COUNTY OF LOS ANGELES

RISK MANAGEMENT AND LIABILITY COST STUDY

Prepared for the
CITIZENS' ECONOMY AND EFFICIENCY COMMISSION OF LOS ANGELES COUNTY

by

McGladrey & Pullen

in association with

Advanced Risk Management Techniques, Inc.

July 30, 1993

McGLADREY & PULLEN

Certified Public Accountants and Consultants

July 30, 1993

Citizens' Economy and Efficiency Commission
of Los Angeles County
Hall of Administration, Room 163
500 West Temple Street
Los Angeles, California 90012

Attention: Mr. Bruce Staniforth, Executive Director

McGladrey & Pullen and Advanced Risk Management Techniques, Inc. (ARM Tech) have conducted a study of the County of Los Angeles risk management program and liability exposure as directed by the Citizens' Economy and Efficiency Commission.

Rapidly increasing tort liability exposure has escalated the urgency for risk management and loss control measures. The attached report presents findings and recommendations of the study in a manner that will highlight major issues and point to significant areas for potentially substantial cost savings.

An Executive Summary briefly presents the contents of the report for quick overall review. Study objectives and tort liability are then described for more detailed understanding of risk management and liability issues. Conclusions and recommendations are explained for the functional areas within risk management and loss control, claims administration, legal defense and subrogation, budgeting, and information systems. Each of these areas offers substantive opportunities for improvement and cost savings, and the report outlines recommended action steps for implementation of these risk management improvements. Upon request, we will be pleased to further explain our study results to the Commission.

McGladrey & Pullen and ARM Tech wish to thank the staff of the Citizens' Economy and Efficiency Commission and the County of Los Angeles for their cooperation and assistance in performing this significant project.

Yours very truly,

McGLADREY & PULLEN

L. Michael Lynch
Director of Consulting Services

LML/km
Enclosure

140 South Lake Avenue, Suite 300, Pasadena, California 91101-2651
(818) 795-7950 FAX (818) 795-9820

Internationally Dunwoody Robson McGladrey & Pullen

COUNTY OF LOS ANGELES
RISK MANAGEMENT AND LIABILITY COST STUDY

TABLE OF CONTENTS

TABLE OF CONTENTS, CONTINUED

TABLE OF CONTENTS, CONTINUED

EXHIBITS

FIGURES

TABLE OF CONTENTS, CONTINUED

COUNTY OF LOS ANGELES

RISK MANAGEMENT AND LIABILITY COST STUDY

I. EXECUTIVE SUMMARY

Risk management has become a major issue for the County of Los Angeles. In recent years, costs for medical malpractice, auto and general liability have been rapidly increasing beyond all expectations. Settlements, court awards, and legal expenses for fiscal year 1991/92 were over $134 million, up from $53.6 million in fiscal year 1988/89. The number of cases going to trial in some areas has more than doubled, and total liability costs have increased over 251% in three years.

<u>EXHIBIT A</u>

Los Angeles County - Liability Expenditures
251% Increase - Fiscal Years 1988/89 Through 1991/92

