



COUNTY OF LOS ANGELES
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March 5, 2019

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 2017-18**

Dear Supervisors:

Enclosed is the County Counsel Annual Litigation Cost Report ("Cost Report") for Fiscal Year 2017-18. The Cost Report is a public document and will be posted on the County Counsel website.

Very truly yours,

MARY C. WICKHAM
County Counsel

By

STEVEN H. ESTABROOK
Litigation Cost Manager
Executive Office

APPROVED AND RELEASED:

MARY C. WICKHAM
County Counsel

SHE:vn
Enclosure

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2017-2018**

I. Overview

Fiscal Year ("FY") 2017-2018 welcomed the first annual decrease in total litigation expenditures in the last five fiscal years. The **\$135.7 million** paid this year was down \$9.7 million, or seven percent, from the \$145.5 million spent one year ago. The \$135.7 million paid this year includes \$73.7 million in judgments and settlements, as well as \$62 million in attorney fees and costs. The seven percent decrease was largely occasioned by significant drops in litigation expenditures paid by the Department of Public Works in Environmental and General Liability cases and the Sheriff's Department in Law Enforcement matters. The Contract Cities Liability Trust Fund and Special Districts reimbursed the County \$16.2 million this year, which reduced the County's litigation expenditures from \$135.7 million to \$119.5 million. This was \$3.7 million less than \$123.2 million paid by the County last year after reimbursement. Finally, the number of new lawsuits against the County remains near last year's decade low, the number of dismissals without any County liability remains comparable to the positive number of dismissals in the last two fiscal years, and the County prevailed in 27 of 28 appellate decisions this year.

II. Judgments and Settlements

Of the \$135.7 million paid in litigation expenses this year, \$73.7 million was paid to satisfy 20 judgments and to settle 238 cases. The \$73.7 million spent on judgments and settlements in FY 2017-2018 ("2017-18") represented a seven percent decrease as compared to the \$79.3 million expended on judgments and settlements in FY 2016-17 ("2016-17").

Judgments

The County paid **\$12.6 million** in judgments this year – up 38 percent compared to the \$9.1 million spent last year. The \$12.6 million was comprised of 20 Judgments, with 14 against the Sheriff's Department (\$10,210,796), two against the Department of Public Works (\$267,709), and one each against the Fire Department (\$1,650,000), the District Attorney's Office (\$350,000), the Chief Executive Office (\$90,240), and the Department of Parks and Recreation (\$3,458). Four judgments exceeded one million dollars. Three of these judgments involved the Sheriff's Department and the fourth million-dollar judgment was in an Auto Liability case against the Fire Department.

The most costly judgment this year (*Amaya* — \$3 million) was a deputy-involved shooting that occurred when a team of deputies served a search and arrest warrant on a murder suspect at a residence in Norwalk. After the deputies forcibly entered the residence, occupant Emilio Amaya entered the kitchen along with the murder suspect, pointed a gun at the deputies, and was shot and killed. The

jury returned a \$3 million verdict in favor of decedent Amaya's mother, sister, and minor autistic son.

The second Sheriff's Department judgment (*Robertson* — \$2.1 million) involved the report of a man shooting a gun in the air on a street in Lynwood. When two responding deputies ordered him to drop the gun, the suspect, Nicholas Robertson, ignored the deputies and walked across the street to an Arco gas station, where several civilians were present. The deputies followed Mr. Robertson to the station and ordered him to drop his weapon. When he instead suddenly turned his body toward the deputies, they shot and killed him. The jury awarded Mr. Robertson's family \$2.1 million.

The third Sheriff's Department judgment is an employment action (*Antuna* — \$2,095,000) which involved eight Sheriff's Department employees who sued the County, former Sheriff Baca, and former interim Sheriff Scott, claiming that they were retaliated against for associating with and supporting Undersheriff Tanaka during his bid to become Sheriff. The alleged retaliatory acts ranged from demotions to being relieved of duty. The jury returned a verdict against former Sheriff Baca only and found in favor of the County. Because of an error in the verdict form, the court granted a new trial on damages to one plaintiff. The judgment for both trials totaled \$2,279,370. During the subsequent appeal, the matter was resolved for \$2,095,000.

