



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
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First District

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Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

November 13, 2009

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

From: William T Fujioka
Chief Executive Officer

Robert E. Kalunian
Acting County Counsel

LEGAL EXPOSURE REDUCTION COMMITTEE STATUS REPORT

On November 5, 2008, on motion by Supervisor Molina, and as amended by Supervisor Antonovich, your Board directed the Chief Executive Officer (CEO), County Counsel, County Risk Manager, and other Department Heads, as appropriate, to create a Legal Exposure Reduction Committee (Committee), that shall:

- Meet quarterly;
- Establish an annual Countywide and departmental legal exposure reduction goal;
- Create proactive County Counsel procedures to advise departments on various methods to reduce legal cost;
- Create procedures to discuss areas of potential exposure, and develop and implement specific strategies calculated to prevent future claims and lawsuits;
- Provide updated training on new changes in laws and policies for each appropriate department to implement;
- Assess the efficacy of corrective action plans, review management training and implementation of County policies, review lessons learned, discuss areas of potential exposure, and develop and implement specific strategies calculated to prevent future claims and lawsuits; and
- Report annually on their progress and efforts.

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Each Supervisor
November 13, 2009
Page 2

This memorandum addresses each of your Board's directives. The Committee consists of two Co-Chairs, the County Risk Manager and Litigation Cost Manager, and representatives from key departments. Committee members include:

Roberta A. Abner, Chief, Sheriff's Department
Rocky A. Armfield, Assistant Chief Executive Officer, Chief Executive Office
Philip L. Browning, Director, Department of Public Social Services
Steven H. Estabrook, Litigation Cost Manager, Office of the County Counsel
Gail Farber, Director, Department of Public Works
Lisa M. Garrett, Acting Director of Personnel, Department of Human Resources
Robert G. Splawn, M.D., Interim Chief Medical Officer, Department of Health Services
Dennis A. Tafoya, Director, Office of Affirmative Action Compliance
Robert B. Taylor, Chief Probation Officer, Probation Department

The Committee undertook the following:

Meet Quarterly

In response to the motion, the CEO and County Counsel presented a Joint Response to your Board on December 12, 2008, describing the projected activities of such a committee, including anticipated outcomes. The first meeting of the Committee was convened on March 5, 2009. Although directed by the motion to meet quarterly, in order to accelerate the process, the Committee has met monthly since its initial meeting. The meetings have been well attended and various sub-committees have met outside the regular Committee meetings.

Establish a Countywide and Departmental Legal Exposure Reduction Goal

Committee members agreed to the following goal:

- ▶ By June 30, 2011, reduce by five percent, Countywide indemnity and legal costs associated with the County of Los Angeles' claims and litigation, including workers' compensation and tort claims. Departmental risk exposure reduction goals will be specific to each department and may include cost reductions or other aspects of risk management. The five percent cost reduction goal shall be established based upon the average annual costs of each category over the last three Fiscal Years (2006-07, 2007-08, 2008-09).

This goal has been communicated to Department Heads in a memorandum from the CEO dated August 21, 2009 (see Attachment I).

Create Proactive County Counsel Procedures to Advise Departments on Various Methods to Reduce Legal Cost

In conjunction with the activities of the Committee and in furtherance of its continuing efforts to provide timely and valuable advice to departments in the area of litigation and the reduction of its related costs, County Counsel will initiate and facilitate the following procedures:

