

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2015-2016**

I. Overview

In Fiscal Year ("FY") 2015-2016, the County of Los Angeles paid \$131.8 million in litigation expenses, up 11 percent from \$119 million paid in FY 2014-2015 ("2014-15"). The increase was, in large part, the result of a \$12.8 million boost in judgments and settlements as compared to FY 2014-15. The \$131.8 million paid this year includes \$71.3 million in judgments and settlements and \$60.5 million in attorneys' fees and costs ("fees and costs"). Importantly, the County was reimbursed \$22.2 million by the Contract Cities Liability Trust Fund and Special Districts which reduced the County's FY 2015-16 litigation expenses (\$131.8 million) to \$109.6 million, only one percent more than the \$108.4 million paid by the County last year after reimbursement. Finally, this year saw a decline in new lawsuits against the County, an increase in the number of cases dismissed without any County liability, and the highest amount of County recoveries (\$4.7 million) in the last seven years.

II. Judgments and Settlements

Of the \$131.8 million paid in litigation expenses this year, \$71.3 million was devoted to satisfying 17 judgments and settling 251 cases. The \$71.3 million spent on judgments and settlements in FY 2015-2016 ("2015-16") represented a 19 percent increase as compared to the \$59.9 million expended on judgments and settlements in FY 2014-15.

Judgments

In FY 2015-16, the County paid \$11.8 million in judgments. Of the 17 judgments paid in FY 2015-16, three exceeded \$1 million: one Breach of Contract claim, one Law Enforcement case, and one Auto Liability matter.

In the Breach of Contract case, a judge found in favor of the contractor in a dispute regarding the renovation and seismic retrofitting of the La Plaza de Cultura y Artes Foundation project (*Accent Builders* - \$5.8 million). The judgment included an award of \$2 million in fees and costs. In one of the Law Enforcement matters, a jury concluded that Sheriff's Deputies wrongfully shot and killed the decedent (*Montalvo* - \$1.43 million paid by the County). Another jury concluded that a Sheriff's Deputy was partially responsible for the death of a motorist who was struck and killed when he exited his vehicle and wandered the freeway after a traffic collision (*Hernandez* - \$1.4 million).

Settlements

The County paid \$59.4 million in settlements this year, \$15.2 million more than it paid in FY 2014-15. Of the 251 settlements paid this year, 18 exceeded \$1 million and accounted for 60 percent of the \$59.4 million in settlement payments this year.

Twelve of these million dollar settlements stemmed from the Sheriff's Department. These cases include one sexual assault by Deputy case (*Lindsay F.* - \$6.15 million) and seven Deputy-involved shootings which ranged in amounts from (*Ostegren* - \$5 million) to (*Beierschmitt* - \$1.4 million). Five settlements involved the Department of Health Services, including a matter in which a patient received an excessive dose of Morphine via a computerized patient-controlled analgesic pump (*Ruiz* - \$6.1 million). The Fire Department settled a case wherein it was alleged that paramedics who attended to a toddler after she slipped in the bathtub at home missed signs of possible brain injury (*Gutierrez* - \$2.4 million).

III. Fees and Costs

In addition to \$71.3 million paid in judgments and settlements, the \$131.8 million paid in litigation expenditures this year also included fees and costs amounting to \$60.5 million, or two percent more than the \$59 million paid last year. Of the \$60.5 million paid in fees and costs in FY 2015-16, \$47.3 million was paid to Contract Counsel, and \$13.2 million was billed by County Counsel to various County departments for litigation services. County Counsel billings include the fees and costs for overseeing litigated cases assigned to Contract Counsel, as well as for handling cases solely in-house. "Fees" generally refer to 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 \$47.3 million, Contract Counsel fees and costs were up less than one percent over the \$46.8 million paid last year in FY 2014-15.

Contract Counsel *fees* increased by \$1.8 million, or four percent, over the \$38.6 million paid last year, but Contract Counsel *costs* dropped 16 percent, from \$8.2 million last year to \$6.8 million this year. The increase in Contract Counsel *fees* was largely attributable to more resource allocation devoted to the *Southern California Gas* litigation. Several Departments realized reductions in Contract Counsel *costs*, including the Sheriff's Department in the area of Law Enforcement, the Department of Health Services in the Auto Liability and Employment areas, and the Chief Executive Office in the General Liability area.

County Counsel

County Counsel fees were down slightly and costs increased in FY 2015-16. At a net \$13.2 million this year, County Counsel fees and costs increased by \$1 million over the \$12.2 million spent in FY 2014-15.

County Counsel *fees*, including those related to oversight of Contract Counsel, remained relatively flat at \$10.9 million, declining \$63,000 as compared to last year. Although several County Departments experienced gains in County Counsel *fees* this year, including the Assessor's Office, the Fire Department, and the Department of Public Works, such gains were offset by a comparable decrease in County Counsel *fees* realized by the Sheriff's Department in the area of Law Enforcement. While fees remained relatively stable as compared to last year, County Counsel *costs* doubled from \$1.2 million last year to \$2.4 million in FY 2015-16, as a result of the Los Angeles Superior Court Consolidation Plan, which eliminated all court reporter positions for civil trial courts and required court reporters to be paid by the litigants. This practice impacted costs this fiscal year.

