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February 20, 2013

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 Council Annual Litigation Cost Report –
Fiscal Year 2011-2012**

Dear Supervisors:

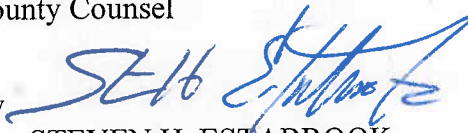
On January 24, 2013, under separate cover, the Annual Litigation Report for Fiscal Year 2011-2012 ("FY 2011-12"), was submitted to your Board. The Annual Litigation Report provided a comprehensive, confidential discussion regarding litigation expenditures for FY 2011-12.

The enclosed County Council Annual Litigation Cost Report ("Cost Report") provides a brief summary of the FY 2011-12 Annual Litigation Report. The Cost Report is a public document and will be posted on the County Council website.

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

Very truly yours,

JOHN F. KRATTLI
County Counsel

By 
STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:


JOHN F. KRATTLI
County Counsel

SHE:mag

Enclosure

HOA.956225.1

COUNTY COUNSEL ANNUAL LITIGATION COST REPORT – FISCAL YEAR 2011-2012

I. Overview

The Annual Litigation Expenses for Fiscal Year 2011-2012 (“FY 2011-12”) were **\$115.2 million**. This was a seven percent increase over the \$107.4 million spent last fiscal year. The increase was, in large part, the result of an \$8 million cost award paid by the County to its insurance carrier in an action brought by the County against the carrier for property damage caused by the 1994 Northridge earthquake. Although down slightly as compared to last year, the 819 new cases filed against the County this year was the second consecutive year in which the number of new cases exceeded the 800 mark. The County obtained 179 dismissals this year without any County liability. It tried 42 cases – winning 24. The County was also successful in 22 of its 30 appeals, and recovered nearly \$1 million through its litigation efforts in FY 2011-12.

II. Payment of Judgments and Settlements

Of the \$115.2 million paid in litigation expenses this year, \$59.9 million was paid to satisfy 19 judgments and to settle 255 lawsuits. The amount paid in judgments and settlements this year rose seven percent, and was up \$3.4 million over last year. Although a single \$8 million payment caused a significant increase in judgments this year, settlements were actually down \$1.8 million as compared to one year ago.

Judgments

In FY 2011-12, the County paid \$17.9 million in judgments. This was \$5.2 million, or 40 percent, more than the \$12.7 million paid last fiscal year. The increase in judgments this year resulted primarily from the payment of a single, long-standing judgment, *Aetna*.

Aetna, the largest judgment paid this year, was an action brought by the County to recover insurance proceeds for the repair of County buildings after the 1994 Northridge earthquake. At the 2004 trial, the County was found to have sustained damages to several County buildings totaling \$13.7 million. However, the loss was less than the aggregate \$20 million policy deductible. As a result, the Court ruled that the insurance carrier was the “prevailing party” and ordered the County to pay *Aetna*’s litigation costs of nearly \$6 million. In 2011, the ruling was upheld on appeal and, due to post-judgment interest, the County was required to pay *Aetna*

nearly \$8 million this year. The *Aetna* judgment accounted for 45 percent of the \$17.9 million in judgments paid by the County this fiscal year.

In addition to *Aetna*, the County also paid \$3.5 million this year on *Bouman*, another long-standing judgment. The *Bouman* judgment was entered against the County nearly 25 years ago in a class action gender discrimination lawsuit involving the Sheriff's Department. After the Ninth Circuit Court of Appeals upheld the judgment, the County entered into a 1993 Consent Decree which required the Sheriff's Department to develop and implement policies, examinations, processes and goals designed to facilitate the hiring and promotion of female deputies. The *Bouman* judgment and resulting Consent Decree also required the County to pay the class counsel's attorney fees and other costs of monitoring these efforts. During the life of the case, the County paid \$72.4 million on *Bouman*, including \$3.5 million this year. However, the payment this year was the County's *final* payment. Effective June 2012, the Court approved a joint report indicating the completion of the County's obligations under *Bouman* and the matter has been fully and finally dismissed.