The fourth and final multi-million dollar judgment (*Rozen* — \$1.65 million) involved a fatal collision between a fire truck that was responding to an emergency call and a vehicle driven by plaintiff's husband, who was en route to a family event at a winery in Malibu. The husband had previously missed the turn into the winery and was late to the event. Instead of pulling to the right as the fire truck approached from behind, plaintiff's husband made a left turn into the winery as the fire truck attempted to pass on the left. Plaintiff's husband was killed in the resulting collision. The jury found each driver 50 percent at fault and the court ultimately awarded Mrs. Rozen \$1.65 million in damages.

The four most expensive judgments accounted for 70 percent of the \$12.6 million spent on judgments this year. Of the \$12.6 million paid by the County in judgments this year, \$2.1 million was reimbursed to the County by the Contract Cities Fund. The bottom-line payment by the County for judgments this year was \$10.5 million.

Settlements

The County paid **\$61.2 million** for 238 settlements this year — down 13 percent compared to one year ago. Ten of the 238 settlements each cost the County \$2 million or more. The cost of these "Top 10" settlements totaled nearly \$32 million and accounted for 52 percent of the cost of all settlements this year. The 10 settlements ranged in cost from two million dollars to eight million dollars, involved four different departments, and included four different case types.

The three most expensive *Law Enforcement* settlements cost the Sheriff's Department \$13 million and accounted for 21 percent of the cost of all settlements paid by the County this year. The first of these three (*O'Connell* — \$8 million) was the most expensive settlement paid by the County this year. Frank O'Connell's conviction of a 1984 murder was based, in large part, on the testimony of a single eyewitness. Twenty five years after the conviction, the witness recanted his testimony, Mr. O'Connell's conviction was overturned and he was released after spending over 27 years in prison. The case settled for \$15 million, to be paid over two consecutive fiscal years, commencing this year with a payment of \$8 million. The second Law Enforcement settlement (*N.L.A.* — \$2,970,000) was a deputy-involved shooting in which two deputies were struggling with a suspect and one deputy, believing that the suspect was reaching for his partner's gun, shot at the suspect and hit his partner. The wounded partner then shot the suspect several times. The suspect died at the scene. The case was settled for \$2.97 million. The third and final Law Enforcement settlement (*Hernandez* — \$2 million) was another deputy-involved shooting in which the plaintiff, a stabbing victim who remained at the scene, was struck by bullet fragments when deputies shot and killed the victim's assailant after he charged at them holding the knife used in the stabbing. The case settled for \$2 million.

The settlement of three *Medical Malpractice* cases involving the Health Services and Probation Departments totaled \$9.5 million this year. The most costly of the three cases (*J.M.M.* — \$3.9 million) involved a fight between two wards at the Sylmar Juvenile Hall. Plaintiff, the youth that initiated the fight, claimed that medical personnel at the facility failed to diagnose his serious head trauma which resulted in seizures and a two-month coma. The Department of Health Services and the Probation Department split the cost with each paying 50 percent of the \$3.9 million settlement. The second million-dollar Medical Malpractice settlement (*Keshishyan* — \$3.6 million) was a "wrongful life" case involving a child born with profound neurologic deficits at LAC+USC. The child, through guardians, alleged that Department doctors did not correctly read ultrasound results and failed to conduct additional diagnostic tests. The case settled for \$3.6 million. The final costly Medical Malpractice settlement (*Tellez* — \$2 million) was another Labor and Delivery case in which an alleged delay in performing an emergency C-Section resulted in, among other conditions, cerebral palsy. The case settled for \$2 million.

The three most costly *Auto Liability* settlements totaled \$6.8 million and involved two Sheriff's Department cases and one Beaches and Harbors action. The most expensive automobile liability settlement (*Olin* — \$2.425 million) involved an attorney who was riding his bicycle in a designated bicycle lane on Mulholland Highway and was struck from behind and killed by a Sheriff's deputy. The case was settled for \$11.75 million. Of the settlement amount, the County paid \$2,425,620 (the amount remaining of the Contract Cities Fund \$3 million self-insured retention after defense attorney fees and costs) and the Fund's insurance carrier paid the remaining \$9,324,280 directly to the plaintiffs. The Fund thereafter reimbursed the County for the full \$3 million self-insured retention. The second costliest Auto Liability settlement was also the most costly case this year for the

Department of Beaches and Harbors (*Storti* — \$2.4 million) and involved a property maintenance employee who drove his SUV over a woman sunbathing on Venice Beach. The case settled for \$2.4 million. The final Auto Liability case (*Morillon* — \$2 million) involved a Sheriff's deputy who was allegedly speeding when responding to a request for assistance and struck an SUV containing three passengers and a driver who made a left turn in front of the deputy. A young couple, seated in the rear of the SUV, was ejected and killed. The case involving one of the two deceased passengers settled for \$2 million. The Contract Cities Fund's insurer paid \$1,795,417 of the settlement amount.

