



COUNTY OF LOS ANGELES
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MARY C. WICKHAM
County Counsel

January 29, 2020

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 2018-19**

Dear Supervisors:

Enclosed is the County Counsel Annual Litigation Cost Report ("Cost Report") for Fiscal Year 2018-19. 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

ADRIENNE M. BYERS
Litigation Cost Manager
Executive Office

APPROVED AND RELEASED:

MARY C. WICKHAM
County Counsel

AMB:ds

Enclosure

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2018-2019**

I. Overview

Annual litigation expenses for Fiscal Year ("FY") 2018-19 totaled **\$148.5 million**,¹ up nine percent from the \$135.7 million spent in FY 2017-18. This hike was largely due to a \$17.7 million increase in judgments and settlements compared to FY 2017-18. The \$148.5 million paid in FY 2018-19 consists of \$91.5 million in judgments and settlements and \$57 million in attorneys' fees and costs.

II. Judgments and Settlements

Of the \$148.5 million the County expended in litigation costs in FY 2018-19, **\$91.5 million** was paid to satisfy 16 judgments and to settle 240 lawsuits. This marks a 24 percent increase over the \$73.7 million the County expended on judgments and settlements in FY 2017-18.

Judgments

The County paid **\$31.1 million** in judgments in FY 2018-19, up 147 percent from the \$12.6 million spent in FY 2017-18. The \$31.1 million was comprised of 16 judgments, with nine against the Sheriff's Department (\$16,387,299); two against the Department of Children and Family Services (\$11,512,272); one against the Department of Public Social Services (\$1,810,888); two against the Department of Parks and Recreation (\$713,262); one against the Department of Medical Examiner-Coroner (\$664,629); and one against the Chief Executive Office (\$11,348). The five most expensive judgments accounted for 84 percent of the \$31.1 million spent on judgments in FY 2018-19.

The most costly judgment in FY 2018-19 involved the Sheriff's Department (*Rodriguez* — \$7 million) and arose from a 2008 riot at Men's Central Jail during which deputies used force to extract inmates from their cells, causing injuries. In 2013, a jury awarded the Plaintiffs \$740,000 in compensatory damages and \$210,000 in punitive damages, plus \$5,402,972 in attorneys' fees and costs. The County appealed to the Ninth Circuit and lost in 2018. The County subsequently settled the Plaintiffs' attorney claim for appellate fees and costs for \$825,000. The District Court issued an amended judgment in 2018, which included the award of additional appellate attorneys' fees and costs. In FY 2018-19, the County paid \$7,080,452, which included payment of the compensatory damages, non-appellate fees and costs awarded by the trial court, the appellate fees and cost settlement, and interest on the judgment.

¹ While it is worth noting that the Contract Cities Liability Trust Fund and special districts reimbursed the County \$14.7 million of its FY 2018-19 litigation expenses, this report covers the total amount paid by the County in litigation, which is \$148.5 million.

The second costliest judgment (*Duval* — \$6 million) involved the Department of Children and Family Services. In *Duval*, the Plaintiff's 15-month-old son was removed from her custody for neglect, but without a warrant or exigent circumstances. After unsuccessful attempts to regain custody, the Plaintiffs filed suit in State court in September 2011. At trial in 2016, a jury awarded \$3,105,000 in damages, \$2,970,246 in attorneys' fees, and \$190,163 in interest for a total of \$6,265,409. Both sides appealed, but before a decision on the appeal was rendered, the lawsuit was settled for \$6 million in exchange for setting aside the judgment and dismissing the case.