- **Aggressive Claims Management.** County Counsel will implement four procedures in the area of government tort claim and litigation management to assist County departments in reducing their overall legal costs. The primary goals of these procedures are to avoid litigation and to provide County departments with greater insight into the claim and litigation processes, reinforce problem-solving skills among managers in the departments with the goal of deflecting lawsuits, and provide timely legal counsel and direction.
 - **High-Level Discussions.** Historically, County Counsel has worked with departments' Risk Management Coordinators to resolve legal disputes at the claim stage. These efforts have yielded mixed results. To standardize and to improve the information gathered from departments, County Counsel, CEO Risk Management, and Third-Party Administrator (TPA) Carl Warren will conduct periodic high-level discussions with Department Head members at the Committee meetings. These discussions will provide department heads with information on the types of claims and lawsuits that are regularly filed against their departments, emphasizing the areas where departments spend most of their money in legal fees, judgments, and settlements. Particular focus will be placed on the cost and time benefits of resolving legal disputes through the government tort claim process, rather than through litigation. Emphasis also will be placed on the type of information departments need to gather while conducting an incident investigation, the importance of documenting events, preserving evidence, and timely responding to County Counsel's request for information. It is anticipated that these high-level discussions with Department Heads will improve their understanding of the factors that impact the claim and litigation process.
 - **Early Intervention.** The second prong of the government tort claim and litigation management procedures will be the implementation of a pilot program to provide for the early intervention by, and consultation with, County Counsel in all employment-related claims. The purpose of this program is to ensure that departmental Risk Management Coordinators are provided with immediate and proper legal guidance in the investigation and evaluation of claims. The program will be reviewed to gauge its effectiveness and consider expansion of the program to other types of claims.
 - **Training Program.** County Counsel, in conjunction with CEO Risk Management and TPA Carl Warren, will conduct bi-annual training of departmental Risk Management Coordinators on the government tort claim and litigation processes. Similar to the presentation for Department Heads, this training will educate Risk Management Coordinators on the types of claims and lawsuits in which departments have been most vulnerable to legal fees, judgments, and settlements. The training will also emphasize the importance of reaching out to County Counsel when an incident occurs within the departments, to seek legal counsel and direction. The training will include examples of "best practices" of selected County departments, and will provide instruction on legal requirements and proper investigative methods.

- **Claim Response.** County Counsel and the TPAs will implement measures to ensure the County's compliance with the Government Tort Act requirements and deadlines governing County response to claims. The CEO will also assist County Counsel in working with departments to conduct appropriate cost-benefit analyses and consider appropriate, early resolution of particular claims.
- The Employment Practices Sub-Committee was created to address specific areas of County liability arising from employment actions. The Sub-Committee will formulate and conduct appropriate training of departmental personnel with the goal of reducing future liability. Specific issues and departments will be targeted and appropriate action plans will be implemented.
- In FY 2007-08, County Counsel implemented the Litigation Severity Index and Management Protocols (LSI). The LSI is utilized in the management of all County litigation and deploys resources according to the magnitude of risk faced by the County. Roundtable meetings, utilized to evaluate litigated matters, are conducted in all significant litigated cases. Each roundtable will include a discussion by the department representatives of the status of the Corrective Action Plan, allowing for input by CEO Risk Management and County Counsel.
- County Counsel has instituted practices requiring that the attorney responsible for litigation involving contractual indemnification issues provide input and recommendations to the County Counsel attorney responsible for review of contracts in order to assure that issues surrounding indemnification are addressed in future contracts. County Counsel will meet internally to discuss and train staff regarding contractual indemnification issues raised in litigation. County Counsel will also present to the Committee, as they arise, contractual indemnification issues raised in litigation and discuss proposed modifications necessary to protect the County.
- Given the potential for high exposure in roadway cases, periodic meetings between County Counsel, Department of Public Works, and Risk Management have been established to focus on litigation and risk management issues associated with these cases.
- The prevalence of technology in today's business and governmental environment is having a significant impact on the costs of litigation. Amendments to the Federal Rules of Civil Procedure on December 1, 2006, along with the newly amended (June 29, 2009) California Code of Civil Procedure, expressly identify electronically stored information (ESI) as automatically subject to the civil discovery process. County Counsel has designated a senior member of its staff to develop expertise in the Federal Rules in order to provide guidance to departments affected by ESI discovery requests. This County Counsel staff member, in collaboration with the CEO, Chief Information Office (CIO), and Internal Services Department, will assist departments in complying with the State of California and Federal electronic discovery rules.