IV. Department Litigation Expenditures

In FY 2015-16, ten County departments spent \$118,978,543, or 90 percent, of the County's \$131.8 million in litigation expenditures. These expenses were comprised of judgments and settlements, as well as fees and costs, in a variety of areas, including Law Enforcement, General Liability, Employment, Medical Malpractice, and Auto Liability. In FY 2015-16, the expenditures for the top ten departments ranged from a high of \$62,580,291 paid by the Sheriff's Department to a low of \$2,248,735 spent by the District Attorney's Office. The litigation expenditures of the top ten departments for FY 2015-16 are as follows:

ANNUAL LITIGATION EXPENSES – TOP TEN DEPARTMENTS FY 2015-16	
Sheriff	\$62,580,291
Health Services	\$20,368,843
Public Works	\$7,647,937
Chief Executive Office	\$6,781,335
Fire	\$5,141,691
Children and Family Services	\$4,781,681
Probation	\$3,275,806
Public Health	\$3,233,610
Parks and Recreation	\$2,918,614
District Attorney	\$2,248,735

V. Contract Cities and Special Districts

Of the \$131.8 million reported in Annual Litigation Expenses in FY 2015-16, the Contract Cities Liability Trust Fund and Special Districts reimbursed the County approximately \$22.2 million. The County paid the remaining \$109.6 million.

A. *Contract Cities*

In FY 2015-16, the Contract Cities Liability Trust Fund paid \$18.8 million of the \$131.8 million in Annual Litigation Expenses. This \$18.8 million payment, which included judgments, settlements, fees and costs, was primarily the result of liabilities arising from the alleged misconduct of Sheriff's Deputies contractually assigned to various cities throughout the County. A small portion of the \$18.8 million reimbursed to the County related to the Department of Public Works' General Liability cases and totaled \$63,400.

In FY 2015-16, the Contract Cities Liability Trust Fund's insurance carriers paid \$19.4 million for six Sheriff's Department Law Enforcement cases, including one sexual assault by Deputy case and five Deputy-involved shooting cases, in which the payment exceeded the Trust Fund's Self-Insured Retention. These insurance payments are not included in the \$131.8 million paid by the County.

B. *Special Districts: Water and Flood Control*

1. *Water Districts*

Water Districts reimbursed the County for \$1.6 million of the \$131.8 million in litigation expenses this year, including expenses related to Groundwater Adjudication, Auto Liability, and General Liability cases. The largest reimbursement involved Groundwater Adjudication. In 2004, the Los Angeles County Water District No 40 (Antelope Valley) filed a lawsuit, which was subsequently joined by District No. 35 (Santa Clarita Valley), seeking a judicial determination of the rights of public water suppliers and landowners to capture groundwater from the Antelope Ground Water Basin ("Basin"). The County's lawsuit was in response to two actions brought against the Water Districts by two of the Basin's largest agricultural companies. Approximately \$1.3 million of the \$1.6 million reimbursed to the County this year by the Water Districts was attributable to this adjudication of groundwater rights in the Antelope Valley. These fees and costs were ultimately paid from the revenue stream of the Water Works District - not from the County General Fund.

2. *Flood Control Districts*

The Flood Control Districts reimbursed the County for \$1.2 million of the \$131.8 million in litigation expenses in FY 2015-16. These expenses involved Environmental, General Liability, and Auto Liability cases. The most costly of these was a federal Clean Water Act case. In 2008, the Natural Resources Defense

Council and the Santa Monica Baykeeper brought a lawsuit pursuant to the federal Clean Water Act, alleging that the County and the Flood Control District violated the Los Angeles County municipal storm water permit by allowing pollutants to exceed water quality standards in Los Angeles Rivers, watersheds, and beaches. A number of appeals to the Ninth Circuit have resulted from this complex and protracted litigation. The Department of Public Works paid \$227,500 in fees and costs on behalf of the Flood Control District in FY 2015-16. The Flood Control District reimbursed the Department of Public Works for the Clean Water Act case, as well as for a variety of other matters, for a total of \$1.2 million.

3. *Open Space District*

Since 2012, the Department of Parks and Recreation has been involved in a series of related lawsuits involving challenges to a proposed oil drilling project in the City of Whittier. The Open Space District contributed \$600,000 to the defense of these consolidated actions in FY 2015-16.

