



COUNTY OF LOS ANGELES
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MARK J. SALADINO
County Counsel

January 26, 2015

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 2013-2014**

Dear Supervisors:

Enclosed is the County Counsel Annual Litigation Cost Report ("Cost Report") for Fiscal Year 2013-2014. The Cost Report provides a summary of the confidential Annual Litigation Report for Fiscal Year 2013-2014. The Cost Report is a public document and will be posted on the County Counsel website.

Very truly yours,

MARK J. SALADINO
County Counsel

By

A handwritten signature in blue ink, appearing to read "S. H. Estabrook".

STEVEN H. ESTABROOK
Litigation Cost Manager
Executive Office

APPROVED AND RELEASED:

A handwritten signature in blue ink, appearing to read "Mark J. Saladino".

MARK J. SALADINO
County Counsel

MJS:mag

Enclosure

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2013-2014**

I. Overview

The Annual Litigation Expenses for Fiscal Year 2013-2014 ("FY 2013-14") were **\$95.6 million**. Although up 7.5 percent from the \$89 million spent last fiscal year, the amount compares favorably to the previous five-year average of \$102 million. The \$95.6 million spent this year includes \$40.3 million in Judgments and Settlements and \$55.3 million in Attorney's Fees and Costs ("Fees and Costs").

II. Judgments and Settlements

Of the \$95.6 million paid in litigation expenses this year, \$40.3 million was paid to satisfy 10 judgments and to settle 194 cases. The \$40.3 million spent on judgments and settlements was up \$4.5 million, or 13 percent, as compared to last fiscal year. Except for the \$35.8 million paid last fiscal year, the \$40.3 million paid this year was the lowest amount of judgments and settlements paid since Fiscal Year 2005-2006.

Judgments

In FY 2013-14, judgments totaled \$5.8 million and were down 19 percent from the \$7.2 million paid last year. Of the ten judgments paid this year, only two exceeded one million dollars. Both cases, (*Bender* - \$2.45 million and *Gutierrez* - \$2.1 million), involved Law Enforcement issues and allegations of excessive force. A jury concluded in *Bender* that Sheriff's deputies used excessive force while arresting an apartment manager. In *Gutierrez*, Sheriff's deputies shot and killed a burglary suspect who was armed with a nine-inch knife. The remaining eight judgments paid by the County this year totaled \$1.25 million. The \$5.8 million paid to satisfy judgments this year was the lowest amount paid in the last eight fiscal years.

Settlements

The County paid \$34.5 million in settlements this year. This was \$5.9 million more than the \$28.6 million paid in settlements last year. Except for the \$28.6 million paid last year, the \$34.5 million was the lowest amount paid in settlements in the last four fiscal years. Of the 194 settlements paid this year, seven exceeded \$1 million. Two of the largest were Medical Malpractice cases involving births. The first involved an infant who was deprived of oxygen when his mother's uterus ruptured shortly before his birth (*Welch* - \$7.5 million), and

the second involved a prisoner who delivered twins prematurely - one did not survive and the other sustained neurological damage (*Works* - \$2 million). Another significant settlement involved an automobile accident caused by a County driver who struck the other vehicle with such force that it rolled over and resulted in the amputation of four fingers on Plaintiff's dominant hand (*Perez* - \$4 million). Two of the seven settlements involved Sheriff's deputies and allegations of excessive force. One involved a mentally unstable woman who was shot and killed when she threatened deputies with a hammer (*Eng* - \$1.8 million), and the other involved a visitor at Men's Central Jail who claimed he was beaten by Sheriff's deputies because he had a cell phone (*Carrillo* - \$1.2 million). A sixth settlement involved a three-year-old girl who sustained a head injury but was not transported by County paramedics to a hospital after being examined. She later developed bleeding in her brain (*Gutierrez* - \$1.4 million). The remaining settlement over one million dollars this year was paid to the attorneys of a disability rights activist group which brought a class action challenging the adequacy of the County's emergency response plans for disabled citizens. The County agreed to integrate disabled citizens into the framework of its emergency preparedness program and to pay the group's attorneys' fees (*Communities Actively Living Independent & Free* - \$1.225 million). These seven settlements totaled approximately \$19 million and accounted for more than one-half of the \$34.9 million paid in settlements this year.