The third costliest judgment in FY 2018-19 involved the Sheriff's Department (*Mendez* — \$5.8 million), and arose from a 2010 incident when deputies shot two residents while searching for an armed felon in a row of woodsheds in the back of a single-family residence in Lancaster. The Plaintiffs sued for civil rights violations based on unlawful search and seizure and use of excessive force. After a bench trial, the judge denied the excessive force claim but found that the deputies violated the Plaintiffs' constitutional rights by entering the shed where Plaintiffs resided without a warrant or announcing their presence. The court awarded the Plaintiffs \$5,771,429, including attorneys' fees. The County appealed to the Ninth Circuit, which affirmed the ruling, then appealed to the U.S. Supreme Court, which ruled for the County and remanded the lawsuit back to the Ninth Circuit. In 2018, the Ninth Circuit issued its opinion concluding that the Plaintiffs' injuries were caused by the deputies' unconstitutional, warrantless entry (not excessive force) and that the trial court's decision could be affirmed under either a constitutional theory or a negligence theory. The County again appealed to the Supreme Court, which declined to hear the case. Ultimately, the County paid the \$5,771,428 judgment, plus interest and attorneys' fees on appeal in FY 2018-19.

The fourth costliest judgment in FY 2018-19 (*F.M.* — \$5.5 million) involved the Department of Children and Family Services. In *F.M.*, the minor, through her guardian, alleged that the Department failed to properly investigate referrals and failed to detect and prevent the abuse of F.M. while she was in her mother's custody. The abuse ended when the Plaintiff, age nine, reported the abuse to her father. Four men and the minor's mother pleaded guilty to crimes stemming from the abuse. In July 2018, a jury awarded damages against the County amounting to \$20.65 million, but the County won post-trial motions that reduced the amount to \$10,525,000, payable in installments. The County paid the first installment of \$5.5 million in FY 2018-19.

The fifth costliest judgment (*Housing Works* — \$1.8 million) involved the Department of Public Social Services. The *Housing Works* Plaintiffs, comprised of a coalition of advocacy groups, alleged violations of the Americans with Disabilities Act in the Department's administration of the General Relief program. After the Department instituted certain policy and procedure changes, the Plaintiffs dismissed the lawsuit in November 2017 on the ground that they had achieved the primary goals of the lawsuit. The court awarded the Plaintiffs \$1.8 million in attorneys' fees and costs, substantially less than the \$6 million the Plaintiffs sought. The County paid the \$1.8 million judgment for attorneys' fees and costs in FY 2018-19.

Settlements

The County paid **\$60.4 million** for 240 settlements this year — a decrease of one percent compared to FY 2017-18. Of the 240 settlements, nine cost the County \$2 million or more each. The cost of these nine settlements totaled \$33.7 million and accounted for 56 percent of the total settlement expenses in FY 2018-19. The nine settlements involved two different departments (Sheriff's Department — \$30.8 million and Department of Mental Health — \$2.9 million), and included two different case types (Law Enforcement — \$27.8 million and Medical Malpractice \$5.9 million).

The most expensive settlement arose from a Law Enforcement wrongful incarceration lawsuit (*O'Connell* — \$7 million). Plaintiff O'Connell's conviction for a 1984 murder was based in large part on the testimony of a single eyewitness. Twenty-five years after the conviction, the eyewitness recanted his testimony. Mr. O'Connell's conviction was subsequently overturned and he was released after spending 27 years in prison. He sued the County, and the lawsuit was subsequently settled for \$15 million, to be paid over two consecutive fiscal years, commencing in FY 2017-18 with a payment of \$8 million. The remaining \$7 million was paid in FY 2018-19.

The second most expensive settlement in FY 2018-19 (*Garza* — \$5.9 million) involved Medical Malpractice failure-to-diagnose allegations against the Department of Mental Health and the Sheriff's Department. The Plaintiffs claimed that Sheriff's deputies and Mental Health medical staff failed to properly treat and monitor him during his incarceration, which enabled him to injure himself and suffer permanent physical injuries.

Six of the nine next most expensive settlements in FY 2018-19 stemmed from Law Enforcement excessive-force shooting fatalities involving the Sheriff's Department: *Bowers/C.M.* — \$4.6 million; *V.W.* — \$3.75 million; *Hernandez* — \$2.7 million; *Taylor* — \$2.6 million; *Martinez* — \$2.5 million; and *Mendoza* — \$2.4 million. These six settlements cost the Sheriff's Department \$18.55 million and accounted for 31 percent of all settlements paid by the County in FY 2018-19.

