



COUNTY OF LOS ANGELES
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ANDREA SHERIDAN ORDIN
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December 14, 2011

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

**Re: County Counsel Annual Litigation Cost Report –
Fiscal Year 2010-2011**

Dear Supervisors:

On December 9, 2011, under separate cover, the Annual Litigation Report for Fiscal Year 2010-2011 ("FY 2010-11"), was submitted to your Board. The Annual Litigation Report provided a comprehensive, confidential discussion regarding litigation expenditures for FY 2010-11.

The enclosed County Counsel Annual Litigation Cost Report ("Cost Report") provides a brief summary of the FY 2010-11 Annual Litigation Report. The Cost Report is a public document and will be posted on the County Counsel website.

If you have any questions regarding this report, please contact me at (213) 974-1762.

Very truly yours,

ANDREA SHERIDAN ORDIN
County Counsel

By 
STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:


ANDREA SHERIDAN ORDIN
County Counsel

SHE:mag
Enclosure

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2010-2011**

I. Overview

The total Annual Litigation Expenses for Fiscal Year 2010-2011 ("FY 2010-11") were **\$107.4 million**. This was a 14 percent increase over the \$94.1 million spent last fiscal year, and was largely the result of a number of inordinately large settlements. Although attorney fees and costs were down by nearly \$1 million and judgments declined by \$2.25 million, settlements increased from \$27.3 million to \$43.8 million this fiscal year. After a substantial drop last year, new cases filed against the County this fiscal year rose by 26 percent and reached a five-year high of 849. The County secured 157 dismissals without any County liability. It tried 35 cases – winning 24. The County was successful in 30 of its 36 appeals, and recovered \$1.5 million through its litigation efforts in FY 2010-11.

II. Payment of Judgments and Settlements

The amount paid for Judgments and Settlements in FY 2010-11 was **\$56,534,640**. This was one-third more than was paid last fiscal year (\$42.3 million) and four percent more than the \$54.6 million paid in Fiscal Year 2008-2009 ("FY 2008-09"). The most expensive case categories were Employment (\$15 million), Law Enforcement (\$14 million), and Medical Malpractice (\$12 million). Of the \$56.5 million paid this year, \$12.74 million was paid in judgments and \$43.8 million was paid in settlements.

Judgments

The \$12.74 million paid in judgments was 15 percent less than was paid last fiscal year (\$15 million), and was 11 percent less than the \$14.4 million paid in FY 2008-09. Nearly one-half the amount paid this year (\$6.2 million) was for *Bouman*, a gender discrimination class action and a continuing County obligation involving the Sheriff's Department since a consent decree was entered in 1993. This year was the largest annual amount paid for *Bouman* in the last five fiscal years. These escalated costs reflect the County's efforts to satisfy all remaining *Bouman* court requirements by June 2012 in accordance with the current governing orders. Nearly all of the amount paid for the remaining 14 judgments this year related to three Law Enforcement and four Employment cases. The Law Enforcement cases were a deputy-involved shooting of two armed brothers (*Davis* - \$1.6 million), a wrongful detention (*Alarid* - \$499,500), and a false arrest (*Johnson* - \$387,500). Four Employment judgments included allegations of racial discrimination (*Hines* - \$1.1 million), sexual harassment (*Lefkir* - \$1.1 million and *Lyznick* - \$900,000), and sexual orientation discrimination (*Martinez* -

\$629,000). These judgments, along with *Bouman*, accounted for \$12.5 million of the \$12.74 million paid on 15 judgments this fiscal year. This was the lowest amount paid for judgments in the last four fiscal years.

Settlements

In FY 2010-11, the County also paid 219 settlements totaling \$43.8 million. This was 60 percent more than was paid in settlements last fiscal year (\$27.3 million) and nine percent more than the \$40.2 million paid in FY 2008-09. Six of these settlements exceeded \$2 million, and ranged from \$2 million to \$5.5 million. These settlements included three case categories: Medical Malpractice, Auto Liability, and Law Enforcement. The Medical Malpractice cases were *Nicks* (\$5.5 million – young girl treated for head injuries at Harbor-UCLA Medical Center) and *Flores* (\$2.55 million – treatment of back injuries at LAC+USC Medical Center). The two Auto Liability settlements also totaled \$8 million and were *Aldana* (\$4.75 million – collision with a Sheriff's deputy's vehicle) and *Roman* (\$3.3 million – collision with fire truck). Finally, the two Law Enforcement settlements were *Dupree* (\$4.3 million – prisoner injured in Lakewood Station holding cell) and *Martinez* (\$2 million – fleeing robbery suspect shot by Sheriff's deputies). These six settlements totaled \$22.4 million - more than one-half of the \$43.8 million paid in settlements this fiscal year.