The final case which settled for two million dollars or more this year involved a Department of Public Works *Dangerous Condition* case (*Arreola* — \$2.6 million) in which a father was killed and his seven-year-old daughter was rendered a quadriplegic when they were struck by a hit-and-run driver in a crosswalk while leaving an elementary school. The surviving wife and two daughters claim that the accident was caused by lack of traffic signals at the crosswalk. The case settled for \$2.6 million.

The top ten most expensive settlements represent just over one-half of the \$61.2 million spent on settlements this year. The Contract Cities Fund reimbursed the County for \$9.8 of the \$61.2 million paid in settlements this year.

III. Fees and Costs

Fees and costs totaled **\$62 million**, down \$4.1 million or six percent, from the \$66.1 million paid last year. Of the \$62 million paid in fees and costs this year, \$47.4 was paid to Contract Counsel, and \$14.6 million was billed by County Counsel to various County departments engaged in litigation.

Contract Counsel

In FY 2017-18, Contract Counsel fees and costs totaled \$47.4 million, down eight percent from the \$51.3 million paid last year.

Contract Counsel fees fell \$2 million, or five percent, from the \$42.5 million paid last year to **\$40.5 million** this year.

Contract Counsel costs, like the fees, were also down this year — dropping nearly \$2 million, or 22 percent, from \$8.9 million to **\$6.9 million** this year.

County Counsel

After two consecutive years of increases, County Counsel fees and costs decreased slightly this year — down from \$14.8 million in FY 2016-17 to **\$14.6 million** this year. However, this year saw County Counsel fees rise, while costs fell. In the end, costs fell more sharply than fees and resulted in an overall decrease in fees and costs of \$170,000.

County Counsel fees, including oversight fees, rose from \$11.5 million last year to **\$11.8 million** this year. Oversight fees were up nearly \$640,000 over last year and brought about the three percent increase in overall County Counsel fees this year.

County Counsel costs were down approximately one-half million dollars this year compared to one year ago, dropping from \$3.3 million in FY 2016-17 to **\$2.8 million** this year.

IV. Department Litigation Expenditures

ANNUAL LITIGATION EXPENSES – TOP TEN DEPARTMENTS FY 2017-18	
Sheriff	\$62,051,388
Health Services	\$14,898,384
Public Works	\$8,695,949
Children and Family Services	\$6,007,769
Fire	\$5,686,558
Probation	\$5,576,268
Public Health	\$5,387,056
Mental Health	\$3,922,050
Beaches and Harbors	\$3,757,149
Public Social Services	\$2,586,237

V. Contract Cities and Special Districts

Of the \$135.7 million reported in Annual Litigation expenses in FY 2017-18, the Contract Cities Liability Trust Fund and Special Districts reimbursed the County \$16.2 million. The County paid the remaining \$119.5 million.

A. *Contract Cities*

In FY 2017-18, the Contract Cities Liability Trust Fund paid \$15.4 million of the \$135.7 million in Annual Litigation expenses. This \$15.4 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 smaller amount was reimbursed to the County related to the Department of Public Works General Liability cases and totaled \$119,500. In FY 2017-18, Contract Cities Liability Trust Fund's insurance carrier paid \$11.1 million for two Sheriff's

Department Auto Liability cases (*Olin* — \$9.4 million and *Paynter/Morillon* — \$1.8 million), in which the settlement payments exceeded the Trust Fund's Self-Insured Retention. This insurance payment was not included in the \$135.7 million paid by the County.

B. *Special Districts: Flood Control and Waterworks*

The County was also reimbursed for litigation expenses paid on behalf of Special Districts. In FY 2017-18, the Special Districts (Flood Control — \$656,987 and Waterworks — \$57,340) reimbursed the County a total amount of \$714,327, including expenses related to Groundwater Adjudication, Auto Liability, and General Liability cases.

VI. Dismissals

In FY 2017-18, 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, 164, or 70 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). Seventy of the 234 dismissals, or 30 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 234 dismissals occurred as a consequence of the opposing parties' failure to timely prosecute the actions.

