COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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November 1, 2007

TO: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley
Auditor-Controller

SUBJECT: **FOLLOW-UP REVIEW OF COUNTY COUNSEL LITIGATION COST MANAGEMENT – RESPONSE TO COUNTY COUNSEL'S RESPONSE**

On October 5, 2007, we issued our report on County Counsel's progress in implementing ten recommendations from our January 29, 2007 report. We reviewed recommendations that County Counsel indicated in their March 23, 2007 response, and in subsequent communications, that they had implemented. We did not review the remaining 26 recommendations at this time. We will follow-up on County Counsel's compliance with these recommendations in subsequent reviews.

Of the ten recommendations reviewed, we noted County Counsel had fully implemented five and substantially or partially implemented the other five recommendations. County Counsel's response dated October 12, 2007 indicates that County Counsel believes they have fully implemented all ten recommendations. On October 16, 2007, the Board directed the Auditor-Controller to report on recommendations for which County Counsel disagrees with the reported implementation status.

It should be noted that most of our recommendation follow-up fieldwork was completed prior to August 2007. Due to the number of significant steps County Counsel has taken to implement the recommendations, we believe that the five recommendations which we determined have not been fully implemented will require minimum effort from County Counsel to achieve an Implemented status. It is conceivable that subsequent to the end of our fieldwork, most of these five recommendations are now fully implemented. We

will again review the status of these five recommendations within the next six months. Following is a discussion on these recommendations.

Recommendation 1 from the January 29, 2007 Report

County Counsel management monitor to ensure initial CEPs are completed in a timely manner, include all required information, and are properly approved.

Current Status: SUBSTANTIALLY IMPLEMENTED

County Counsel's Response

County Counsel's response indicates that they believe our conclusion that the recommendation is only substantially implemented is based, in part, on a new recommendation that we made in our follow-up report, not on the original recommendation which dealt with monitoring Case Evaluation Plans (CEPs) to ensure the CEPs were completed timely, included all required information, and were properly approved. County Counsel also stated that our conclusion is based on a former monitoring process that has since been replaced, and that they gave us evidence that the CEP we say was not signed was approved in a RMIS note.

County Counsel also states that they are using multiple methods to monitor CEPs, including: 1) using a revised spreadsheet to log-in and track CEPs; 2) maintaining and reviewing duplicate monitoring files; 3) sending "reminder e-mails" to attorneys, Third Party Administrators (TPA) and outside counsel in advance of due dates and "follow-up" e-mails if any requirements have not been met; 4) including CEP information in roundtable scheduling notices; 5) inputting the CEP data into RMIS; and, 6) scanning and attaching CEPs into RMIS. County Counsel states these procedures demonstrate that they have fully complied with the recommendation to monitor CEP compliance.

Auditor's Response

We recognize that County Counsel made a significant effort to implement this recommendation and agree the procedures or processes they implemented contributed to their significant improvement in monitoring CEPs. That is why we classified this recommendation as Substantially Implemented.

However, County Counsel's response does not address the key reason the recommendation was not classified as Implemented. Our conclusion that the recommendation was Substantially Implemented was not related to the new recommendation regarding approval of CEPs for cases handled in-house as indicated by County Counsel on their response. Our conclusion was based on audit test results

which showed untimely CEPs, undocumented CEP approval and inconsistent CEP monitoring at the time of our fieldwork as described below:

- Two CEPs were submitted late (i.e., an average of 29 days beyond the due dates, which were 75 days and 90 days from the date assigned).

- One CEP was not signed by the TPA to indicate approval. The RMIS note to which County Counsel's response refers indicates the TPA received the CEP and increased case reserves, but does not indicate approval. The TPA's contract states that the TPA must submit approved CEPs to County Counsel, and the TPA's procedure manual indicates that the TPA should sign the CEP to indicate approval. In fact, we noted in a few instances that County Counsel is encouraging and reminding staff to obtain approving signatures on CEPs, including CEPs approved by TPAs.

