COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

April 6, 2011

TO: Supervisor Michael D. Antonovich, Mayor
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

FROM: Wendy L. Watanabe
Auditor-Controller

SUBJECT: **THIRD FOLLOW-UP REVIEW OF COUNTY COUNSEL LITIGATION COST MANAGEMENT**

On March 27, 2007, your Board directed the Auditor-Controller to report on County Counsel's progress in implementing the recommendations from our January 29, 2007 report on Litigation Cost Management. The original report contained a total of 45 recommendations, including nine recommendations made by an outside attorney who reviewed County Counsel's handling of a sample of cases.

This is our third and last follow-up review on County Counsel's progress in implementing the January 2007 recommendations. This review focuses on the fourteen recommendations we reported as not implemented in our two prior follow-up reviews, dated October 5, 2007 and March 30, 2009.

Results of Review

Overall, County Counsel has made significant progress in implementing the recommendations from the Litigation Cost Management report. Of the 14 recommendations we reviewed, seven have been fully implemented, four have been substantially implemented, and three have been partially implemented. County Counsel needs to continue to work on implementing software to electronically review outside attorneys' bills; ensure supervising County Counsel attorneys charge time to their assigned cases and review all (or a larger percentage of) outside attorney invoices; and ensure the Risk Management Information System (RMIS) reports of in-house cases that have exceeded 70% of budgeted fees and costs include all applicable cases.

Because County Counsel has fully implemented almost all of the recommendations from our prior report, and has made significant progress on the remaining seven recommendations, we do not plan to conduct any additional follow-up reviews. We recommend that County Counsel provide your Board semi-annual status reports until the remaining recommendations are fully implemented.

Status of Recommendations

Recommendation 2 from the January 29, 2007 Report

County Counsel management evaluate the feasibility of using RMIS to provide management reports to ensure initial Case Evaluation Plans are completed in a timely manner.

Current Status: IMPLEMENTED

County Counsel's procedures require attorneys to prepare a Case Evaluation Plan and Budget (CEP) within 30, 60 or 90 days after a case is assigned, depending on the significance of the case. CEPs should include the facts, legal analysis, proposed action, settlement prospects, initial settlement value, and budgeted attorney fees and costs for the case. County Counsel uses CEPs to monitor litigation cost, control attorneys' fees and evaluate the proposed litigation strategy for each case.

In our January 29, 2007 report, we noted that initial CEPs were not being submitted on time, and recommended that County Counsel evaluate the feasibility of using RMIS to ensure initial CEPs are completed timely. In our prior follow-up reviews, we noted that County Counsel had added a field in RMIS to record CEP dates and was generally entering the CEP dates in the new field. However, County Counsel stated that RMIS could not produce reports to monitor CEPs, and indicated that they were installing an electronic case calendaring system, Compulaw, that could be used to electronically remind attorneys when CEPs were due.

During this follow-up review, we noted that County Counsel has started using Compulaw to track CEP due dates and generate reports of past due CEPs. County Counsel management sends the Compulaw reports to division managers. To ensure the reports adequately identify past due CEPs, we reviewed a sample of five CEPs that were submitted late and noted that all five CEPs were appropriately listed on the exception reports. Therefore, it appears County Counsel is using exception reports to notify attorneys of past due CEPs to ensure attorneys complete CEPs timely, as we recommended.

Recommendation 5 from the January 29, 2007 Report

County Counsel management evaluate using RMIS to generate reports identifying cases where actual expenditures are close to a specified percentage of the approved budget (e.g., 80%) to identify cases that may require an amended CEP.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel did not always ensure an amended CEP was completed before fees and costs exceeded the prior approved budget, or before increasing the RMIS budget. We recommended that County Counsel evaluate whether RMIS could generate reports for cases where actual expenditures reach a specified percentage of the approved budget (e.g., 80%) to identify when an amended CEP may be required. In our March 30, 2009 report, we noted that County Counsel was working with the RMIS vendor to develop an exception report.