City of Alhambra

The judgments and settlements paid in FY 2013-14 do not include payments made this year to 47 plaintiff cities in the *City of Alhambra, et al. v. County of Los Angeles* ("*Alhambra*") and the nine plaintiff cities in the *City of Agoura Hills, et al. v. County of Los Angeles* ("*Agoura Hills*") actions. The plaintiff cities claim that the Auditor-Controller improperly calculated the amount of Property Tax Administrative Fees ("PTAF") collected from those cities beginning in Fiscal Year 2006-2007 ("FY 2006-07"). In 2012, the California Supreme Court ruled in favor of the 47 plaintiff cities in *Alhambra*, finding that the Auditor-Controller improperly calculated the amount of PTAF. Between FY 2006-07 and Fiscal Year 2012-2013 ("FY 2012-13"), the County collected \$233.2 million in PTAF from the cities, a portion of which must be returned as a result of the ruling in *Alhambra*. Last fiscal year, the County made a partial payment to the 47 cities in the *Alhambra* action of \$32.2 million. An additional \$1.6 million was refunded to the *Alhambra* plaintiff cities this fiscal year. The County also refunded \$2.3 million in PTAF revenue this fiscal year to the nine *Agoura Hills* plaintiff cities. These *refunds* were not included in the Annual Litigation expenses for FY 2012-13 or FY 2013-14.

III. Attorney Fees and Costs

In addition to \$40.3 million paid in judgments and settlements, the \$95.6 million paid in litigation expenditures this year also included attorney fees and costs in the amount of \$55.3 million. This was \$2.1 million, or four percent, more than the \$53.2 million paid last fiscal year. Of the \$55.3 million paid in attorney fees and costs this year, \$42.9 million was paid to Contract Counsel and \$12.4 million was billed by County Counsel at hourly rates established to cover overhead to other County departments for litigation services, including costs. The amount billed by County Counsel includes the attorney fees and costs for managing or overseeing litigated cases assigned to Contract Counsel, as well as handling cases in-house without the involvement of Contract Counsel. "Fees" are generally the hourly rate paid to counsel and "costs" include a variety of expenses related to, among other items, court reporters, experts, and copying.

Contract Counsel

At \$42.9 million, Contract Counsel fees and costs were up \$3.1 million, or 8 percent, as compared to the \$39.8 million paid last year. *Fees* were up \$2.9 million, or 8.5 percent, over last year and *costs* rose by a more modest 4 percent, up from \$5.9 million last year to \$6.2 million this year. The increase in Contract Counsel fees occurred primarily in the areas of Employment, Medical Malpractice, and Law Enforcement. Contract Counsel fees involving Employment cases were up compared to last year in several departments, including the Sheriff's Department, the Department of Health Services, and the Fire Department. Contract Counsel costs were up moderately this year over last in the areas of Medical Malpractice, Employment, and Auto Liability. Contract Counsel costs were negatively impacted throughout this fiscal year by the Los Angeles Superior Court Consolidation Plan which eliminated all court reporter positions for civil trial courts and required such costs to be paid by the litigants.

County Counsel

In FY 2013-14, County Counsel fees and costs were down one million dollars compared to one year ago – from \$13.4 million to \$12.4 million. County Counsel *fees* totaled \$11.3 million, down 10 percent from the \$12.5 million billed last year. However, County Counsel *costs* were up nearly \$300,000, to \$1.2 million this year. County Counsel fees dropped in the areas of General Liability, Auto Liability, and Law Enforcement. Fees paid for Department of Public Works General Liability matters decreased significantly this year. The decreases in County Counsel fees were offset somewhat by the increases in costs which occurred in the areas of General Liability and Law Enforcement. County Counsel was also negatively impacted by the Los Angeles Superior Court

Consolidation Plan and the assumption of additional costs related to court reporters. The net result of the decrease in County Counsel fees and increase in costs was a \$1 million overall decrease.

