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ANDREA SHERIDAN ORDIN
County Counsel

November 23, 2010

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 Report –
Fiscal Year 2009-2010**

Dear Supervisors:

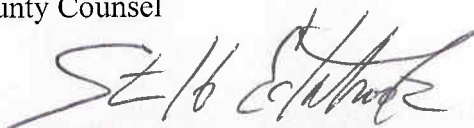
On November 18, 2010, under separate cover, the Annual Litigation Report for Fiscal Year 2009-2010 ("FY 2009-2010"), was submitted to your Board. The Annual Litigation Report provided a comprehensive, confidential discussion regarding litigation expenditures for FY 2009-2010.

The enclosed County Counsel Annual Litigation Cost Report ("Cost Report") provides a brief summary of the FY 2009-2010 Annual Litigation Report. The Cost Report is a public document and will be posted on the County Counsel website.

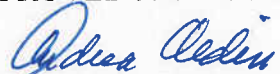
If you have any questions regarding this report, please contact me at (213) 974-1762.

Very truly yours,

ANDREA SHERIDAN ORDIN
County Counsel

By 
STEVEN H. ESTABROOK
Litigation Cost Manager

APPROVED AND RELEASED:


ANDREA SHERIDAN ORDIN
County Counsel

SHE:mag
Enclosure

c: William T Fujioka, Chief Executive Officer
Sachi A. Hamai, Executive Officer, Board of Supervisors
Wendy L. Watanabe, Auditor-Controller

**COUNTY COUNSEL ANNUAL
LITIGATION COST REPORT – FISCAL YEAR 2009-2010**

I. Overview

The total Annual Litigation Expenses for Fiscal Year 2009-2010 (FY 2009-10) were down **\$10 million** as compared to last fiscal year (from \$104 million to \$94 million). This 10 percent decrease was the result of a reduction in the payment of settlements from \$40.2 million to \$27.3 million (234 settlements), and was achieved while holding the line on overall attorney fees (Contract Counsel and County Counsel), which increased by only 1.6 percent this fiscal year. Although overall attorney fees were relatively flat, litigation costs were up \$1.6 million over last fiscal year. Marking the end of three consecutive years of gains, new cases this fiscal year were at a three-year low and were down 17 percent as compared to last year. The County obtained 183 dismissals without any County liability. It tried 22 cases this year – winning 14, and received favorable decisions in 96 percent of its 47 appellate cases. Finally, the County recovered \$1,642,000 through its litigation efforts in FY 2009-10.

II. Payment of Judgments and Settlements

The amount paid for Judgments and Settlements in FY 2009-10 was **\$42,307,834**. This was 22 percent less than was paid last fiscal year (\$54.55 million) and seven percent less than was paid in Fiscal Year 2007-2008 (\$45.34 million). Of the \$42.3 million paid this fiscal year, \$15 million was paid in judgments and \$27.3 million was paid in settlements.

The \$15 million paid in judgments was 4.5 percent more than was paid last fiscal year, and three percent more than was paid in Fiscal Year 2007-2008. The two largest judgments paid this fiscal year were *continuing* County obligations involving the Sheriff's Department. The first involved a 1993 Consent Decree (*Bouman* - \$4.93 million), and the second was the final of three annual payments resulting from a 2006 verdict (*Marroquin* - \$5.25 million). *Bouman* is a class action gender discrimination lawsuit and *Marroquin* was a traffic collision involving a Sheriff's Deputy. These two cases accounted for two-thirds of the total judgments paid this fiscal year. The bulk of the remaining payments involved a \$3.37 million judgment entered in 2005 against the County in a Sheriff's Department shooting case (*Mitchell*) and a \$636,451 judgment entered in 2007 in a County jail excessive force case (*Jimenez*).

In FY 2009-10, the County also paid 234 settlements totaling \$27.3 million. Settlements this year were down 32 percent as compared to last year, and were down 11 percent as compared to Fiscal Year 2007-2008. Six of the settlements exceeded \$1 million. These included: *Mancinas* (\$5.98 million – brain injury sustained

by infant during delivery at Olive View Medical Center), *Griffith* (\$2.8 million - young woman seriously injured in vehicular collision with an employee of Agricultural Weights and Measures), *Brian S.* (\$1.55 million - seven year-old foster child witnessed the rape and murder of his five year-old sister by his mother's boyfriend), *Schroeder* (\$1.4 million - surgery at LAC+USC Medical Center resulted in permanent urinary/bowel incontinence), *Ellerd* (\$1.36 million - overtime action by social workers), and *Gonzalez* (\$1.25 million - plaintiff arrested for rape and murder and later released due to suppressed confession). The total amount paid for these six settlements accounted for more than one-half of the \$27.3 million paid in settlements this fiscal year.