During this follow-up review, we noted that County Counsel has developed a report of cases exceeding 70% of the approved budget, and has started distributing the reports to division managers. Supervising attorneys are supposed to review each case on the report to determine if an amended budget is needed. We reviewed a sample of ten cases that exceeded 70% of budgeted fees or costs, and noted all ten cases appeared on the applicable exception report. Based on our sample, the reports include all appropriate cases, and we consider this recommendation implemented.

Recommendation 16 from the January 29, 2007 Report

County Counsel management evaluate and implement procedures to ensure that affected departments are provided adequate status reports on their cases for both in-house and outside counsel.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that 40 (34%) of 119 required case status reports were not submitted to County Counsel or the affected departments. To ensure information regarding case developments is consistently communicated and adequately documented, we recommended that County Counsel evaluate and implement procedures to ensure that affected departments receive adequate status reports.

As noted in our March 30, 2009 follow-up report, Trial Counsel Reports (TCRs) have replaced status reports as the formal updates on case status. County Counsel's revised procedures state that TCRs are due approximately ten days before case roundtables, but no later than the day of the roundtable.

During our current review, we noted that attorneys submitted TCRs for all ten cases we reviewed on or before the date of the roundtable, and departmental representatives attended all of the roundtables. We also noted that County Counsel holds roundtables more regularly and frequently than they did in the period covered by our original review. County Counsel also has procedures to invite departments to attend roundtables. If departments do not attend roundtables, they can request a copy of the TCR from the supervising attorney, but it is up to attorneys to decide whether to give the departments a copy of the TCR. Per County Counsel management, this is because some TCRs

contain confidential information that should not be distributed outside County Counsel's offices.

Based on County Counsel's improved procedures to use TCRs to update departments at regularly scheduled roundtables, we consider this recommendation to be implemented.

Recommendations 17 and 18 from the January 29, 2007 Report

Recommendation 17

County Counsel management establish a tracking system to ensure that status reports are submitted as required, and monitor for compliance through exception reports.

Recommendation 18

County Counsel management evaluate using RMIS to monitor the completion of required status reports, and to generate exception reports for missing status reports.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that attorneys did not always complete required reports on case status, and we recommended that County Counsel start tracking and monitoring status reports to ensure they are submitted as required. We also recommended that County Counsel evaluate using RMIS to generate exception reports of missing status reports. In our March 30, 2009 follow-up review, County Counsel IT staff indicated that RMIS was not able to identify outstanding status reports, and that County Counsel was planning to track status report due dates using Compulaw. As discussed under Recommendation 16 earlier in this report, TCRs have replaced the prior status reports. TCRs are due approximately ten days before roundtables, and are intended to provide updated case status to roundtable participants, including affected departments, in preparation for roundtable discussions.

During this follow-up review, we noted that County Counsel has started using Compulaw, a litigation calendaring system, to track TCR due dates and generate reports of past due TCRs. Compulaw sends automated reminders of TCR due dates to supervising attorneys, and staff use Compulaw to generate bi-monthly exception reports of past due TCRs and send those reports to applicable County Counsel divisions for review. To ensure the reports adequately capture past due TCRs, we reviewed a sample of five past due TCRs, and noted that all of them were listed on the exception reports. Therefore, it appears County Counsel is now monitoring status reports, and we consider these recommendations to be implemented.

Recommendation 21 from the January 29, 2007 Report and Recommendation 6 from the November 27, 2006 Outside Attorney Report

Recommendation 21 from the January 29, 2007 Report

County Counsel management ensure supervising attorneys review the reasonableness of outside counsel billings. This should include revising bill review procedures for TPA cases to require the supervising attorney to review outside counsel invoices.

Recommendation 6 from the November 27, 2006 Outside Attorney Report

Supervising County Counsel attorneys should review all outside counsel invoices for whether the time entries are reasonable, necessary and proper, irrespective of whether a TPA is also reviewing those invoices.