VII. New Cases

The number of new cases involving the County rose slightly this year, from 707 in FY 2016-2017 to 714 in FY 2017-2018. This was the second lowest number of new cases in the last eight years. Non-Jurisdictional led the way with 208 new cases (plaintiffs failed to identify a responsible department). The Sheriff's Department followed with 196 cases, only seven more than last year. Of the 196 new Sheriff's Department cases 52 percent were Law Enforcement-related cases and 32 percent were Auto Liability cases. The Department of Public Works had 54 new cases, followed by the Department of Health Services (42), and the Department of Children and Family Services (40). Each of the remaining 26 Departments fielded fewer than 20 new cases. The 714 new cases this year fell within 13 various categories, or case types: General Liability (213), Auto Liability (131), Law Enforcement (127), Employment (70), Dangerous Condition (58), Medical Malpractice (38), Foster Care (31), Breach of Contract (16), Real Property (14), Taxes (7), Election (4), Environmental (4), and Operations (1).

VIII. Trials, Writs, and Appeals

A. *Trials*

The County tried 24 cases in FY 2017-18, four more cases than the County tried last year and ten fewer than it tried in FY 2015-16. The County prevailed in 54 percent, or 13 trials, this year, compared to eight victories, or 40 percent, last year. There was one mistrial this year compared to one mistrial in FY 2016-17. Of the 24 cases tried in FY 2017-18, 12 Sheriff's Department cases were tried this year, the most of any department. The Department registered victories in seven. The County prevailed in three Employment trials (one Sheriff's Department Wrongful Termination, one Mental Health Department Wrongful Termination, and one Health Services Department Retaliation case), three Medical Malpractice trials (two Failure to Diagnose and one Sheriff's Department Custody-Failure to Treat), three General Liability trials (Coroner – Falsified Records, Sheriff's Department Slip-and-Fall, and Public Works – Roadway Condition), two Law Enforcement (Sheriff's Department Patrol – False Arrest and Sheriff's Custody – Excessive Force – Battery), and two Auto Liability trials (both Sheriff's Department auto accidents). Of the 10 losses, a pedestrian injury case, *Cobb*, involving the Health Services Department, was the largest verdict this year. In *Cobb*, the plaintiff was walking in a marked crosswalk near LAC+USC when he was struck by a forklift. He was awarded \$10.9 million.

However, an alternative indicator of success at trial for the County is whether the decision or verdict rendered at trial was more or less than the plaintiff's *final settlement* demand prior to trial. An example of this alternative analysis includes the *Portello-Swagel* case in which an injured passenger involved in a rear-end collision demanded \$1 million minimum to settle the case. The jury returned a verdict for the plaintiff, but awarded her only \$53,000. Although considered a plaintiff "win," a result such as this would be considered a win for the County under this alternative analysis. The County achieved "wins" under this alternative analysis in 20 of the 24 cases tried – an 83 percent success rate.

B. *Writs*

The County was an interested party in seven writs of mandamus. The County was not a moving party in any writ proceedings this year. The County won three of seven writs. One successful County writ result stemmed from challenges to the dissolution of the California Redevelopment Agencies and the resulting reallocation of funds at the direction of the California Department of Finance to the County Auditor-Controller. The County also prevailed in two land use writs in which petitioners challenged a County zoning code enforcement action as well as a County denial of a land use map. Adverse parties prevailed in writ actions involving the reimbursement of County Mental Health services' costs, the refusal to approve a local school district election consolidation action, a Public Records Act request denial, and an environmental challenge to the County's Santa Clarita River Floodway ordinance.

C. *Appeals*

The County won 27 of the 28 appeals to which it was a party this year. All of the appeals were initiated by adverse parties. The County had one notable appellate victory this year involving a case in which a former County jail inmate alleged that he received deficient mental health care while in jail. This allegedly kept him from better assisting in another civil rights case he had previously filed against the County regarding its jail. The District Court dismissed plaintiff's action and the Ninth Circuit Court of Appeals affirmed.

IX. Recoveries

The County recovered \$1,155,657 through its litigation efforts in 28 cases in FY 2017-18. The most noteworthy recovery stemmed from the reimbursement by an insurer of a County Contractor of County litigation costs in a Health Services Department case. The County received \$476,576. The County also recovered \$101,579 in property taxes owing on a property subject to eminent domain in the City of Los Angeles.