



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE

(213) 974-1801

FACSIMILE

(213) 626-7446

TDD

(213) 633-0901

RAYMOND G. FORTNER, JR.
County Counsel

June 23, 2006

TO: SUPERVISOR MICHAEL D. ANTONOVICH, Mayor
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE B. BURKE
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE

FROM: RAYMOND G. FORTNER, JR.
County Counsel

RE: **Litigation Cost Manager's Annual Report on Cost Reduction
Measures for 2006-07 (Monday, June 26, 2006, Budget
Deliberations)**

Enclosed is the report by the County Counsel Litigation Cost Manager in response to your Board's order for an annual report regarding legal cost savings measures.

In his report, the Litigation Cost Manager discusses several measures to continue our management of litigation and achieve reductions in indemnity payments and legal fees and costs. As explained in his report, some measurements will begin to provide reliable identifiable results only after the data is captured for three full fiscal years.

The Office of the County Counsel remains committed to assisting in the timely and accurate assembling of all relevant data so that the measures described in this report will be reliable and meaningful, all in furtherance of the goal of reducing litigation costs to the County.

If you have questions concerning this matter, please contact me, Chief Deputy County Counsel Donovan M. Main at (213) 974-1804, or Litigation Cost Manager Robert E. Nagle at (213) 974-1822.

RGF:jb

Enclosure

c: David E. Janssen, Chief Administrative Officer

Sachi A. Hamai, Executive Officer, Board of Supervisors

EXEC.4025.1

MEMORANDUM

June 23, 2006

TO: RAYMOND G. FORTNER, JR.
County Counsel

FROM: ROBERT E. NAGLE
Litigation Cost Manager 

RE: **Litigation Cost Manager's Annual Report**

This memorandum is to respond to the Board of Supervisors' request for measures implemented by the Litigation Cost Manager and County Counsel for fiscal year 2006/2007 to continue to reduce the costs of litigation for the County. Under separate cover and subject to the attorney-client and attorney work product privilege, I have provided to the Board a detailed report of litigation results obtained for the Third Quarter of FY 2005/2006.

I. LITIGATION RESULTS FY 2005-2006

Litigation results for the first three quarters of FY 2005-2006 are generally tracking last year's results, although with a slight increase in the amount paid out in judgments and settlements. For the first three quarters of FY 2005-2006 the County has paid \$27,229,962 (see attached Exhibit A). An additional \$5,639,869 has been paid out so far in the fourth quarter of FY 2005-2006 (which will not be over until June 30, 2006, with payment of billings continuing through July 30, 2006). Total judgments and settlements paid so far for FY 2005-2006 total \$32,869,831. Outside fees and costs paid out through the first three quarters of FY 2005-2006 are \$25,301,584.

The results through three quarters of FY 2005-2006 generally communicate the following concepts:

- (1) County Counsel obtains more dismissals of lawsuits than it settles;
- (2) County Counsel is generally successful when taking cases to trial;
- (3) County Counsel is generally successful when taking cases up on appeal;
- (4) County Counsel is generally successful in representing the Departments before Civil Service Hearings;

- (5) County Counsel has made great improvements in holding down outside legal fees and costs;
- (6) County Counsel generally has held down settlements when viewed over the past five years; and
- (7) County Counsel has been effective in generating revenue through litigation for the County.

II. SIMPLE ANALYSIS OF LIMITED DATA

Sufficient data does not yet exist to complete an analysis of results by an individual attorney or law firm. However, I believe it is important to give the Board an indication of what will be possible once sufficient data has been collected. I have analyzed a summary of trials involving County-involved vehicle accidents and excessive force cases involving the Sheriff's Department.

In the last three years the County has gone to trial on nine cases involving County involved vehicle accidents. In almost all the cases, the ultimate verdict at trial was far less than plaintiff's demands. The **average fees** paid to attorneys for these nine cases was \$13,907; the **average costs** incurred from experts, depositions, etc., was \$7,453; the **average amount paid** on these cases was \$69,000, and each case **averaged** 25 months from receipt of the lawsuit until verdict at trial.

The County has gone to trial on 14 excessive force cases involving the Sheriff's Department, with 11 cases involving defense verdicts, and three adverse verdicts of \$37,500, \$301,500 and a \$3.2 million verdict that are being appealed. The **average fees** paid to attorneys in these fourteen cases was \$119,007; the **average costs** incurred from experts, depositions, etc., were \$45,299 and each case **averaged** 33 months from receipt of the lawsuit until verdict at trial. Calculating the average indemnity (verdict) paid on this type of case does not have much meaning. Allegations of civil rights abuse vary significantly from case to case and is dependent upon whether a deputy sheriff has been disciplined or who the plaintiff's attorney is. A few plaintiff's counsel expend large sums of fees working up the case hoping for a large award of attorney's fees in the event of a minimal award in favor of the plaintiff.