III. Attorney Fees and Costs

The total Attorney Fees and Costs paid by the County this fiscal year was **\$51,801,840**. This amount included *both* in-house, or County Counsel, and outside, or Contract Counsel, fees and costs. Overall, all fees and costs were up five percent over last year. Of the \$51.8 million, \$38.1 million was paid to Contract Counsel and \$13.7 million was billed by County Counsel to various County departments. Contract Counsel fees and costs were up six percent as compared to last fiscal year, and County Counsel fees and costs were up only one-half of one percent over one year ago.

Contract Counsel *fees* totaled \$32 million and were up three percent over last fiscal year. This increase was due, in part, to a rate increase given to 20 Contract Counsel panel firms in December 2009. These panel counsel had not received an increase in 15 years and were considerably below comparable public entity market rates. The rate increase brought these panel firms into parity with other panel firms which had received a similar rate increase last fiscal year. The second rate increase accounted for 40 percent of the rise in Contract Counsel fees this fiscal year. The remaining increase was largely due to a steady influx of new cases over the preceding three fiscal years, particularly in the Law Enforcement and Employment areas. County Counsel *fees* were down one percent as compared to last fiscal year.

Although Contract Counsel and County Counsel *fees* increased only slightly, *costs* rose by \$1.6 million over last fiscal year. These costs generally included such items as deposition transcript and video fees, expert and consultant fees, investigative service charges, and other similar expenses. These costs rose from \$5.4 million last year to \$7 million this year. The majority of this increase was the result of elevated costs paid in Employment and Law Enforcement cases, particularly those cases which proceeded to trial.

IV. Dismissals

In FY 2009-10, the County successfully obtained 183 dismissals of lawsuits filed against it without paying plaintiffs any money. These dismissals were the result of voluntary actions by plaintiffs (often prompted by a motion or other action by the County), or Courts sustaining or granting County motions, such as demurrers, motions to dismiss, and summary judgments. Attorney fees and costs relating to efforts to secure the dismissals totaled \$7.5 million. There were nearly 20 percent more of such dismissals obtained this fiscal year than last.

V. New Cases

After steadily increasing every year for the last three fiscal years, new cases were at a three-year *low* this fiscal year. The number of new cases (673) represented a 17 percent *decrease* as compared to last fiscal year. New cases involving nearly every department were down. Cases involving the Treasurer and Tax Collector and the District Attorney were down by approximately 50 percent. New cases involving the Fire Department were down 38 percent, new cases involving the Department of Children and Family Services were down 36 percent, and new Sheriff's Department cases were down by nearly 25 percent.

VI. Trials, Writs, and Appeals

Like last fiscal year, the County tried 22 cases in FY 2009-10. It realized a 64 percent success rate, winning 14. Of the eight losses, *Davis*, a Sheriff's Department shooting case, was the most costly. *Davis* involved two armed brothers who entered a liquor store. When the proprietor alerted the Sheriff's Department, deputies responded and both brothers were shot following a foot pursuit. The brother who carried a shotgun was killed. The jury awarded the parents of the decedent and his brother \$2.65 million. The County has appealed the verdict. The County prevailed in all five of the other excessive force trials and in five of eight trials involving Employment issues.

The number of cases tried this fiscal year did not include trials and hearings involving writs of mandamus and prohibition. This fiscal year, 15 such matters proceeded to trial or final hearing. The County prevailed in 10 of these matters, including actions to abate dangerous conditions and to govern discharges to the Santa Monica Bay. However, the County was not successful in its action to stay legislation shifting local redevelopment revenues to the State. This ruling has been appealed.

The County won all but one of the 43 appeals brought by adverse parties, and three of the four appeals it initiated – a 96 percent overall success rate.

VII. Recoveries

The County recovered \$1,642,000 through its litigation efforts in FY 2009-10. An action brought by the County against the designer of an information technology system yielded \$1.5 million. The County also secured settlements in an eminent domain action (\$112,000) and in an action to recover payment for medical services it had rendered (\$30,000).