Current Status: PARTIALLY IMPLEMENTED

In the prior reports, it was noted that County Counsel supervising attorneys did not always review outside attorneys' invoices, especially for cases contracted through a Third Party Administrator (TPA). Although TPA contracts require the TPAs to review the invoices for mathematical accuracy and appropriate billing rates, supervising attorneys who are familiar with the day-to-day facts of the case should also review the invoices for reasonableness. Only attorneys who are responsible for overseeing a case and are familiar with the work performed can evaluate whether outside counsel time charges are reasonable. In addition, outside counsel has an incentive to be more careful about their billings if they know that in-house attorneys are reviewing their invoices, as opposed to non-attorneys.

During this follow-up, we noted that, although supervising County Counsel attorneys do review invoices for cases contracted directly with outside counsel, they do not review all invoices for cases contracted through a TPA. As noted in our March 30, 2009 follow-up report, County Counsel management indicated it is not practical for supervising attorneys to review all invoices until County Counsel implements electronic billing review software, which would reduce the time required to review each invoice. In the interim, County Counsel has instituted a new procedure for supervising attorneys to review invoices for high priority (Priority 1) TPA cases.

We believe County Counsel's interim procedure is not sufficient because Priority 1 cases comprise only 13% of total outside law firm fees and costs. Therefore, 87% of billings for cases contracted through TPAs are not reviewed by a supervising County Counsel attorney. In addition, it appears the procedure is not always being followed. Two (20%) of ten invoices we reviewed for Priority 1 cases contracted through a TPA were not sent to County Counsel for approval because of the TPA's mistake. For an additional two invoices, the TPA paid the invoices without receiving County Counsel's approval. County Counsel's instructions to the TPAs state that, if the TPA does not

receive any communication from County Counsel within 15 days, the TPA can assume the invoice has been approved. However, this procedure does not ensure supervising attorneys actually receive and review the invoices.

Based on the above, we consider this recommendation to be partially implemented. To fully implement this recommendation, County Counsel needs to implement the electronic billing review software, and require supervising attorneys to review all invoices for cases contracted through a TPA. As an interim procedure, County Counsel should review invoices for a larger percentage of cases. County Counsel management should also require TPAs to ensure they get approval from County Counsel supervising attorneys before paying the invoices.

County Counsel's attached response indicates that it is not currently feasible for County Counsel staff to review all invoices, but they will revisit the issue when the electronic billing review software is implemented. In the meantime, County Counsel intends to continue to only review invoices for Priority 1 cases contracted through a TPA.

Recommendation 23 from the January 29, 2007 Report and Recommendation 9 from the November 27, 2006 Outside Attorney Report

Recommendation 23 from the January 29, 2007 Report

County Counsel management continue to investigate the use of electronic billing review software.

Recommendation 9 from the November 27, 2006 Outside Attorney Report

The County Counsel's office should adopt an electronic billing system for all outside counsel invoices.

Current Status: PARTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that electronic billing review software could help County Counsel review outside attorneys' bills, and could increase in-house staff productivity and reduce costs. The outside attorney, who reviewed a sample of County Counsel cases, also noted in his November 27, 2006 report that electronic billing could reduce paper usage and expedite County Counsel's review of outside counsel invoices.

During this follow-up review, we noted County Counsel has been working on implementing electronic billing review software, but the software is not yet in place. County Counsel issued a Request for Proposals (RFP) for electronic billing software in September 2009, and received five responsive proposals. County Counsel management indicated they had delays in evaluating the proposals due to technical and other issues, but have now completed the evaluations. County Counsel is negotiating with the highest-rated bidder. Because implementation of the billing software is still pending, we consider this recommendation to be partially implemented.

County Counsel's attached response indicates they had completed contract negotiations for the electronic billing review software, and expected to execute a contract by March 15, 2011. County Counsel expects the software will be fully implemented and operational within six months.