VI. City of Azusa

The judgments and settlements paid in Fiscal Year 2015-16 do not include payments made this year to 13 plaintiff cities in the *City of Azusa, et al. v. County of Los Angeles* ("Azusa") action. The plaintiff cities claimed that the Auditor-Controller improperly calculated the amount of Property Tax Administrative Fees ("PTAF") collected from those cities beginning in Fiscal Year 2006-2007 ("2006-07"), based upon the 2012 California Supreme Court ruling in *City of Alhambra v. County of Los Angeles* ("Alhambra"). Between FY 2006-07 and FY 2012-2013 ("2012-13"), the County collected \$233.2 million in PTAF from all of the cities, a portion of which must be returned as a result of the *Alhambra* ruling. In FY 2015-16, the County paid \$5 million to 13 cities led by the City of Azusa. Since these payments constituted a partial refund of the \$233.2 million previously collected by the County, this amount is not included as a judgment or settlement in the FY 2015-16 litigation expenses.

VII. Dismissals

In FY 2015-16, the County disposed of 234 cases without payment of settlements, judgments or attorneys' fees to opposing parties and without any County liability. Of these 234 dismissals, 127, or 54 percent, 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-seven of the 234 dismissals, or 41 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. Six of the 234 dismissals occurred as a consequence of the opposing parties' failure to timely prosecute the actions, and four dismissals resulted from the failure of plaintiff to appear at trial.

VIII. New Cases

The number of new cases involving the County fell below the 800 mark for the third consecutive fiscal year and realized a slight drop of three percent from 773 in FY 2014-15 to 749 in FY 2015-16. The Sheriff's Department led the way with 202 new cases, followed by 163 new cases that were considered Non-Jurisdictional (plaintiffs failed to identify a responsible department), 71 for the Department of Health Services, and 64 new matters for the Department of Public Works. All other Departments fielded fewer than 40 new cases in FY 2015-16. The 749 new cases this year fall within 13 various categories, or case types: Auto Liability (119), Breach of Contract (8), Condemnation Defense (25), Dangerous Condition (185), Elections (2), Employment (76), Environmental (7), Foster Care (25), General Liability (70), Law Enforcement (156), Medical Malpractice (41), Real Property (32), and Tax (3).

IX. Trials, Writs, and Appeals

A. *Trials*

The County tried 34 cases in FY 2015-16, nine more cases than the County tried last year and two more than it tried in FY 2013-2014 ("2013-14"). The County prevailed in 53 percent, or 18 trials, this year, compared to 16 victories, or 64 percent, last year. There was one mistrial this year compared to no mistrials in FY 2014-15 and four in FY 2013-14. The County prevailed in three employment cases, seven excessive force cases, five general liability cases, one false arrest claim, one failure to protect claim, and one auto liability case. Of the 15 losses, an auto liability case from the Public Defender's Office, *Newland*, was the most expensive. In *Newland*, the Plaintiff, a pedestrian, was struck by a car that had collided with a Deputy Public Defender. The bifurcated trial resulted in an adverse jury verdict of nearly \$14 million that has been appealed by the County. At issue before the Court of Appeal will be an exception to the Going and Coming Rule, which provides that an employee is not acting within the course and scope of his employment when he is commuting to and from work.

B. *Writs*

Just like last year, the County was an interested party in eight writs of mandamus and/or prohibition. The County was not the moving party in any writ proceedings this year. One writ stemmed from challenges to the dissolution of California Redevelopment Agencies and the resulting reallocation of funds at the direction of the California Department of Finance to the County Auditor-Controller. This proceeding either had no demonstrable impact or their effects were *de minimis*. Adverse parties prevailed against the County in three writs this year and were unsuccessful in two. Two other matters resulted in split decisions.

C. *Appeals*

The County won 81 percent of the 31 appeals to which it was a party this year. The County prevailed in two of the six appeals that it initiated and in all of the 23 appeals commenced by adverse parties. The County received 25 rulings in its favor and four adverse rulings. There were two split decisions.

The most noteworthy appeal arose out of festivities in Valencia on the Fourth of July 2010. During a fireworks display at the Valencia Mall, a car making a left turn veered out of control, landing on the sidewalk, colliding into pedestrians, and killing the plaintiffs' family member. Plaintiffs alleged that the County Fire and Sheriff's Department failed to control vehicular traffic and to place safety barriers to protect pedestrians on the sidewalk. After the plaintiffs unsuccessfully opposed the County's motion for summary judgment, the Court of Appeal affirmed, finding that the County did not own the subject property and did not cause any dangerous condition that may have existed.

X. **Recoveries**

The County recovered \$4,719,666 through its litigation efforts on 21 cases in FY 2015-16. As a result of a complaint against the Hacienda La Puente Unified School District for its failure to pay monies owed under a contract that required the school district to provide adult educational services to County inmates, the County collected \$3,350,000. Similarly, the County recovered \$550,000 arising out of a contract in which the contractor failed to deliver on its commitment to remediate boilers at three County facilities. In addition, the County was awarded \$500,000 when it prevailed at a bench trial that focused on concession agreements at Whittier Narrow Equestrian Center. Another \$124,135 flowed from eminent domain proceedings involving the State of California's condemnation of property utilized to widen the I-5 Freeway. The remaining \$195,531 stemmed from various other contract claims, governmental class action lawsuits, and collection of discovery sanctions from adverse parties.