The final most expensive settlement exceeding \$2 million (*Matthews* — \$2.25 million) involved allegations of sexual assault committed against two detainees at the Century Regional Detention Facility by a Sheriff's deputy. The deputy subsequently pleaded no contest to eight counts of sexual activity with detainees at the facility and was sentenced to two years in State prison.

III. Fees and Costs

The County paid **\$57 million** for fees and costs in FY 2018-19, a decrease of \$5 million, or eight percent, from the \$62 million the County paid in FY 2017-18. Of the \$57 million, \$40.5 million was paid to contract counsel firms, and \$16.5 million was billed by County Counsel attorneys to various County departments engaged in litigation.

Contract Counsel

In FY 2018-19, contract counsel fees and costs totaled **\$40.5 million**, a decrease of 14 percent from \$47.4 million paid in FY 2017-18.

Contract counsel fees fell \$6.6 million, or 16 percent, from the \$40.5 million paid in FY 2017-18 to **\$33.9 million** in FY 2018-19.

Contract counsel costs also declined, dropping \$300,000, or four percent, from the \$6.9 million paid in FY 2017-18 to **\$6.6 million** in FY 2018-19.

County Counsel

County Counsel fees and costs increased to **\$16.5 million** in FY 2018-19 — up from \$14.6 million in FY 2017-18. County Counsel costs rose more than fees, and resulted in an overall increase of \$1.9 million.

County Counsel fees rose to **\$12.5 million** in FY 2018-19, up \$680,000, or six percent, from \$11.8 million in FY 2017-18. County Counsel costs rose by \$1.2 million, or 43 percent in FY 2018-19, up from \$2.8 million in FY 2017-18 to **\$4 million** this fiscal year.

IV. Department Litigation Expenses

TOP TEN DEPARTMENTS	
FY 2018-19	
Sheriff's Department	\$81,485,430
Children and Family Services	\$17,101,150
Public Works	\$7,623,038
Health Services	\$6,771,345
Mental Health	\$4,418,657
Public Social Services	\$4,119,795
Fire	\$3,428,562
Probation	\$3,379,870
Parks and Recreation	\$2,442,951
Regional Planning	\$1,771,061

V. Contract Cities and Special Districts

Of the \$148.5 million reported in annual litigation expenses in FY 2018-19, the Contract Cities Liability Trust Fund ("Fund") and special districts reimbursed the County **\$14.7 million**.

A. *Contract Cities*

In FY 2018-19, the Fund reimbursed **\$12.2 million** of the \$14.7 million. Of the \$12.2 million paid by the Fund, \$12.1 million was paid for judgments, settlements, fees and costs arising from the conduct of deputies contractually assigned to various cities throughout the County by the Sheriff's Department. The remaining \$108,000 was for judgments, settlements, fees and costs associated with the Department of Public Works.

B. *Special Districts: Flood Control, Open Space, Sewer & Drain and Waterworks*

The County was also reimbursed for litigation expenses paid on behalf of its special districts, which have their own funding sources. In FY 2018-19, the special districts (Flood Control — \$1.3 million, Open Space — \$76,000, Sewer & Drain — \$600,000 and Waterworks — \$500,000) reimbursed the County a total of \$2.5 million.

VI. Dismissals

In FY 2018-19, the County disposed of 241 lawsuits without payment of any settlements, judgments, or attorneys' fees to opposing parties and without any County liability. Of these 241 dismissals, 187, or 78 percent, resulted from voluntary dismissals by Plaintiffs and/or their attorneys (on nearly every occasion prompted by a dispositive motion or other strategic action taken by the County). Fifty-four of the 241 dismissals, or 22 percent, were involuntary to the extent that they were dismissals effectuated by the court because of successful County motions, including demurrers, motions to dismiss, motions for summary judgment, and discovery motions resulting in terminating sanctions.