Create Procedures to Discuss Areas of Potential Exposure, and Develop and Implement Specific Strategies Calculated to Prevent Future Claims and Lawsuits

Your Board has also directed each Department Head to create Management Appraisal and Performance Plan (MAPP) goals that will decrease risk in their departments. Upon the recommendation of the CEO and County Counsel, the Committee has endorsed the use of various methods of evaluating areas of potential exposure and identifying specific activities to prevent future claims. These methods and activities are to be utilized in the development of MAPP goals.

Various sub-committees have been established in response to your Board's motion to focus on specific areas of potential exposure or to develop strategies to prevent future claims and lawsuits. These sub-committees include:

- **Classification Studies.** CEO Classification has been designing and collecting data to define the current job classifications, positions, and incumbents conducting risk management work in each department. The sub-committee is evaluating the type of risk management work performed by departmental employees and the percentage of time performing risk management-related duties. The survey is nearly complete. The sub-committee is also analyzing the workload of each department's risk management program. The next phase of the study will show whether there are any deficiencies in skills and knowledge in the current classifications, and whether it is appropriate to create any new classifications or modify existing classifications. The study will evaluate the size, scope, and level of reporting responsibilities, and recommend ideal reporting structures.
- **Employment Practices.** This sub-committee is comprised of members from eight County departments, including DHR, OAAC, Sheriff, Probation, and County Counsel. The initial efforts of the sub-committee will focus on specific employment issues which exist throughout the County and addressing these issues on a Countywide basis. In conjunction with the Training sub-committee, the Employment Practices sub-committee will provide training to departmental personnel to assist them in identifying the areas of current and potential liability, and work with the departments in establishing policies and procedures to prevent future losses.
- **Training.** The Training sub-committee, including representatives from DHR, OAAC, CEO, and County Counsel, are developing a comprehensive employment-focused, risk management-related training program for managers and supervisors. The intent is to include the training content on the County Learning Net System website to facilitate dissemination of the training.
- **Medical Malpractice.** Representatives from DHS and County Counsel have analyzed and targeted specific areas of exposure and identified areas for improvement and risk reduction.

Provide Updated Training on New Changes in Laws and Policies for Each Appropriate Department to Implement

Training on new changes in laws and policies is provided by the CEO, County Counsel, DHR, OAAC, and others. The Committee is compiling a list of currently available training opportunities and is preparing additional training on risk management subjects to be provided to managers and supervisors.

Some of the training completed in the last year for Countywide audiences includes:

- Four CEO-sponsored Risk Management Coordinator training sessions which addressed a wide range of risk management issues, including Department Head MAPP goals and the use of RECAP;
- Six CEO-sponsored Loss Control and Prevention training sessions;
- Four CEO-sponsored Return-to-Work training sessions;
- Four CEO-sponsored *Return-to-Work 101* training sessions for new Return-to-Work coordinators;
- Three CEO-sponsored CAP training sessions; and
- Sixty OAAC-sponsored *Employment Guidelines for the Disability Reasonable Accommodation Process* training sessions.

Additional training is provided on a department-by-department basis.

Assess the efficacy of Corrective Action Plans, review management training and implementation of County policies, review lessons learned, discuss areas of potential exposure, and develop and implement specific strategies calculated to prevent future claims and lawsuits

The Committee discussed the CAP process, including lessons learned and potential improvements to the existing program. Various CEO CAP-related initiatives were discussed, including roles and responsibilities of department risk management personnel related to the CAP program, executive management CAP performance measurement activity, options for sharing lessons learned, and better uses of performance data in determining the timing of CAP development. The Committee will focus time and resources on the CAP program during the next quarter. In addition, CEO staff met with Committee members and discussed liability loss control, liability loss performance, and specific departmental CAP activity. Detailed CAP-related information and statistics can be found in the CEO Risk Management annual reports.

If you have any questions or need additional information, please call us, or your staff may contact Rocky A. Armfield, County Risk Manager, at (213) 351-5346, or Steven H. Estabrook, Litigation Cost Manager, at (213) 974-1762.

WTF:REK:ES
RAA:SHE:SN:sg

c: All Department Heads