- The monitoring system in place at the time of our review was not consistently used. We noted and considered the various monitoring mechanisms that County Counsel lists in their response. However, while these are positive steps, not all these steps were being consistently performed. The spreadsheet that County Counsel uses to track CEPs was not consistently updated and was not being used to follow up on late or missing CEPs. We noted County Counsel is sending follow-up emails and reminding staff of late or missing CEPs. These reminders were sent in July and August 2007, after we brought this issue to their attention.

To ensure full implementation of this recommendation, County Counsel management needs to ensure all their multiple monitoring efforts are consistently applied, including submitting approved CEPs timely.

Recommendation 7 from the January 29, 2007 Report

County Counsel management ensure that cost-benefit analyses are completed and documented in CEPs and roundtable discussions.

Current Status: PARTIALLY IMPLEMENTED

County Counsel's Response

County Counsel states that the elements of a cost-benefit analysis are broader than our report indicates, and indicates we are substituting our judgment for counsel's legal opinion of appropriate litigation strategy. County Counsel also indicates they disagree that CEPs lack the required information just because the attorneys preparing them wrote that it was "premature to assess" liability or the information requested was "unknown at this time."

Auditor's Response

We did not evaluate proposed litigation strategy, nor did we express any opinion on the appropriateness of the decision to defend or settle a case. Our issue was strictly one of documentation.

We agree that there are numerous factors that need to be considered in formulating litigation strategy. Our reason for classifying this recommendation as Partially Implemented is that the case files (including CEPs and roundtable notes) do not always explain how the decision to defend or settle a case was reached. In their response, County Counsel gives specific details about why a litigation strategy was appropriate. However, these details were not included in the CEPs and/or roundtable notes we reviewed.

In addition, we did not find fault just because attorneys indicated that it was premature to assess certain information or that the information was unknown at the time the CEP was prepared. The cases we cited as exceptions were those where cost information was available but not included in the CEP or roundtable notes and those where cost information was included in the CEP but there was no evidence showing how County Counsel arrived at the decision to defend or settle the case based on the cost information provided. This is not to say cost-benefit analyses were not considered, but there was no documentation or evidence on how the decision was reached.

County Counsel can quickly move this recommendation to Implemented status by better documenting cost-benefit information and conclusions reached.

Recommendation 2 from the October 5, 2007 report

County Counsel revise their procedures to require attorneys to prepare/update a cost-benefit analysis for each case and review these analyses at the quarterly roundtables or similar forums.

County Counsel's Response

County Counsel disagrees with our new recommendation. They say we are requiring them to have substantive (or case specific) quarterly roundtables for all cases. County Counsel's response also states that the outside consultant's report recommends that cost-benefit analyses are best done closer to a mediation date or about two months before trial.

Auditor's Response

The intent of our recommendation is to ensure all cases have cost-benefit analyses prepared/updated and that the analyses are reviewed on a regular basis. The fact that we recommend that County Counsel needs to review these cost-benefit analyses at the "quarterly roundtables or similar forums" indicates that it is up to County Counsel management's discretion to determine if they will do this through quarterly roundtables or another mechanism.

During our follow-up, we noted that cost-benefit analyses may not be performed or updated for every case. For example, cost benefit analyses are required in CEPs, which are prepared early in a case and whenever legal fees and costs exceed prior estimates, and at six-month roundtables. However, six-month roundtables are only required if a case is initially budgeted for $100,000. As a result, if the initial CEP is prepared before the cost benefit information is known, and the case is budgeted below $100,000, a cost benefit analysis may not be prepared until (or if) a revised CEP is prepared. In addition, County Counsel indicated that it is often too early to perform cost-benefit analyses even at six-month roundtables. If it is too early at both the initial CEP and the six-month roundtable, there is a risk that a cost-benefit analysis may never be performed. Also, because new information may change the estimated value of the case, cost-benefit analyses should be periodically updated throughout the life of a case.