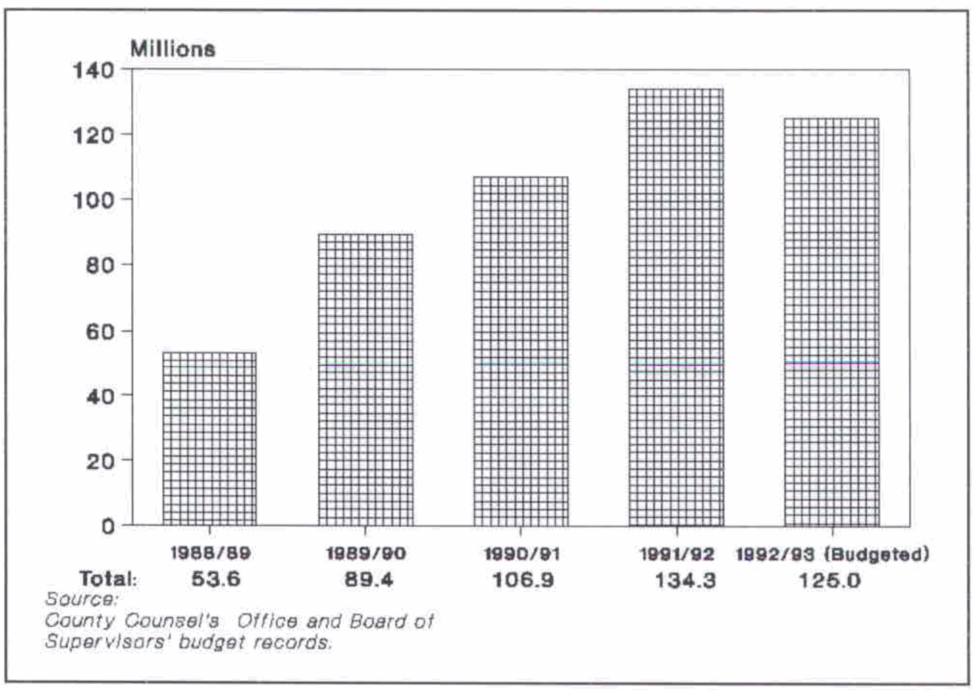

EXHIBIT B

Judgments and Damages Budget Unit
Comparison of Liability Costs by Category
(In $ Millions)

Category	Fiscal Years 1988/89	Fiscal Years 1991/92	Dollar Increase	Percent Increase
Judgments and settlements	$ 25.5	$ 89.9	$ 64.4	353 %
*Medical malpractice	21.9	28.8	6.9	32 %
*General and automobile liability	6.2	15.6	9.4	252 %
Totals	$ 53.6	$ 134.3	$ 80.7	251 %

* Self-insurance

Increases in the last three years have been startling, but are even more dramatic when looking back seven years to 1985. Attorney's fees and expenses for auto and general liability cases have risen 923%, from $930,000 in 1985 to $8.5 million in 1992 - over ninefold - as shown in Figure 4 on page 20. Medical malpractice cost alone has increased 244%, from $3.4 million in 1985 to $8.3 million in 1992. Total legal defense costs now account for nearly half of all liability expenditures, as shown in Exhibit C.

EXHIBIT C

Comparison of Liability and Legal Defense Costs

Fiscal Year 1991/92	Amount	Percent
Judgments and settlements	$ 73,057,317	54 %
Legal defense	61,232,074	46 %
Total	$ 134,289,391	100 %

These escalating costs have prompted the Board of Supervisors to seek alternative solutions for containing costs of tort liability judgments, settlements, and litigation. In this connection, the Board also seeks to identify approaches to hold County departments more accountable for these expenses so that departments have an incentive to minimize liability exposures.

ANALYSIS OF THE PROBLEM

The Citizens' Economy and Efficiency Commission has undertaken a study of the County's risk management program at the request of the Board of Supervisors. The commission directed McGladrey & Pullen and Advanced Risk Management Techniques, Inc. to assist in this analysis to identify means by which escalating liability costs can be reduced.

The objectives of this study are to develop and recommend:

- Action steps to provide savings in tort liability and risk management expense for the County;
- Ways to make County departments more accountable for liability costs;
- Changes to County risk management information system procedures for more timely and accurate identification of liability exposure; and
- A plan to implement the recommendations.

OBSERVATIONS OF THE STUDY

The existing policies and procedures for risk management have not and do not appear to be containing costs, but rather are permitting tort liability exposures to increase dramatically.

Emphasis on Risk Management and Loss Control

Risk management and loss control activities have recently been in a state of transition, with responsibilities for tort liability administration reassigned from the Risk Management and Insurance Management Agency (RIMA) to County Counsel. As a result, risk management and loss control efforts have been impeded.

The County budget devotes proportionately fewer resources to risk management and loss control than many other government entities. Only four percent of the RIMA's operating budget is devoted to liability risk management and loss control, as compared to nearly 50% elsewhere. These limited resources are not achieving risk management objectives as effectively as possible.

