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The Honorable Board of Supervisors
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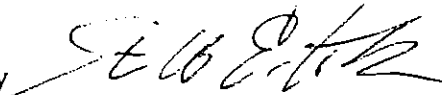
Re: **County Counsel Annual Litigation Cost Report –
Fiscal Year 2016-17**

Dear Supervisors:

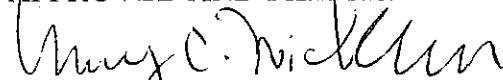
Enclosed is the County Counsel Annual Litigation Cost Report ("Cost Report") for Fiscal Year 2016-17. The Cost Report is a public document and will be posted on the County Counsel website.

Very truly yours,

MARY C. WICKHAM
County Counsel

By 
STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:


MARY C. WICKHAM
County Counsel

MCW:mag
Enclosure

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2016-2017**

I. Overview

In Fiscal Year ("FY") 2016-2017, the County of Los Angeles paid \$145.5 million in litigation expenses, up ten percent from \$131.8 million paid in FY 2015-2016 ("2015-16"). The \$145.5 million paid this year includes \$79.3 million in judgments and settlements and \$66.1 million in attorney fees and costs ("fees and costs"). The ten percent increase was largely the result of a \$10.1 million settlement of a wrongful incarceration case and a \$5.6 million boost in fees and costs as compared to last year. Importantly, the Contract Cities Trust Fund and Special Districts reimbursed the County \$22.2 million this year, which reduced the County's litigation expenditures from \$145.5 million to \$123.3 million. This was 12 percent more than the \$109.4 million paid by the County last year after reimbursement. Finally, there was a second yearly increase in the number of cases dismissed without any County liability, \$1.2 million recovered by the County through litigation, and a second consecutive annual decline this year in new lawsuits filed against the County. The decline in new lawsuits included a significant drop in new Sheriff's Department Law Enforcement cases involving excessive force Deputy-related shooting cases.

II. Judgments and Settlements

Of the \$145.5 million paid in litigation expenses this year, \$79.3 million was devoted to satisfying 12 judgments and settling 242 cases. The \$79.3 million spent on judgments and settlements in FY 2016-2017 ("2016-17") represented an 11 percent increase as compared to the \$71.3 million expended on judgments and settlements in FY 2015-16.

Judgments

In FY 2016-17, the County paid \$9.1 million in judgments, down 23 percent compared to the \$11.8 million spent in FY 2015-16 and the second consecutive annual reduction. Of the 12 judgments paid in FY 2016-17, three exceeded \$1 million and all three involved the Sheriff's Department. The most expensive judgment (*Castro* - \$3.5 million) involved a prisoner at the West Hollywood Station who allegedly sustained permanent brain injury when he was attacked by another prisoner in a detoxification cell. The second judgment (*Rieth* - \$1.3 million) involved a motorcyclist who collided with a marked Sheriff's patrol unit on the freeway and sustained a fractured leg and other injuries. In the final million-dollar judgment (*Arias* - \$1.2 million), an unarmed suspected vandal was shot after reaching toward his front pants' pocket after Deputies allegedly instructed him to raise his hands.

Settlements

The County paid **\$70.2 million** for 242 settlements this year, up \$10.8 million from the \$59.4 million paid in FY 2015-16. Of the 242 settlements paid this year, 21 settlements exceeded \$1 million and accounted for nearly three-quarters of the \$70.2 million spent on settlements this year. The five most expensive of these 21 settlements ranged in value from \$3 million to \$10.1 million and accounted for nearly one-half of the total costs of all of the million-dollar cases. These five cases involved a variety of Departments and related case types.

The most expensive settlement this year was a Sheriff's Department Law Enforcement case (*Carrillo* - \$10.1 million), which involved a plaintiff who spent 20 years in prison for a 1991 murder he claims that he did not commit. His conviction was overturned on disclosure and credibility issues. The *Carrillo* case, alone, was nearly the difference between the amounts paid for settlements this year and one year ago.

The second costliest settlement and the most expensive Environmental settlement this year involved a federal Clean Water Act lawsuit (*NRDC/Baykeeper* - \$4.5 million), which alleged that the County and Flood Control District violated a municipal storm permit by allowing pollutants to exceed quality standards in Los Angeles watersheds and beaches. Following a complex legal process, the case was settled and a portion of the settlement amount was paid this year, split 25 percent/75 percent between the Chief Executive Office and the Public Works Department, respectfully. The Flood Control Special District reimbursed the payment by the Public Works Department.

The third case (*Lugo* - \$3.5 million) involved a patient at Harbor-UCLA Medical Center who sustained a brain injury while being treated for a chronic infection. *Lugo* was the most costly medical malpractice case this year.

A Public Works Department dangerous condition, roadway case (*Barragan* - \$3 million) involved a single-vehicle accident that left the 42-year-old plaintiff paralyzed from the shoulders down when she lost control of her vehicle on a curve, drove off the road, and rolled the vehicle several times. She claimed that the shoulder of the road constituted a dangerous condition.