The value of calculating averages in these categories is to provide a base-line tool to evaluate the general performance of outside counsel and the efficiency and cost-effectiveness of how they manage their cases. The more an

individual case exceeds these “average” costs the more attention the monitoring attorney should pay to monitor the case. In the event that all of these same type cases for an individual law firm routinely exceed these “average” costs, the monitoring attorney can meet with the firm and discuss areas where cost control measures might be productive (reduce the number of depositions, not summarize depositions until sure the case is going to trial, etc.).

III. IMPLEMENTATION OF MARCH 23, 2006 LITIGATION MANAGEMENT PROCEDURES

On March 23, 2006, Litigation Management policies and procedures were distributed to the Management Team of County Counsel that incorporated many of the revisions that had been created by the Litigation Cost Manager over the past two years that had led to the noticeable improvement in litigation results (attached hereto as Exhibit B). There has been demonstrable improvement in the scheduling of roundtables and the reporting of litigation results.

I believe the Office of the County Counsel is bringing closure on the first year of the training process and implementation of the revised litigation management policies and procedures and that so long as emphasis remains on these procedures and policies, the office will be able to continue to achieve significant improvement in litigation results.

IV. CLAIMS HANDLING

County Counsel has been handling the government claims process in close association with Department Risk Manager Coordinators and advising the CAO Risk Manager of receipt of new claims for at least the past three years. We are currently evaluating what entity (Department, Contract City, Insurer) should be assigned as the primary funding source for the expenses of litigation.

V. ROUNDTABLES

The County has obtained success in taking cases to trial through increased utilization of the "Roundtable" process. Successful outcomes will always be driven by an accurate assessment of the facts. The roundtable process is an essential element, which brings together through the direction of the Office of County Counsel, those individuals in the Department most familiar with the facts of the case, outside counsel, County Counsel and risk management in order to fully discover and analyze any adverse facts related to the litigation. The determination to settle a case or take it to trial can only be made once most of the

critical facts have been uncovered and analyzed by County Counsel. The earlier a case is roundtabled, the earlier County Counsel can take advantage and assure of being ahead of the curve to make an objective determination and assessment of the case value and economically dispose of the case or determine that the case should be tried.

The more cases taken to trial by County Counsel with positive results (a defense verdict, dismissal prior to verdict or a judgment against the County less than the amount authorized for settlement) will have a significant and beneficial effect on the ultimate value of cases settled by the County. The Office of County Counsel is committed to the roundtable process and for FY 2005/2006 has expanded the roundtable process to all divisions within County Counsel, and to move toward scheduling earlier roundtables for cases involving attorney fees and costs anticipated to be in excess of \$100,000.

The County's legal data base was transferred into the RMIS system effective March 1, 2003. The converted data into the system is being reviewed and cleaned up for all cases that were open as of March 1, 2003. I have issued regular quarterly reports to the Board of Supervisors since December 2003 detailing the results of the efforts of the Office of County Counsel in litigation management, with significant reductions in fees and costs paid to Outside Counsel, reduction in amounts paid out in Judgments and Settlements and the documentation of significant recoveries for the County as a result of the efforts of County Counsel through litigation.

All of my efforts and those of County Counsel will be dedicated during FY2006/2007 to continue the reduction of both Judgments and Settlements to be paid out by the County, the reduction of legal fees and expenses incurred by the County and the maximization of recoveries on behalf of the County.

If you need further clarification regarding any item contained in this memorandum, please contact me. The litigation management techniques described above have proven to be very effective in the reduction of litigation costs in my prior years in private industry.

If you have questions concerning this matter, please contact me, Litigation Cost Manager Robert E. Nagle, at (213) 974-1822.

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Attachment 1

Case Evaluation Plans

A Case Evaluation Plan should take into consideration, to the extent possible, the following information:

- a. **Pleadings**: A brief description of the allegations asserted for each cause of action of the complaint.
- b. **Facts/Factual Issues**: An overview of the facts as you know them, and to the extent possible at this early stage, identification of any disputed facts critical to the case. Identify potential witnesses who have factual knowledge and the location of relevant documents needed for an analysis of the case. Also, identify the key witness who will testify to the County's key facts, and evaluate their credibility.
- c. **Legal Analysis**: For each cause of action, set forth the elements of that cause of action, facts supporting that cause of action, how we will defend and counter those facts and/or arguments, any affirmative defenses we have, and an analysis of the viability of the cause of action.
- d. **Proposed Action**: Describe your initial discovery plan and strategy decisions which need to be made now or which you anticipate may need to be made in the future.
- e. **Settlement Prospects/ Alternative Dispute Resolution**: Advise what you believe to be the initial settlement value of this case. Also advise if you believe the utilization of Alternative Dispute Resolution (mediation, arbitration, voluntary settlement conferences, etc.) has a probable chance of resolving this case at an early stage of litigation. If so, what steps are needed in order to set up this case for ADR?
- f. **Attorney Fees Provision**: Is there a contractual right or statutory basis for Plaintiffs to seek recovery of attorney fees? If so, what steps can the County take to minimize the recovery of attorney fees. Is there a contractual right or statutory basis for the County to seek recovery of attorney fees? If so, what steps can the County take to maximize the recovery of attorney fees.