A greater emphasis on risk management needs to be applied by the County. The directive of the Board of Supervisors to make departments more accountable has not been effective. The current plan to accomplish this does not work well because the goals of the plan are not clearly defined, departments do not understand how the plan works, and information is not available to department management.

The County needs to take a strategic approach to risk management and administrative control. Loss control activities need to be a paramount focus of a centralized litigation unit within an existing County agency. As in other public entities, Los Angeles County needs to devote sufficient resources to a consolidated unit to effectively administer loss control measures.

Legal Defense Fees

The County is heavily dependent upon the use of outside claims administration and legal defense firms. Costs for legal defense for 1991/92 were almost half (48%) of total tort liability costs, compared to an average 33% for other large public entities investigated. The approved list of outside defense counsel numbers 49 law firms, too large a group to effectively monitor and control with the limited resources at County Counsel. There are few or no incentives for the outside counsel to quickly and efficiently handle cases or to seek early settlements.

By focusing on risk management and legal cost containment, considerable savings can be generated by the County. Legal expenses can be substantially reduced through exerting greater control over outside defense firm activities, handling more cases in-house, and establishing a more aggressive policy for settling claims before they are litigated. In this connection, the County should consider raising levels of settlement authority of its third-party administrators (TPAs), County Counsel, and the Claims Board to resolve claims before or during the early stages of litigation.

Third-Party Claims Adjusting

The current contract between the County and its liability claims adjusting firm provides a negotiated rate for a specified volume of claims. In the event the number of claims processed exceeds the maximum specified in the contract, the rate will significantly increase the cost of claims processing, as occurred last year. In the current year, fees paid the third-party liability claims administrator (TPA) through about two-thirds of the year are very close to the maximum allowed under the negotiated fee agreement. Consequently, if the number of claims against the County this year exceeds the contractually agreed limit, the cost of claims processing to the County could be substantially increased.

Claims volume must be carefully monitored by County administration to maintain cost control. Alternative claims processing arrangements should also be designated to accommodate excess claims volume by another means to avoid increased costs.

Liability Cost Information

Cost information is scattered among various sets of records kept by RIMA, third-party claims adjusting companies, and County Counsel. There is no single source of current, accurate cost data. Considerable effort is required to research, accumulate, and reconcile cost totals.

As a consequence of cost data being inaccessible, county departments do not receive liability cost and budget information on a timely or periodic basis. This information was not available to departments for the most recent budget process. Consequently, the departments were instructed to use prior year budget information as a basis for next year's expense estimates.

The County possesses considerable computer resources, yet budget data is manually processed at County Counsel's accounting department. Financial reports are computer generated; however, the information is then manually sorted and entered into another computer system for generation of departmental expense analysis. This slows down the reporting process considerably and results in untimely distribution of financial information. County Counsel's office is applying limited resources to write more computer programs, but the tasks involved are too great to be accomplished at this pace within a reasonable period of time. Plans need to be developed to consolidate risk management information so that it can be easily accessible to departments and available on a timely basis.

Management Information Systems

Management information systems are not comprehensively coordinated or systematically approached. Departments use their own computer systems to track claims information. These separate systems are developed by the departments without benefit of a coordinated Countywide approach. As a result of there being no uniform approach, County departments have developed incompatible systems. None of the departments interviewed had all the data they needed to properly track tort liability incidents and associated costs.

Additionally, there is no network in place to readily provide departments with updated claim and case information. Although that information exists, departments do not have easy access to the database.

This fragmentation of data has pervasive ramifications. Without a complete set of accurate data, effective risk management and loss control are difficult. Without this data for timely distribution to County departments, it is also difficult to make departments duly accountable for their respective liability exposure. Accurate data and the proper management of that data is the foundation for any program to better utilize risk management resources, lower defense costs, minimize potential liability activities, and collect cost information for accounting and budgetary needs.

SUMMARY OF CONCLUSIONS

In this time of severe budget cutting, the County needs to exert greater control over tort liability and risk management activities that consume budget dollars. Escalating litigation fees and judgments need to be contained. Departments need better information as they seek to reduce their liability exposure. The County needs to go forward with a concerted effort to develop goals, objectives, and strategies for liability cost containment.