The final action (*Thomas* - \$3 million) of the five costliest settlements this year involved the drowning of a 17-year-old young man at the Jesse Owens Park pool while he was performing a swim test. His parents alleged that the pool staff did not diligently observe him at all times.

These five cases represented the most expensive County settlements in FY 2016-17. Of the \$70.2 million, \$15.1 million was reimbursed by the Sheriff's Contract Cities Liability Trust Fund (\$10.5 million) and the Department of Public Works Special Districts – Flood Control and Waterworks (\$4.6 million).

III. Fees and Costs

Fees and costs totaled \$66.1 million this year, up \$5.6 million, or nine percent, over the \$60.5 million paid one year ago. Of the \$66.1 million, \$51.3 million was paid to Contract Counsel and \$14.8 million was billed by County Counsel to various County Departments engaged in litigation. 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. Contract Cities and Special Districts reimbursed the County for \$5.7 million of the \$66.1 million spent on fees and costs this year.

Contract Counsel

In FY 2016-17, Contract Counsel fees and costs were \$51.3 million, up nine percent over the \$47.3 million paid last year.

Contract Counsel *fees* rose by \$2.1 million, or five percent, from \$40.4 million paid last year to \$42.5 million this year. Like Contract Counsel fees, Contract Counsel *costs* were also up \$2 million, or 30 percent, from \$6.8 million last year to \$8.8 million this year.

County Counsel

At \$14.8 million this year, County Counsel fees and costs were up \$1.6 million over the \$13.2 million spent last year.

County Counsel *fees*, including oversight fees, rose five percent this year, from \$10.9 million last year to \$11.5 million. Like last year, County Counsel costs rose again this year, from \$2.4 million to \$3.3 million this year.

IV. Department Litigation Expenditures

In FY 2016-17, ten County departments spent \$130,859,179, or 90 percent, of the County's \$145.5 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 2016-17, the expenditures for the top ten departments ranged from a high of \$68,619,128 paid by the Sheriff's Department to a low of \$2,188,439 spent by the Public Social Services Department. The litigation expenditures of the top ten departments for FY 2016-17 were as follows:

FY 2016-17 ANNUAL LITIGATION EXPENSES TOP TEN DEPARTMENTS	
Sheriff	\$68,619,128
Public Works	\$16,219,850
Health Services	\$11,044,657
Children and Family Services	\$8,139,194
Parks and Recreation	\$6,469,430
Public Health	\$5,011,209
Fire	\$4,995,448
Mental Health	\$4,839,941
Probation	\$3,331,883
Public Social Services	\$2,188,439

V. Contract Cities and Special Districts

Of the \$145.5 million reported in Annual Litigation Expenses in FY 2016-17, the Contract Cities Liability Trust Fund and Special Districts reimbursed the County \$22.2 million. The County paid the remaining \$123.3 million.

A. *Contract Cities*

In FY 2016-17, the Contract Cities Liability Trust Fund paid \$16 million of the \$145.5 million in Annual Litigation Expenses. This \$16 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 \$16 million reimbursed to the County related to the Department of Public Works' General Liability cases and totaled \$168,800.

In FY 2016-17, the Contract Cities Liability Trust Fund's insurance carriers paid \$405,500 for a Sheriff's Department Deputy-involved shooting case (*Berry* - \$2.9 million), in which the settlement payment exceeded the Trust Fund's Self-Insured Retention. This insurance payment was not included in the \$145.5 million paid by the County.

B. *Special Districts: Water and Flood Control*

1. *Water Districts*

Water Districts reimbursed the County for \$1.2 million of the \$145.5 million in litigation expenses this year, including expenses related to Groundwater Adjudication, Auto Liability, and General Liability cases. The two largest reimbursements involved an Auto Liability case in which the plaintiff, a Los Angeles City sewer line inspector, was struck by machinery being hauled on a trailer pulled by a Department of Public Works employee (*Delfin* - \$500,000), and a groundwater adjudication action seeking a judicial determination of the rights of public water suppliers and landowners to capture groundwater from the Antelope Valley Water Basin (*Diamond Farming* - \$371,300). 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 \$4.7 million of the \$145.5 million in litigation expenses in FY 2016-17. 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 ("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. The case

settled this year for \$7.3 million. The settlement provided that the County and the District provide two water quality projects at a projected cost of \$4 million, \$2.8 million of which will be paid at a later date. The County and the District paid the remaining \$1.2 million, as well as \$3.3 million in plaintiffs' attorney fees. The Department of Public Works paid 75 percent of the \$4.5 million. The District reimbursed the Department of Public Works the \$3,375,000 paid on the Clean Water Act case, as well as for a variety of other matters, for a total of \$4.7 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 \$277,000 to the defense of these consolidated actions in FY 2016-17.