Recommendation 25 from the January 29, 2007 Report

County Counsel management require attorneys to complete the Case Evaluation and Plan Analysis or an alternative document to perform a post-resolution assessment of cases that exceed a specified dollar amount.

Current Status: PARTIALLY IMPLEMENTED

In September 2003, County Counsel and the CEO submitted a draft Case Evaluation and Plan Analysis tool to the Board, as the Board had requested in April 2003. County Counsel and the CEO indicated that the tool would be completed for all cases with costs of $200,000 or more, and should be submitted to County Counsel's Litigation Cost Manager and the CEO Risk Manager, in addition to the Board. The tool included a comparison of original budgeted and actual litigation costs, an assessment of the defense team's performance, and a discussion of lessons learned that could be used to reduce future costs.

In our January 29, 2007 report, we noted that County Counsel was not using the Case Evaluation and Plan Analysis tool, and recommended that County Counsel require attorneys to use the tool, or develop another document for post-resolution assessments for settlements and judgments over a specified dollar amount.

During this follow-up, we noted that County Counsel has developed a Post-Trial Analysis Protocol which requires a review of all cases with adverse judgments of more than $300,000, if the judgment either exceeds 150% of County Counsel's maximum estimate, or the judgment equals or exceeds the plaintiff's final settlement demand. However, we noted that this new protocol differs significantly from the tool that was developed in response to the Board's motion. For example, the new protocol applies only to adverse judgments, not settlements. The new protocol also does not require a comparison between original budgeted and actual litigation costs, and results of the review are not reported to the CEO or the Board of Supervisors. In addition, very few cases would require review under this new protocol. For example, only one case met the criteria for a mandatory review in Fiscal Year 2008-09.

Since 2003, County Counsel has developed new procedures designed to control litigation costs, and has improved compliance with the procedures. It may be appropriate to revise the 2003 tool to reflect these changes. However, the number of cases required to be reviewed under the new protocol is so limited that it may not provide the Litigation Cost Manager, the Board of Supervisors or the CEO Risk Manager with information they need to assess the adequacy of County Counsel's efforts to manage litigation costs. For the reasons noted above, we do not believe the new

protocol adequately addresses the Board's motion, and therefore we consider this recommendation to be partially implemented.

County Counsel's attached response indicates they believe the new protocol is sufficient as written and, since County Counsel already provided the protocol to the Board with their October 2009 status report, they do not plan to provide any further transmittal.

Recommendation 30 from the January 29, 2007 Report

County Counsel management update the RMIS program to eliminate automatic updates to RMIS budgets if in-house fees/costs exceed the current budget, and to require supervisory approval of budget changes for both in-house and outside counsel cases that exceed a specified amount.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that RMIS was programmed to automatically increase a case budget if in-house fees exceeded the prior budget. This meant that budgets for in-house cases were increased without management's approval. We also noted that County Counsel staff sometimes increased case budgets in RMIS without the required approvals. Therefore, we recommended that County Counsel change the RMIS program to eliminate automatic budget updates for in-house fees, and to require supervisory approval of changes to RMIS budgets that exceed a specified amount.

During this follow-up review, we determined that County Counsel has eliminated the automatic budget increases for in-house cases, and has developed procedures requiring approval to update RMIS budgets. Therefore, we consider this recommendation to be implemented.

Recommendation 31 from the January 29, 2007 Report

County Counsel management evaluate using RMIS to generate exception reports of in-house cases that have exceeded their budget.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our January 29, 2007 report, we recommended that County Counsel reprogram RMIS to eliminate automatic budget updates for in-house fees, and evaluate using RMIS to generate exception reports of in-house cases that have exceeded their budget.

During this follow-up review, we noted that County Counsel has developed RMIS reports of in-house cases where fees and/or costs exceed 70% of the approved budget, and has started distributing the reports to divisions for review. However, we noted the reports are not capturing all cases. For example, the reports we reviewed showed only in-house attorneys' fees incurred, and did not show in-house costs, even when the

costs were recorded in RMIS. In addition, we reviewed a sample of five cases for which in-house fees exceeded 70% of approved budgets as of the February 2010 report date, and noted four (80%) of the cases did not appear in the report. County Counsel IT staff indicated the four cases did appear on the March 2010 report.

