Complaint had lapsed. However, as set forth above, the allegations in the Cross-
28 Complaint were specific as to JOHN KOVARIK'S role as an agricultural inspector for

1 the County of Santa Cruz. Further, pursuant to Government Codes § § 995-996.6, the
2 County still has a duty to defend even though JOHN KOVARIK was named in the
3 Complaint in his individual capacity.

4 12. Litigation against JOHN KOVARIK ensued and after JOHN KOVARIK was
5 deposed for the second time, Deputy County Counsel Ellen Lewis did contact
6 McGrath's attorney, Tom Norton. Mr. Norton wrote her a letter erroneously stating
7 the he had no intention of claiming anything against JOHN KOVARIK based on
8 allegations related to his role as an agent for the County of Santa Cruz. Based on Mr.
9 Norton's representation, the County of Santa Cruz again refused to defend and
10 indemnify JOHN KOVARIK against William's Cross-Complaint. Notwithstanding Mr.
11 Norton's representations, he and his client, McGrath, continued to make claims against
12 JOHN KOVARIK in his capacity as an agent of the County of Santa Cruz. Although
13 the County Counsel's Office was again notified that McGrath was still continuing to
14 make claims against JOHN KOVARIK in his official capacity as a county employee, the
15 County again refused his requests for defense and indemnification. JOHN KOVARIK
16 also notified his collective bargaining unit, S.E.I.U. 415 in an attempt to convince the
17 County of Santa Cruz to honor its obligations. However, it indicated there was
18 nothing it could do.

19 13. Thereafter -- after the County of Santa Cruz had refused JOHN KOVARIK'S
20 request for defense and indemnification no less than three times -- JOHN KOVARIK'S
21 attorney, David Beck, filed a motion for summary adjudication for dismissal of JOHN
22 KOVARIK, individually. Notwithstanding Mr. Norton's vigorous opposition which cited
23 alleged actions by JOHN KOVARIK as an agent of the County of Santa Cruz, JOHN
24 KOVARIK'S motion was granted on or around October 22, 1998, resulting in his
25 dismissal from the lawsuit. Nevertheless, he incurred substantial costs in attorney's
26 fees and costs related to his defense of the above Cross-Complaint.

27 CONCLUSION

28 As a result of the conduct of the County of Santa Cruz in refusing to defend

1 and indemnify JOHN KOVARIK against the afore-mentioned Cross-Complaint, JOHN
 2 KOVARIK claims that the County of Santa Cruz breached its contract (the
 3 Memorandum of Understanding) with its employees, has breached the covenant of
 4 good faith and fair dealing in refusing to defend and indemnify him, and breached
 5 general legal principles in regard to defense of claims and indemnification.

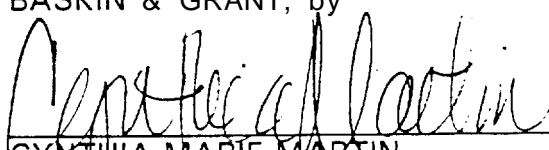
6 The names of the public employees causing JOHN KOVARIK'S injuries under
 7 the described circumstances known to JOHN KOVARIK are Harry Oberhelman and
 8 Ellen Lewis. The names of all other public employees responsible for JOHN
 9 KOVARIK'S injuries are unknown to JOHN KOVARIK at this time.

10 The injuries sustained by JOHN KOVARIK, as far as known, as of the date of
 11 presentation of this claim, consist of attorney's fees and costs expended in defending
 12 against the aforementioned Cross-Complaint as well as accompanying emotional
 13 distress damages suffered as a result of the erroneous decision not to defend JOHN
 14 KOVARIK in the subject lawsuit.

15 Jurisdiction over the claim would rest in Superior Court.

16 All notices or other communications with regard to this claim should be sent to
 17 Cynthia Marie Martin at Baskin & Grant, 730 Mission Street, Santa Cruz, California
 18 95060.

19
 20
 21
 22 February 22, 1999

BASKIN & GRANT, by

 By: _____
 CYNTHIA MARIE MARTIN
 Attorneys for Claimant, JOHN KOVARIK