VII. New Lawsuits

The number of new lawsuits in which the County was served rose seven percent, from 714 in FY 2017-18 to 762 in FY 2018-19. This was the highest number of new lawsuits since FY 15-16. Among all departments, the Sheriff's Department was sued more often than any other County department in FY 2018-19. The Sheriff's Department was served with 194 lawsuits in FY 2018-19, down from 196 in FY 2017-18. The Department of Public Works was a distant second, with 47 new lawsuits in FY 2018-19, down from 54 in FY 2017-18. Closely following the Department of Public Works was the Department of Children and Family Services, with 44 new lawsuits, up from 40 in FY 2017-18, and the Department of Health Services, with 42 new lawsuits, unchanged from FY 2017-18. Nine additional departments were named in 10 or more new lawsuits in FY 2018-19: Fire, 22, up

from 11; Treasurer and Tax Collector, 18, down from 19; Probation, 17, up from 13; District Attorney, 14, down from 16; Assessor, 12, up from two; Internal Services, 12, up from 11; Mental Health, 12, up from eight; Public Social Services, 12, up from 10; and Parks & Recreation, 11, down from 13. All remaining County departments were either not sued, or were named in fewer than 10 lawsuits in FY 2018-19.

The County was also named in 244 Non-Jurisdictional lawsuits. These lawsuits consist of allegations that do not involve the County, County officers or employees acting in the scope of their employment, or County property.

The new lawsuits cover 12 case types: Auto Liability (134), Breach of Contract (12), Dangerous Condition (237), Election (4), Employment (81), Environmental (7), Foster Care (26), General Liability (47), Law Enforcement (137), Medical Malpractice (31), Real Property (25), and Tax (21).

VIII. Trials, Writs and Appeals

A. Trials

The County prevailed in nine of the 14 trials in FY 2018-19, a success rate of 64 percent, higher than the four-year average success rate of 56 percent. Of the 14 lawsuits tried in FY 2018-19, the Sheriff's Department had the most, with eight lawsuits tried. The Sheriff's Department won five of the eight lawsuits tried. The County prevailed in five Law Enforcement, one Medical Malpractice and three General Liability trials. Of the five losses, a failure to protect lawsuit involving the Department of Children and Family Services (*F.M.*) resulted in the largest verdict this year. In *F.M.*, the Plaintiffs alleged the Department failed to properly investigate referrals and failed to detect and prevent *F.M.*'s abuse while in her mother's custody. Plaintiff was awarded \$10.52 million.

B. Writs

A petition for a writ of mandate can be filed to: (1) compel an officer or agency to perform a legal duty; or (2) to obtain court review of an administrative decision made by an officer or body. The County was named as a respondent (like a defendant in a lawsuit) in three writs filed in FY 2018-19, down from seven in FY 2017-18.

The County successfully obtained a dismissal of one writ involving a Public Records Act request regarding an autopsy performed by the Department of Medical Examiner-Coroner. The County also prevailed on a writ stemming from an administrative determination that the petitioner's dogs, which had previously injured multiple people and other dogs, met the definition of "vicious" under State law. In the third writ, adverse parties prevailed in a petition which sought to correct a backlog in the processing of Medi-Cal renewal packets. Although the Department of Public Social Services had already resolved the backlog, the court entered a judgment in favor of the petitioners in this writ.

C. *Appeals*

The County won 31 of the 35 appeals to which it was a party this year. Thirty-two of the appeals were initiated by adverse parties and three were initiated by the County. One notable appellate victory this year was *Matrix Oil Corporation*. In that litigation, the County Regional Park and Open Space District challenged a settlement between the Mountains Recreation and Conservation Authority, the City of Whittier, and Matrix Oil Corporation regarding a proposed oil drilling project on land acquired by Whittier with Proposition A funds. Ruling in the County's favor, the Court of Appeal held that any proceeds from the proposed project on land acquired with County Proposition A taxpayer funds must be spent on parks and open space, consistent with the intent of the voters.

IX. Recoveries

The County recovered **\$52.8 million** through its litigation efforts in 35 lawsuits in FY 2018-19. A noteworthy recovery stemmed from the October 2015, natural gas leak in Porter Ranch, which forced thousands of residents to evacuate their homes. The Southern California Gas Company paid the County \$51,782,241 towards funding a health study on the long-term effects of exposure to natural gas; lead-based paint abatement in Boyle Heights and Maywood; purchase of up to three new electric Breathmobile mobile asthma clinics and related infrastructure; and other related fees and costs.