To determine whether the report problems were resolved, we reviewed an additional sample of five cases that should have appeared on the September 2010 report, and noted two (40%) were not on the report. In addition, in-house costs were not included on the report.

County Counsel IT staff indicated there were errors in the query for generating the reports, and that County Counsel has now corrected the errors. However, due to the reporting issues observed in our review, we cannot consider this recommendation to be fully implemented.

County Counsel's attached response acknowledges that they experienced some technical and system issues with capturing all cases, and they believe they have now resolved those issues.

Recommendation 33 from the January 29, 2007 Report

County Counsel management develop standards for staff to account for time spent on cases, and require supervisors to review time cards and/or appropriate RMIS reports to ensure supervising attorneys are charging their time to their cases.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that some supervising attorneys did not appear to be charging time to the cases they supervise. For example, the supervising attorneys did not charge any time to two (17%) of the 12 cases in our sample that were contracted directly with outside counsel. Accurately charging attorney time is essential to identify the full cost of a case.

During this follow-up review, we reviewed how supervising attorneys charged their time on days they attended a roundtable for cases contracted directly with outside counsel. We noted that in four (33%) of the 12 cases reviewed, the attorneys did not charge time to the cases on the day they attended the roundtables. For one of the cases, the attorney indicated his secretary made a mistake when coding his time card in RMIS. For the other three cases, all supervised by the Sheriff Advocacy unit, we noted the supervising attorneys did not charge any time to the cases they supervised.

According to staff we interviewed, attorneys in the Sheriff Advocacy unit never charge time to specific cases. However, we noted that Sheriff Advocacy Unit attorneys perform litigation tasks, including attending roundtables and reviewing outside attorneys' case evaluation plans and budgets. Therefore, they should charge time spent on litigation

tasks to the cases they supervise. In addition, based on our interviews, it appears supervisors throughout the Department do not review the reasonableness of the time attorneys charge to the cases they supervise.

We reviewed an additional three cases that were not handled by the Sheriff Advocacy unit to see how attorneys charged time on days they attended roundtables for cases contracted directly with outside counsel. For two (66%) of the three cases, we noted the attorneys did not charge time to a case on the days they attended the case roundtable, and did not charge any time to one case at all. Therefore, it appears that supervising attorneys outside the Sheriff Advocacy unit are also failing to charge time to cases.

To fully implement this recommendation, County Counsel needs to ensure attorneys charge all time spent overseeing litigation to the cases or to a litigation oversight code, and should require supervisors to review time cards and/or appropriate RMIS reports to ensure supervising attorneys are appropriately charging their time to their cases.

County Counsel's attached response indicates they believe they have made significant progress in accurately capturing time attorneys spend supervising cases contracted directly with outside counsel, and will continue to work with staff in this area.

Recommendation 2 from the November 27, 2006 Outside Attorney Report

Engage in "Trial-Disaster" contingency planning at the roundtables.

Current Status: IMPLEMENTED

The outside attorney, who reviewed a sample of County Counsel cases, indicated that County Counsel attorneys should develop trial contingency plans at roundtables, and document these plans in the roundtable minutes. Contingency planning involves assuming the worst may happen at trial, and having backup plans ready to fall back on. Roundtable attendees should discuss "what if" scenarios and develop backup plans in case evidence, such as key witnesses or records, become unavailable at trial.

In our March 30, 2009 follow-up report, we noted that County Counsel stated they added a field to the new roundtable report form to prompt attorneys to discuss and document trial disaster contingency planning at roundtables. However, for ten (59%) of 17 roundtables we reviewed at that time, attorneys used old report forms that did not contain a field for trial disaster planning or the field was left blank.