VI. Dismissals

In FY 2016-17, the County disposed of 255 cases without payment of settlements, judgments or attorneys' fees to opposing parties and without any County liability. Of these 255 dismissals, 163, or 64 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-seven of the 255 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. Eight of the 255 dismissals occurred as a consequence of the opposing parties' failure to timely prosecute the actions, and seven dismissals resulted from the failure of plaintiff to appear at trial.

VII. New Cases

The number of new cases involving the County fell for the second consecutive fiscal year and realized a drop of six percent, from 749 in FY 2015-16 to 707 in FY 2016-17. This was the lowest number of new cases in the last seven years. Although the Sheriff's Department led the way with 189 new cases, it experienced a 30 percent reduction in new Law Enforcement cases, a 40 percent decline in Excessive Force cases, and a 33 percent decrease in Deputy-related shooting cases. The Sheriff's Department was followed by 148 new cases that were considered Non-Jurisdictional (plaintiffs failed to identify a responsible department), 85 for the Department of Health Services, and 58 new matters each for the Department of Public Works and Children and Family Services. All other Departments fielded fewer than 50 new cases in FY 2016-17. The 707 new cases this year fell within 13 various categories, or case types: Auto Liability (126), Breach of Contract (10), Condemnation Defense (7), Dangerous Condition (171), Elections (3), Employment (82), Environmental (6), Foster Care (40), General Liability (55), Law Enforcement (116), Medical Malpractice (39), Real Property (21), and Tax (31).

IX. Trials, Writs, and Appeals

A. Trials

The County tried 20 cases in FY 2016-17, fourteen fewer cases than the County tried last year and five less than it tried in FY 2014-2015 ("2014-15"). The County prevailed in 40 percent, or eight trials, this year, compared to 18 victories, or 53 percent, last year. There was one mistrial this year compared to no mistrials in FY 2014-15 and four in FY 2013-14. Of the 20 cases tried in FY 2016-17, 13 Law Enforcement cases were tried this year, with the Sheriff's Department registering victories in five. The County prevailed in three Employment cases, two Medical Malpractice cases, one False Arrest case, one Sexual Assault case, and one wrongful incarceration case. Of the 11 losses, a warrantless detention of a minor case, *Duval*, involving the Children and Family Services Department, was the largest verdict this year. In *Duval*, the Plaintiff, a mother whose child was detained without a court warrant, sued for denial of civil rights and was awarded a \$3.105 million verdict.

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. Examples of this alternative analysis include the *Pina* and *Escohea* cases. *Pina* involved an inmate who claimed he was injured in a custody bus accident and demanded \$150,000 to settle the case. The jury returned a verdict for the inmate, but awarded him only \$5,000. In *Escohea*, a search warrant case, the plaintiff demanded \$4 million. The jury awarded him only \$2,500. Although considered plaintiff "wins," results such as these would be considered wins for the County under this alternative analysis. The County achieved "wins" under this alternative analysis in 14 of the 20 cases tried - a 70 percent success rate.

B. Writs

The County was an interested party in three writs of mandamus and/or prohibition. The County was not the moving party in any writ proceedings this year. The County won all three writs. 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. Two writs involved land use cases in which petitioners challenged a County zoning code enforcement action and a County denial of a land use map.

C. Appeals

The County won 94 percent of the 34 appeals to which it was a party this year. The County prevailed in one of the three appeals that it initiated and in all of the 31 appeals commenced by adverse parties.

The County had an important appellate victory this year involving a case in which a County nurse claimed harassment and discrimination at the Barry J. Nidorf Juvenile Hall. The trial court jury awarded her \$1,336,730 in damages and attorney fees. The County successfully appealed the verdict on the basis that there was no substantial evidence for the verdict. The more expensive of the two appellate losses

occurred in the *Castro* case. The Plaintiff was a prisoner in the West Hollywood Sheriff's Station detoxification cell and was beaten by a fellow prisoner, leaving the Plaintiff with brain damage. The trial court jury awarded the Plaintiff \$2,623,632, plus attorney fees. The Ninth Circuit Court of Appeals affirmed this verdict.

X. Recoveries

The County recovered \$1,238,179 through its litigation efforts on 23 cases in FY 2016-17. The most noteworthy recovery stemmed from a County Flood District recovery of cleanup costs. A fire in two commercial buildings in the City of Santa Fe Springs led to the mixing of water with hazardous chemicals. The polluted water entered the drain system maintained by the Flood District. The Flood District recovered \$475,000. The County also recovered \$310,000 from a price-fixing class action case brought by the State of California regarding electronic equipment. The remaining \$453,179 stemmed from breach of contract claims regarding an indemnity agreement with the Alameda Corridor Joint Powers Authority, a class action litigation cost recovery involving the alleged release of confidential medical information, and a recovery of costs related to a class action case involving fees and commissions charged to inmates using jail telephones.