Our recommendation was not based on Mr. Moscaret's report, but is based on the need to ensure cost-benefit analyses are not overlooked. Counsel's response appears to be referring to Mr. Moscaret's recommendation relating to roundtables for cases with potential costs exceeding $500,000, where he recommends holding at least three roundtables, one in the first six months of the case, one six months prior to trial (prior to final mediation), and one two months before trial. The portion of Mr. Moscaret's report we referred to in our October 5, 2007 report states that Counsel should regularly monitor case valuation and rising legal fees in the case, and suggests that it be done every three months.

Recommendation 11 from the January 29, 2007 Report

County Counsel management clearly reemphasize that required roundtables must be held, and continuously monitor for compliance, using a RMIS exception report or another tracking system.

Current Status: SUBSTANTIALLY IMPLEMENTED

County Counsel's Response

County Counsel's response indicates that the inconsistencies we noted in the tracking spreadsheet do not indicate that the spreadsheet was an ineffective monitoring tool. The absence of dates for two TPA cases is not relevant because County Counsel says they are not responsible for tracking TPA cases. County Counsel also states that it was appropriate to leave the scheduled date for a roundtable on the spreadsheet even though the roundtable had not taken place, because a new roundtable had not yet been scheduled. County Counsel stated that the two cases we cited as requiring six-month roundtables, but for which no roundtable was held and no follow-up was indicated on the spreadsheet, were outside our sample and did not require six-month roundtables.

Auditor's Response

We reported the recommendation as Substantially Implemented because the monitoring system in place at the time of our review was not consistently used. Specifically, the spreadsheet used to monitor roundtable scheduling was not complete, nor was it used as a monitoring mechanism to ensure roundtables were actually held. The missing dates for two TPA case roundtables is an inconsistency because County Counsel records dates for both TPA and non-TPA cases on the spreadsheet. In addition, not updating the spreadsheet to indicate that a roundtable had been cancelled and needed to be rescheduled could have resulted in the roundtable being overlooked. For the case we noted, the roundtable was scheduled on April 18 and cancelled the next day. However, as of May 30, six weeks after the roundtable had been cancelled, the spreadsheet still showed the roundtable was scheduled for May 16, and there was no indication on the spreadsheet that the roundtable had been cancelled or needed to be rescheduled. According to County Counsel, they rescheduled the roundtable on May 31, which was after we brought this issue to their attention.

We reviewed a sample of 30 cases from the spreadsheet to test the adequacy of the spreadsheet as a monitoring tool, and noted two of the 30 cases appeared to have met the monetary requirement for six-month roundtables (i.e., estimated total costs to the County exceeded $100,000) six months into the case, but no roundtable had been scheduled. For example, for one of the two cases, total in-house and outside budgeted fees and costs per the CEPs, prepared three months into the case, totaled $120,000.

Recommendation 32 from the January 29, 2007 Report

County Counsel management immediately review all RMIS user access profiles to ensure access is restricted to each user's duties, and review all user access at least annually, whenever employees duties change, or when an employee leaves the Department.

Current Status: PARTIALLY IMPLEMENTED

County Counsel's Response

County Counsel's response indicates that because they reviewed RMIS access for attorneys and their support staff, they implemented this recommendation. County Counsel also states that it appears we concluded the recommendation was only partially implemented because we added new recommendations.

In addition, County Counsel states that they are unable to comply with our new recommendation because RMIS does not provide for different dollar levels of authority for adjusting case budgets.

Auditor's Response

Our original recommendation states that County Counsel should review all RMIS user access profiles. We did not limit the recommendation to legal staff, and our conclusion that the recommendation was Partially Implemented was not related to the new recommendations, but to point out that County Counsel had not reviewed all RMIS user access profiles including financial personnel as it was intended on our original recommendation. It is apparent that County Counsel misunderstood our original recommendation. This issue can be quickly remedied by County Counsel reviewing all RMIS user access profiles including non legal staff.