During this follow-up review, we noted that, for eight (80%) of ten roundtables reviewed, attorneys used the new roundtable report form, and included comments in the field for trial disaster contingency planning, even if only to indicate that trial-disaster planning was not applicable. While we cannot evaluate the adequacy of County Counsel's contingency planning, the inclusion of a contingency planning field on the roundtable form, and the fact that attorneys have generally been using it indicates contingency

planning is being considered in the roundtable process. Therefore, we consider this recommendation implemented. County Counsel should continue to ensure attorneys use the new form and document trial disaster contingency planning at roundtables as the outside attorney recommended.

Acknowledgment

We discussed our report with County Counsel management. County Counsel's attached response indicates agreement with the majority of our findings. County Counsel's response indicates that it is not feasible for them to review all outside attorneys' invoices, and that they believe their new post-resolution assessment protocol is sufficient.

We thank County Counsel management and staff for their cooperation and assistance during this review. Please call me if you have any questions, or your staff may contact Terri Kasman at (213) 253-0103.

WLW:JLS:RGC:TK

Attachment

c: William T Fujioka, Chief Executive Officer
Andrea Sheridan Ordin, County Counsel
Laurie Milhiser, County Risk Manager
Sachi A. Hamai, Executive Officer
Public Information Office
Audit Committee

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

ANDREA SHERIDAN ORDIN
County Counsel

TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901
E-MAIL
aordin@counsel.lacounty.gov

March 10, 2011

TO: WENDY L. WATANABE
Auditor-Controller

FROM: ANDREA SHERIDAN ORDIN
County Counsel

RE: **Third Follow-up Review of County Counsel Litigation Cost Management**

We provide this response to your office's Third Follow-up Review of our office's Litigation Cost Management Audit. We agree with the majority of your findings and appreciate the acknowledgment that we have made significant progress in implementing the close to 50 wide-ranging and, in many instances, extremely broad, recommendations contained in the initial reports. We take this opportunity to provide comments as to the few recommendations which your most recent review determined to not be fully implemented.

Recommendation 21 from January 29, 2007 Report and Recommendation 6 from the November 27, 2006 Outside Attorney Report – Related to County Counsel attorneys reviewing all outside counsel invoices.

As you know, currently all outside counsel invoices are reviewed by either a Third Party Administrator or our staff, and invoices for Priority 1 cases are reviewed by both. We reiterate that at this time, given budget and staffing demands, it is not feasible for County Counsel staff to review all invoices.

Upon implementation of an E-Billing System and in the context of our ongoing discussion with the County's Third Party Administrators, we will revisit expanding invoice review by our staff. However, currently the Third Party Administrators are tasked with and paid to review invoices and, thus, for our staff to also do so would be duplicative of both effort and resources. We are still committed to reviewing invoices for Priority 1 cases and we will work with staff to reinforce their obligation to timely do so.

Recommendation 23 from the January 29, 2007 Report and Recommendation 9 from the November 27, 2006 Outside Attorney Report – Related to the procurement of an electronic billing system.

The solicitation and contract negotiation process for the E-Billing system has been much more extenuated than contemplated. Over the course of the process, various unforeseen issues arose, both from the technical as well as the procedural perspective. We are pleased, however, to be able to report that negotiations on the contract are complete and we are awaiting final approval from the Chief Information Officer. We fully expect to execute a contract by March 15, and E-Billing implementation will commence immediately thereafter. We anticipate the system will be fully implemented and operational within six months. The Third Party Administrators will be provided use of E-Billing so as to assist in and standardize their review of invoices.

Recommendation 25 from the January 29, 2007 Report – Related to a post-resolution assessment of cases.

Your review identifies several areas in which you believe our office should consider modifying its post-resolution assessment protocol. We address those below:

First, we do not believe it necessary to apply the protocol to settlements as those cases and results are thoroughly vetted within the office, through the Claims Board and, if in excess of $100,000, through the Board. In presenting a settlement to the reviewing body or bodies, an extremely detailed analysis is conducted to explain the reasons for settling and to identify what occurred during the processing of the case dictating or warranting settlement. The entire settlement process is, in essence, a post-resolution assessment process.