Three other judgments, each exceeding \$1 million, also contributed to the \$17.9 million paid by the County in judgments this year. These judgments were paid to homeowners who claimed that their house sustained damages from a sewer leak (*Gliksman* - \$1.2 million), a County pharmacist who claimed that she was not properly accommodated when assigned to a graveyard shift (*Chang* - \$1.1 million), and an intoxicated pedestrian who was struck by a Sheriff's vehicle while jaywalking across Sunset Boulevard in West Hollywood (*Rosenberger* - \$1 million).

Settlements

In FY 2011-12, the County paid \$42 million in settlements. This was \$1.8 million less than was paid in settlements last fiscal year. Six settlements combined for more than \$21 million and accounted for one-half of the amount spent on settlements this year. These settlements included two case categories: Dangerous Condition (roadway and trip-and-fall) and Medical Malpractice. The Dangerous Condition cases were *Roderick* (\$6.15 million – a studio worker was rendered a quadriplegic when he drove his vehicle off the Angeles Crest Highway and down a 150-foot embankment) and *Nelson* (\$3.6 million – an elderly man was paralyzed when he tripped and fell over an exposed support bar at a bus shelter). The four Medical Malpractice settlements included three actions involving labor & delivery issues and one settlement involving a brain hemorrhage. The three labor & delivery cases were *Montoya* (\$3.5 million – a mother suffered neurological and brain injuries after the delivery of her baby at Harbor-UCLA Medical Center), *Works* (\$3 million – a mother prematurely delivered twins at LAC+USC Medical Center – one twin died and the other suffered significant neurological injuries), and *Marin* (\$2.8 million – a newborn was deprived of oxygen during birth at Harbor-UCLA Medical Center and

suffered brain damage). The final Medical Malpractice settlement was *Vasquez* (\$2.3 million – a patient suffered a subdural hematoma after his temporary release from Rancho Los Amigos National Rehabilitation Center).

III. Dismissals

In FY 2011-12, the County obtained 179 dismissals without paying plaintiffs or their attorneys any money. Contract Counsel and County Counsel secured these dismissals by either persuading plaintiffs or their attorneys to voluntarily dismiss their actions or by obtaining court orders through a variety of motions (such as motions to dismiss, demurrers, and motions for summary judgments) directing that the cases be dismissed. The County expended \$1.4 million in attorney fees and costs in obtaining these 179 dismissals, down from the \$3.9 million spent last year to obtain 157 dismissals.

IV. Attorney Fees and Costs

In addition to Judgments & Settlements, the \$115.2 million paid in litigation expenses this year also included Attorney Fees & Costs in the amount of \$55.3 million. Of this amount, \$40.9 million was paid to Contract Counsel and \$14.4 million was billed by County Counsel to other County departments for litigation services. The amount billed by County Counsel included the attorney fees & costs for handling cases in-house, as well as for managing or overseeing cases assigned to Contract Counsel. Attorney Fees & Costs for both Contract Counsel and County Counsel increased this year as compared to Fiscal Year 2010-2011 (“FY 2010-11”).

Contract Counsel

Contract Counsel fees & costs were up \$3.5 million as compared to last year. This increase principally occurred in excessive force, foster care, and auto liability cases. A primary cause of this increase was the continued influx of new cases during the preceding two fiscal years, as well as a significant rise in the number of such cases proceeding to trial this year. Finally, the increase in Contract Counsel fees & costs was also the result of a one-time acceleration in the payment of invoices in the second half of this year brought about by the implementation of a new electronic billing system. The efficiencies of the new system, including the prompt payment of invoices, effectively advanced the payment of some attorney fees & costs, which otherwise would have been paid next fiscal year, into this year.