IV. Department Litigation Expenditures

In FY 2013-14, ten County departments spent \$86.8 million, or just over 90 percent, of the County's \$95.6 million litigation expenditures. These expenses were comprised of judgments and settlements, as well as attorneys' fees and costs, in a variety of areas, including Law Enforcement, Medical Malpractice, General Liability, Employment, and Auto Liability. In FY 2013-14, the expenditures for the top ten departments ranged from a high of \$40.7 million by the Sheriff's Department to a low of \$1.2 million paid by the District Attorney's Office. No other County departments paid more than one million dollars in litigation expenses this fiscal year. The litigation expenditures of the top ten departments for FY 2013-14 were as follows:

ANNUAL LITIGATION EXPENSES – TOP TEN DEPARTMENTS	
FY 2013-14	
Sheriff	\$40,655,075
Health Services	\$20,844,243
Public Works	\$5,828,340
Fire Department	\$4,892,671
Children and Family Services	\$4,239,936
Chief Executive Office	\$2,652,715
Probation	\$2,319,421
Public Health	\$2,110,017
Parks and Recreation	\$2,018,567
District Attorney	\$1,201,483

V. Contract Cities Expenses and Waterworks Expenses

Of the \$95.6 million reported in Annual Litigation Expenses this fiscal year, approximately **\$12 million** was paid by the Contract Cities Trust Fund and other special districts. The County paid the remaining \$83.6 million.

Contract Cities

In FY 2013-14, \$11.1 million of the \$95.6 million Annual Litigation Expenses was paid by the Contract Cities Trust Fund. This \$11.1 million payment, which included judgments and settlements and attorney fees and costs, was the result of liabilities arising from the alleged misconduct of Sheriff's deputies contractually assigned to various cities throughout the County (\$11 million), and for liabilities resulting from work performed for cities by the Department of Public Works (\$65,500).

Special Districts

Three special districts, the Los Angeles County Waterworks District 36, District 40, and the Flood Control District, each paid a portion of the \$95.6 million Annual Litigation Expenses this year. The Los Angeles County Waterworks Districts 36 and 40 paid approximately \$819,400 in attorneys' fees and costs for groundwater rights actions, in the Santa Clarita and Antelope Valleys. The Flood Control District paid approximately \$117,300 in a Clean Water Act action brought by the Natural Resources Defense Council involving water quality standards in Los Angeles rivers, watersheds, and beaches. In FY 2013-14, the two Waterworks Districts and the Flood Control District paid approximately \$936,700 of the \$95.6 million Annual Litigation Expenses.

VI. Dismissals

In FY 2013-14, the County disposed of 266 cases without payment of settlements, judgments or attorneys' fees to opposing parties and without any County liability. One hundred seventy-two, or 65 percent, of these 266 dismissals resulted from voluntary actions by Plaintiffs and/or their attorneys (on nearly every occasion prompted by a dispositive motion or other action by the County). Ninety of the 266 dismissals, or 34 percent, were involuntary to the extent that they were effectuated by successful County motions, including demurrers, motions to dismiss, summary judgments, and discovery motions resulting in terminating sanctions. Four of the 266 dismissals occurred as a consequence of the opposing parties' failure to timely prosecute the actions. Attorneys' fees and costs to secure the 266 dismissals entered this year totaled \$6.7 million from their inception to conclusion. Last year, the County secured 277 dismissals at a total cost of \$7.5 million.

VII. New Cases

The number of new cases fell below the 800 mark for the second consecutive year. In FY 2013-14, there were 763 new cases, down four percent from the 794 new cases last year. The number of new cases has steadily declined during the last three fiscal years, dropping from 849 in Fiscal Year 2010-2011