As to adverse verdicts, we continue to believe our Post-Trial Analysis Protocol is appropriate. While the mandatory review is limited to the enumerated thresholds, the Protocol provides that in any case where the adverse decision against the County exceeds $500,000, the Panel should consider whether a discretionary review would be appropriate. Thus, we believe that the Protocol, as written, provides for the review of the majority, if not all, cases with a <u>significant</u> unanticipated adverse outcome. Looking back, the adverse monetary verdicts which we have received over the past two years since the Protocol was implemented, we conducted post-trial analysis on four of these cases. The remainder of the cases were not identified for review because (1) the amount of the verdict was less than what we valued the case at (making the verdict a better result than we had forecasted); (2) the verdict was minimal (i.e., less than

$50,000) and, therefore, review clearly was not warranted; or, (3) the case is on appeal.

We believe the protocol fulfills the purpose of assuring that our office is retrospectively looking at cases in which significantly unanticipated results are rendered to identify any case management decision or litigation tactics that might have contributed to the adverse outcome, or to the misjudgment of its value. The only change which we may consider is to apply the Protocol to cases which are on appeal rather than wait until the appeal is finalized. There are arguments for and against this approach which need to be considered before implementing such a change.

Moreover, you state that the Protocol does not require a comparison between the original litigation plan and the final outcome. We can only interpret this statement to mean that you are concerned that the Protocol does not compare the original budget and indemnity reserve with the final outcome, as that would be the logical comparison. With that rephrasing, we respectfully disagree with the statement. The trigger for initiating the Protocol, whether it be a mandatory or discretionary review, is that the verdict significantly exceeds the projected indemnity (e.g., indicating that we may have "undervalued" the case or something may have occurred in the course of the litigation which altered the case value). Thus, by default, we are comparing the indemnity reserve with the verdict. In the course of the review, we attempt to assess why our value of the case was markedly different than that determined by the court or jury. We assess both internal factors (e.g., strategies that may better predict or avoid such a differing result in future cases) and external factors (e.g., adverse court rulings or hostile juries). We review the "litigation plan" both as to strategies which were effective and those which may not have been.

As you note, we provided the Protocol to the Board with our October 2009 status report. As we do not believe it is necessary for the Board to formally approve this Protocol (i.e., through a Board action) as it is a component of our internal litigation protocols, we do not believe any further transmittal is required.

Recommendation 31 from the January 29, 2007 Report – Evaluate using RMIS to generate exception reports of in-house cases that have exceeded their budget.

As indicated in your report, we have developed RMIS reports of in-house cases where fees and/or costs exceed 70 percent of the approved budget. As a preliminary matter, we do not agree that these reports should be designated as Exception Reports as they are not reports of cases requiring "exception" from

the established budget. Rather, these are informational reports for staff to use to assist in identifying both cases that may need to be reviewed to determine if their budgets are appropriate as well as those which do not warrant further review as it is anticipated that the matter, in fact, will be resolved within budget. The cases identified are not necessarily out of scope of the budget but rather should be reviewed to determine if a budget amendment is necessary and if so, that the amendment is done prospectively rather than retrospectively. Thus, cases that are properly reserved will appear on this report.

With that clarification, we acknowledge that we experienced some technical and system issues with capturing all cases. We believe, as you indicate, that we have resolved those issues at this time.

Recommendation 33 from the January 29, 2007 Report – Related to standards for supervising attorneys to account for time spent on cases.

We believe we have made significant progress in accurately capturing this time as is indicated by the fact that the recorded time spent supervising outside counsel has increased over the past year. However, we will continue to work with staff in this area.

Thank you and your staff for your attention to this review. Please do not hesitate to contact me or Chief Deputy County Counsel Leela Kapur at (213) 974-1807 should you have any questions or wish to discuss these issues further.

ASO:LAK:vc