County Counsel

County Counsel fees & costs were also up \$900,000, as compared to last year. The primary reason for this increase was a credit that was applied in the

previous fiscal year. In FY 2010-11, County Counsel recovered \$862,000 in fees & costs in connection with an action brought by the County to compel a homeowner's association to comply with requirements to create hiking and equestrian trails adjacent to its property. County Counsel prevailed and was awarded \$862,000 in attorney fees & costs. This recovery was applied as a credit and used to offset the expenditure of fees & costs by County Counsel attorneys during the previous fiscal year. Absent this one-time credit, County Counsel fees & costs this year would have been nearly the same as last year.

V. Contract Cities Expenses and Waterworks Expenses

Of the \$115.2 million in annual litigation expenses this fiscal year, \$7.5 million was *not* paid by the County General Fund. Instead, these expenses were paid by the Contract Cities Trust Fund and the Waterworks District. These payments were the result of alleged misconduct of Sheriff's deputies contractually assigned to various cities throughout the County, liabilities resulting from work performed for cities by the Department of Public Works, and public water rights litigation.

VI. New Cases

For the second consecutive fiscal year, the number of new cases exceeded the 800 mark. In FY 2011-12, there were 819 new cases, down slightly from the 849 new cases filed against the County last fiscal year. Consistent with this modest decline, several departments experienced decreases in new cases as compared to last year, including the Sheriff's Department, the Probation Department, the Treasurer-Tax Collector, the Public Defender's Office and the Department of Beaches and Harbors. The Departments of Public Social Services and Child Support Services each experienced a 50 percent reduction in new cases this year. Although the overall number of new cases declined this year, several departments saw increases over last year in the number of new actions filed against them. These departments included Public Works, Health Services, the District Attorney's Office, the Auditor-Controller, Children and Family Services, the Assessor's Office, Animal Care and Control, and the Board of Supervisors. The Departments of Mental Health and Community and Senior Services saw significant increases this year as compared to one year ago – each increased to 22 new cases from six and four, respectively.

VII. Trials, Writs, and Appeals

The number of cases tried by the County rose for the second consecutive year – from 22 in Fiscal Year 2009-2010 to 35 in FY 2010-11, and again to 42 this fiscal year. This was the most cases tried during any of the last six fiscal years. The County was successful in 57 percent of these cases, winning 24, losing 14, and trying four cases in which jurors were unable to reach a verdict. The County prevailed in 13 of 19 Law Enforcement trials. The two most significant losses were

Dirks (\$6 million – excessive force used during an arrest following a routine traffic stop) and *Castro* (\$2.6 million – prisoner beaten by a fellow prisoner at West Hollywood Sheriff's Station). The County won six of eight Auto Liability cases and three of six Employment cases. The most significant Employment loss was *Hager* (\$4.5 million – wrongful termination for disobeying orders and investigating the alleged homicide of another deputy).

The number of cases tried this fiscal year did not include trials and hearings involving writs of mandamus and prohibition. In FY 2011-12, six such writs proceeded to trial or final hearing. The County prevailed in four, including actions enjoining the City of Los Angeles from constructing a sewer line in an unincorporated area of the County and controlling dangerous dogs.

The County received favorable decisions in 22 of 30 appeals. The County won two of the five appeals it initiated, and 20 of the 25 appeals filed by adverse parties. In one successful appeal, the County obtained a reversal of a \$250,000 award of attorney fees & costs in a Law Enforcement case (*Shoyoye*), and, in another, it secured the reversal of a \$606,000 judgment in an Employment action (*Rogers*). Two appellate losses were particularly significant - *Aetna* and *California Department of Health Care Services*. *Aetna* was a failed attempt to recover insurance proceeds for damages caused by the 1994 Northridge earthquake and a resulting \$8 million cost bill. *Health Care Services* was an unsuccessful action brought by the County to recover \$5.25 million in expenses for providing services to Medi-Cal patients.

VIII. Recoveries

The County recovered \$992,803 through its litigation efforts in FY 2011-12. These efforts included eminent domain and condemnation actions. The most significant of these recoveries was the result of an action filed by the California Department of Transportation against the Los Angeles County Flood Control District to acquire land to widen the 405 freeway. The County recovered \$771,000 as the result of this action.