to 819 new cases in Fiscal Year 2011-2012 ("FY 2011-12"), and down again to the 794 new cases last year. During that three-year period, there has been a 10 percent drop in new cases involving the County. Twenty-six departments, not including the Board of Supervisors and the "Non-Jurisdictional" cases which fail to identify a particular department, were involved in new actions this fiscal year. Sixteen of these departments saw decreases as compared to one year ago. These included the Department of Public Health, Internal Services Department, Department of Public Works and the Sheriff's Department. The number of new cases involving the Internal Services Department were down 85 percent this year, particularly in the areas of Breach of Contract and Employment. New cases involving the Department of Public Health dropped by nearly 80 percent, and saw significant declines in the areas of Automobile and General Liability. However, other departments experienced increases in new cases over last year, including Registrar-Recorder, Department of Mental Health, and the District Attorney's Office. Significant increases occurred in the area of Real Property for the Registrar-Recorder, Employment cases increased for the Department of Mental Health, and new Law Enforcement cases were more prevalent for the District Attorney's Office. New Non-Jurisdictional cases have steadily increased over the last six years. Such cases rose 10 percent this year as compared to last year, from 101 to 113 cases. The bulk of these increases occurred in the area of Dangerous Condition, particularly with *trip-and-fall* cases.

VIII. Trials, Writs, and Appeals

A. *Trials*

The County tried 33 cases in FY 2013-14, an uptick from the 31 cases tried in FY 2012-13 and nine fewer cases than the County tried in FY 2011-12. The County prevailed in 52 percent, or 17 trials, this year, compared to 18 victories in FY 2012-13. There were four mistrials this year. A victory of note came in the *County of Santa Clara* case wherein a Santa Clara Superior Court judge held three lead paint manufacturers liable for public nuisance, ordering each of them to pay \$1.15 billion into an abatement fund to remediate lead paint found in pre-1978 public housing units across Los Angeles County and other jurisdictions who brought suit. Because the Los Angeles County's share of the contaminated housing units totals 55 percent, the County is eligible to apply for \$632.5 million of the abatement funds. In addition to the *County of Santa Clara* case, the County prevailed in nine excessive force matters, three false arrest cases, two medical malpractice matters, one employment case, and one breach of contract case. Of the 12 losses, a Sheriff's Department shooting case was the most expensive. In *Mendez*, two plaintiffs were shot by Deputies who were searching for an armed and dangerous felon in a row of seemingly uninhabited woodsheds in which Mr. Mendez and a cohort, Ms. Garcia, happened to reside. Faced with the silhouette of a man holding a gun, Deputies fired, resulting in

injuries to Mr. Mendez and to Ms. Garcia. In a bench trial, a federal judge found in favor of the Deputies on the excessive force, assault and battery, and other state actions but questioned the alleged violations of the Fourth Amendment, awarding the plaintiffs a total of \$5,771,427, including their attorneys' fees. The matter is now on appeal.

B. *Writs*

Just like last fiscal year, the County was an interested party in eight writs of mandamus and/or prohibition and prevailed in 50 percent of the contested hearings in FY 2013-14. Unlike last fiscal year when the County initiated two writ proceedings, the County was not the moving party in any writ proceedings this year. Four of the writs this year stemmed from challenges to the dissolution of California Redevelopment Agencies and the resulting reallocation of funds, all of which were unsuccessful.

C. *Appeals*

The County won 83 percent of the 36 appeals to which it was a party this year, including victories in each of the two appeals it initiated. Two appeals were particularly significant: *King* and *Owens*. In *King*, the Court of Appeal affirmed a jury verdict for the County in which a Men's Central Jail inmate had claimed excessive force during a series of incidents with Sheriff's deputies. In the other significant appeal, the validity of the Utility User Tax adopted by voters in the 2008 election was called into question. The complainants, part of a proposed class action, alleged violations of federal and State due process and free speech rights in connection with the election and also claimed that the assessment of the Utility User Tax was unlawful. The trial court dismissed all claims, and the Court of Appeal affirmed. The California Supreme Court upheld the dismissal of the case.

IX. Recoveries

The County recovered \$1,072,375 through its litigation efforts in FY 2013-14. As a result of its pursuit of cross-complaints against four third-party cross-defendants in an action brought by a former County employee, the County collected a total of \$692,499. In addition, the County's participation in a settlement pool arising from a class action brought by several governmental entities that overpaid for pharmaceuticals yielded \$355,102. Another \$22,573 came from a District Court order, awarding the County its litigation costs after prevailing on a motion for summary judgment.