However, two of the six settlements paid this year (*Nicks* and *Flores*) were approved for payment late last fiscal year, but were not paid until this year. Had these settlements (totaling \$8 million) been paid in the year approved, settlements last year would have totaled \$35.3 million (instead of \$27.3 million) and settlements this year would have reached only \$35.8 million. This year, only \$170,000 in settlements was approved, but remained unpaid at the close of the fiscal year.

III. Dismissals

In FY 2010-11, the County secured 157 dismissals without paying plaintiffs or their attorneys any money. Contract Counsel and County Counsel obtained these dismissals by either persuading plaintiffs to voluntarily dismiss their actions or by securing court orders through a variety of motions (such as motions to dismiss, demurrers, and motions for summary judgment) directing that the cases be dismissed. The County expended \$3.9 million in attorney fees and costs in obtaining these 157 dismissals, down from the \$7.9 million spent last year for 184 dismissals.

IV. Attorney Fees and Costs

The total Attorney Fees and Costs paid by the County this fiscal year was **\$50,874,623**. This amount included *both* Contract Counsel and County Counsel fees and costs, including County Counsel fees incurred managing cases assigned to Contract Counsel. Of the \$50.87 million paid this year, \$37.3 million was paid to Contract

Counsel and \$13.5 million was billed to various departments by County Counsel. Overall fees and costs this year were down \$927,000, or two percent, as compared to last fiscal year. In Employment cases, the most expensive case category last fiscal year, attorney fees and costs were down 13 percent, or nearly \$2 million. These reductions in attorney fees and costs were achieved despite a December 2009 increase in billing rates for a number of Contract Counsel panel firms, a significant influx of new cases, and the escalated costs associated with a 60 percent increase in the number of new trials this year.

V. Contract Cities Expenses

Of the \$107.4 million in annual litigation expenses this fiscal year, \$8 million was paid from the Contract Cities Fund and not from the County General Fund. These expenses were the result of the alleged conduct of Sheriff's deputies contractually assigned to various cities throughout the County. These liabilities were in the areas of Law Enforcement, Auto Liability, and General Liability.

VI. New Cases

After a three-year low (673) last fiscal year, the number of new cases rose 26 percent this year to 849 cases, the most filed against the County in the last five fiscal years. New cases relating to the Department of Children and Family Services and the Treasurer and Tax Collector's Office more than doubled, and new cases involving the Sheriff's Department, District Attorney's Office, Department of Public Social Services, and the Fire Department were up approximately 50 percent. Only new cases involving the Probation Department and the Department of Health Services declined as compared to last year.

VII. Trials, Writs, and Appeals

The number of cases tried by the County this fiscal year rose significantly over last year – from 22 to 35. This was the most cases tried during any one of the last five fiscal years. The County won 24 of the 35 trials and was granted one mistrial – a 69 percent success rate. The County prevailed in all five trials involving allegations of excessive force in the jails. The most costly losses involved a \$565,000 verdict in favor of an apartment manager against a Sheriff's deputy for excessive force (*Bender*) and an award of \$450,000 to a County clinical psychologist who was terminated for failing to obtain a license to practice psychology before the expiration of a five-year waiver (*Brown*). The County prevailed in five of the other nine excessive force trials, two of the other four Employment trials, as well as in both Medical Malpractice trials.

The number of cases tried this fiscal year did not include trials and hearings involving writs of mandamus and prohibition. This fiscal year, only four such matters proceeded to trial or final hearing and the County prevailed in three, including actions to control dangerous dogs and to enforce zoning violations.

The County received favorable decisions in 30 of 36 appeals. It won 27 of the 30 appeals initiated by adverse parties, three of the five appeals it initiated, and received one opinion affirming the trial court's ruling on one count and reversing it on another – an 86 percent overall success rate. In one successful appeal, the County obtained a reversal of a \$329,000 award of attorney fees. In the three losses, a Probation officer secured the reinstatement of a \$565,000 verdict against the County, a jail inmate won a reversal of a unanimous verdict in favor of the County, and a Sheriff's deputy obtained the reversal of a trial court's dismissal of his action for wrongful termination.

VIII. Recoveries

The County recovered \$1,517,063 through its litigation efforts in FY 2010-11. In an action against a homeowner's association to enforce the dedication of hiking and equestrian trails, the County was awarded \$862,000 in attorney fees and costs. The County also recovered \$539,663 in property tax revenue and was paid \$50,400 on an environmental clean-up action. Finally, the County recovered \$65,000 on two contract actions.