We made two additional recommendations to address issues that came to our attention during our follow-up review. For example, we noted ten employees appeared to have the conflicting functions of entering and approving financial transactions. Some of these employees could also increase case budgets and issue checks. We also noted that 89 employees have authority to significantly increase case budgets. Therefore, we added a recommendation that County Counsel should review RMIS access profiles of financial personnel, ensure that adequate separation of duties is maintained, and consider limiting the number of personnel who are able to increase case budgets above a specific amount. We also recommended that County Counsel require written requests to add or update RMIS user profiles.

Although RMIS is not designed to assign differing limits for increasing budgets within one user profile, County Counsel could readily create new user profiles with differing limits. For example, County Counsel could create new user profiles such as County Counsel Update A, which would allow users to increase budgets up to $100,000; County Counsel Update B, which would allow users to increase budgets up to $500,000; and County Counsel Update C, which would allow users to increase budgets up to $1 million.

With a minimum effort County Counsel could achieve an Implemented status for this recommendation.

Recommendation 34 from the January 29, 2007 Report

County Counsel management include in-house costs for supervising TPA cases in the in-house fees reported in the Quarterly Litigation Reports.

Current Status: PARTIALLY IMPLEMENTED

County Counsel's Response

County Counsel states that they created new RMIS billing codes for time spent overseeing litigation, and these codes are classified as litigation and are included in the Quarterly Litigation Reports.

Auditor's Response

Through our testwork, we confirmed that in-house fees reported in the Quarterly Litigation Reports for the second and third quarters of FY 2006-07 did not include in-house fees for overseeing TPA cases. This was confirmed with the County Counsel senior manager responsible for preparing the Quarterly Litigation Reports.

County Counsel told us they are planning to require attorneys to charge time spent attending roundtables for TPA cases to a RMIS code that is reported as litigation in the Quarterly Litigation Reports. However, County Counsel had not started doing this at the time of our review.

Summary/Acknowledgement

We again recognize that County Counsel has taken a number of significant steps to implement the recommendations from our January 2007 report. The five recommendations that have not been implemented as of the time of our follow up review will require minimum effort from County Counsel to achieve an Implemented status. We will again review the status of these five recommendations within the next six months.

County Counsel's response (attached) indicates that they are confident they will be able to document full implementation of these recommendations in our next review and that they will continue their efforts until all recommendations are fully implemented.

Please call me if you have any questions, or your staff may contact Terri Kasman at (626) 293-1121.

JTM:MMO:JLS:TK

Attachment

c: William T Fujioka, Chief Executive Officer
Raymond G. Fortner, Jr., County Counsel
Rocky Armfield, County Risk Manager
Sachi A. Hamai, Executive Officer
Public Information Office
Audit Committee

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RAYMOND G. FORTNER, JR.
County Counsel

November 1, 2007

J. Tyler McCauley, Auditor-Controller
525 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: October 5, 2007 Auditor-Controller Report
County Counsel Implementation of
Litigation Management Recommendations

Dear Mr. McCauley:

Thank you for the opportunity to review the issues with you that have arisen regarding your assessment of the extent of my office's implementation of certain recommendations as discussed in your reports of January 29, 2007, and October 5, 2007, and my response dated October 12, 2007.

From this most recent review and your report of November 1, 2007, I believe that the differences in our views regarding those items judged to be partially or substantially implemented actually consist of disagreements over the characterization of completion efforts, rather than substantive factual differences. Much relates to timing issues and the dates of the relevant field work the report speaks to. Previously I had not fully appreciated that the report speaks to a finite period in the past, and not to the present, nor that in your judgment full implementation could be reached with relatively minimum effort which may already have occurred. I am confident that we will be able to document full current implementation of these recommendations in your next review.

I appreciate the efforts our respective staffs have expended on these recommendations and their implementation. My staff and I will continue our efforts to the end that all are fully implemented, and work with your staff to bring the audit to a satisfactory close.

Very truly yours,

RAYMOND G. FORTNER, JR.
County Counsel

RGF:vec

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