The results of our research indicate that the County's risk management and liability cost containment activities can be improved significantly. The major findings of our analysis are that:

- Available County resources need to be consolidated into one functional unit for improved risk management and liability program cost reduction.

- Current cost control measures are insufficient to contain claims adjusting and legal defense expenditures.

- Plans are inadequate to effectively increase departmental accountability for results of the risk management and liability program. Incentives are unavailable to effectively provide for cost savings initiatives.

- Liability management information systems are not integrated to provide accurate and timely information on liability costs and exposures for program management, decision-making, and budgeting purposes.

SUMMARY OF RECOMMENDATIONS

Our recommendations are made for the purposes of (1) better allocating available County staff and financial resources; (2) developing more effective procedures, systems, and management; and (3) providing the means to reduce expenditures for tort liability settlements, judgments, legal defense, claims, and administrative costs.

To accomplish these purposes, we recommend that the County:

- Consolidate liability risk management and cost containment activities into a single unit which devotes its full resources to liability program management, making this a major priority program.

- Negotiate claims adjusting fee contracts to anticipate claim processing overruns and be more aggressive in controlling defense costs of outside counsel. The County should expeditiously settle claims of clear liability before they become lawsuits.

- Evaluate better means to make departments more accountable for their liability expenses.

- Strategically view the risk management systems in all departments and develop a coordinated approach to capture and disseminate liability and loss control information.

Implementation of these recommendations, as discussed in section IX, may be accomplished in various ways. The Board of Supervisors should direct the appropriate agencies to evaluate alternatives to determine the most feasible and cost effective means to achieve the efficiencies desired.

COST SAVINGS PROJECTED

The potential cost savings are dramatic. With an appropriate redirection and reallocation of staff and financial resources, the County could reduce its overall tort liability costs substantially. The magnitude of such savings will be dependent upon the success of the County in implementing the foregoing recommendations. Over a four-year period, it is projected that such savings could exceed $400 million, as shown in Exhibit D below and explained further in Section X, page 58.

EXHIBIT D

Los Angeles County
Projected Savings by Recommended Activity

Projected Savings by Activity	1st Full Year (FY 1993/94)	2nd Full Year (FY 1994/95)	3rd Full Year (FY 1995/96)	4th Full Year (FY 1996/97)	Total
1. Defense costs	$20,300,000	$41,100,000	$ 63,200,000	$ 87,100,000	$ 211,700,000
2. Settlements and judgments	16,700,000	35,700,000	57,200,000	81,800,000	191,400,000
3. Claims administration	837,000	837,000	837,000	837,000	3,348,000
4. Subrogation recovery	250,000	275,000	302,500	332,850	1,160,350
5. Staff consolidation	36,700	36,700	36,700	36,700	146,800
Projected gross savings	$ 38,123,700	$ 77,948,700	$ 121,576,200	$ 170,106,550	$ 407,755,150
Net costs added	423,000	624,000	693,000	675,000	2,415,000
Projected net savings by year	$ 37,700,700	$ 77,324,700	$ 120,883,200	$ 169,431,550	$ 405,340,150
Projected cumulative savings	$ 37,700,700	$ 115,025,400	$ 235,908,600	$ 405,340,150	

The above projected savings are based on liability costs *only rising at one-half* of the rate actually experienced in the previous three years! Although some minor costs added would be budgeted items, most are simply reallocations of current resources. Overall costs would easily be covered by concurrent savings.

The detail of net costs for the recommendations that yield the projected earnings is discussed in Section X. Some costs require an out-of-pocket expenditure, such as computer programming and claims audits. Other costs are a transfer of funds from one account to another, such as reducing outside legal defense expense and adding more in-house legal staff.

An alternative approach shown in Exhibit E assumes *no rise* in total liability costs beyond the $120 million amount budgeted for fiscal year 1992/93, which is lower than the $134 million in actual 1991/92 expenses. Even without costs increasing, projected net savings approach $100,000,000 at the conclusion of four years.