- g. **Cross-Complaint, Subrogation Prospects, Insurance Recoveries or Provision of Defense:** Discuss if there is a potential for recovery from a third party or insurance carrier. Has the case been tendered for a cost of defense to any applicable insurance carrier and/or contractor?

- h. **Case Staffing:** Identify the attorney(s) who will be working on the case and briefly discuss each of their roles. Identify any extraordinary case staffing needs and identify the facts and circumstances which you believe justify such extraordinary staffing.

Attachment 2

Roundtable Discussion Topics

It is recognized that the level of discussion and the topics covered at an individual case roundtable will vary from case to case. Each attorney chairing a roundtable should use his or her professional judgment to determine how to best proceed. However, the following are topics that should generally be covered in individual case roundtables:

Initial Roundtable:

- A review of the Case Evaluation Plan and case budget
- Assigned counsel's view as to the County's risk of liability and the facts and law that support this conclusion
- The settlement demand (if any) and whether there is value in making a CCP 998 or Federal Rule 68 offer early in the litigation
- Actions that might be taken to resolve the litigation either through dispositive motion, alternative dispute resolution or settlement
- Strategies to minimize the amount of damages
- Expert witnesses that will need to be retained and why
- In cases with multiple defendants, any potential conflicts of interest
- An evaluation of opposing counsel
- The discovery plan and budget for discovery
- Possible affirmative defenses and immunities that might apply
- Identification of potential witnesses
- How any award of attorneys' fees against the County might be minimized and whether there is any basis for the County to seek an award of attorneys' fees
- Possible risk mitigation and/or loss prevention issues, as well as possible corrective action, for consideration by the client department and/or CAO Risk Management

Subsequent Roundtables:

- An update of the Case Evaluation Plan
- Factual issues to be decided at trial
- Key legal issues in the case
- Settlement prospects and all efforts thus far to resolve the litigation (including any demands received and any offers advanced)
- Whether a CCP 998 or Federal Rule 68 offer is appropriate
- The County's trial strategy and approach
- The identity of and an evaluation of the witnesses for both sides
- The identity of the County representative to sit at counsel table
- Expert witnesses to be called by both sides with a description of their anticipated testimony and an evaluation of their anticipated effectiveness before the trier of fact
- For each cause of action, an evaluation of the County's chances of prevailing and the amount of damages that might be awarded for or against the County
- The budget for the remaining costs and fees to be incurred to take the matter through trial
- A timetable for activity to be completed before trial (i.e. remaining discovery, motion for summary judgment, motions in limine, jury instructions, etc.)
- Proposed jury instructions
- Critical issues that need to be preserved for a possible appeal
- Possible risk mitigation and/or loss prevention issues, as well as possible corrective action, for consideration by the client department and/or CAO Risk Management

Attachment 3

Counsel's Trial Evaluation

The trial evaluation which will be completed by the attorney who will actually try the case should include a discussion of the following topics:

- a. Trial Strategy: Give an overview of the story the County will present to the trier of fact as well as any key legal positions the County will take.
- b. Witnesses: Identify the key witnesses for both sides as well as all expert witnesses. Briefly describe their expected testimony. Identify who will sit at Counsel table as the County representative.
- c. Exposure/Damages Analysis: For each cause of action, provide an evaluation of the County's chances of prevailing and the amount of damages that might be awarded for or against the County.
- d. Settlement Prospects: Discuss settlement prospects. Identify the most recent settlement demand and/or offer made. State whether any CCP 998 or Federal Rule 68 offer or demand has been made or received.
- e. Fees and Costs: Set forth the original estimated budget for the case, as well as any amendments thereto, and the amount of fees and costs incurred to date. Include an estimate of the anticipated fees and costs through trial.
- f. Additional Actions Before Trial: Describe the actions that need to be completed prior to trial (e.g. additional discovery, motions for summary judgment, motions in limine, jury instructions). Give a timetable for completing each action.
- g. Issues to Preserve for Appeal: Identify any critical issues that trial counsel will need to be careful to preserve for any possible appeal.