EXHIBIT E

Los Angeles County
Alternative Projected Savings by Recommended Activity

Projected Savings by Activity	1st Full Year (FY 1993/94)	2nd Full Year (FY 1994/95)	3rd Full Year (FY 1995/96)	4th Full Year (FY 1996/97)	Total
1. Defense costs	$ 7,400,000	$ 13,700,000	$ 19,000,000	$ 23,500,000	$ 63,600,000
2. Settlements and judgments	3,500,000	6,900,000	10,100,000	13,100,000	33,600,000
3. Claims administration fee	837,000	837,000	837,000	837,000	3,348,000
4. Subrogation recovery	250,000	275,000	302,500	332,850	1,160,350
5. Staff consolidation	36,700	36,700	36,700	36,700	146,800
Projected gross savings	$ 12,023,700	$ 21,748,700	$ 30,276,200	$ 37,806,550	$ 101,855,150
Net costs added	423,000	624,000	693,000	675,000	2,415,000
Projected net savings by year	$ 11,600,700	$ 21,124,700	$ 29,583,200	$ 37,131,550	$ 99,440,150
Projected cumulative savings by year	$ 11,600,700	$ 32,725,400	$ 62,308,600	$ 99,440,150	

II. PROJECT SUMMARY

Escalating costs of liability have prompted the Board of Supervisors to search for the means to aggressively address cost containment of tort liability and to make County departments more accountable for these expenses.

STUDY AUTHORIZATION

At its regular meeting on October 22, 1991, the Board of Supervisors of Los Angeles County (County) passed a motion to request "that the Citizens' Economy and Efficiency Commission (Commission) conduct a study of the increased liability costs and risk management measures that may be instituted to reduce escalating costs to the County." Refer to Appendix A for a copy of the motion. On January 26, 1993, a contract to perform the study was executed between the County and McGladrey & Pullen. The study was conducted pursuant to Work Order #92311 and Master Agreement №66089.

PURPOSE AND OBJECTIVES

The purpose of the study was to conduct a review of the County's organizational approach and operational procedures of the risk management program and to identify any areas in which cost containment measures could be instituted to reduce overall liability costs.

Focus on Cost Savings

At the request of the Commission, we focused on those areas which would result in the most significant cost savings to the County. Our objectives in developing this study were to:

- Develop recommendations to provide savings in tort liability expenses;
- Determine if effective procedures exist to make County departments more accountable for liability costs;

- Recommend changes to existing data processing procedures for better tracking and reporting of liability costs;

- Develop implementation steps for the recommendations.

Points of Review

Specifically, the study was to review:

1. The current measures in place for the risk management and insurance program.

2. The design and effectiveness of the current risk management program.

3. The efficiency and effectiveness of the current risk management operations.

4. Whether the current management information systems and budget procedures are adequate to identify, measure, and evaluate liability exposures and associated costs.

5. The awareness of individual county departments of the risk management priorities, goals, and objectives.

6. Any other areas not currently addressed which would reduce tort liability and risk management costs.

APPROACH AND METHODOLOGY

The information necessary to complete the study was primarily acquired through interviews with appropriate County personnel and selected employees of contract service providers. After an initial meeting with selected personnel of the Risk and Insurance Management Agency (RIMA) and County Counsel's Office, our project team conducted interviews and extensive follow-up discussions with representatives of:

- RIMA
- County Counsel's Office
- Sheriff's Department
- Department of Public Works
- Auditor-Controller's Office
- Internal Services Division (ISD)
- Carl Warren & Company (CWC)
- Professional Risk Management (PRM)

At the request of the Board of Supervisors, the consultants also contacted the Los Angeles Trial Lawyers Association (LATLA) for their comments and concerns.

Work Plan

Our general approach was to:

1. Finalize the project workplan developed in our proposal;
2. Collect and organize available data and information from the County and other sources;
3. Conduct interviews with selected County staff;
4. Analyze the data;
5. Evaluate the results of existing risk management and liability cost containment activities;
6. Identify problem areas and opportunities for cost reduction;
7. Contact other large public entities for comparative information;
8. Develop recommendations for improved efficiency and future cost savings;
9. Develop implementation action steps for the proposed recommendations.

Data Collection

The data obtained for purposes of preparing this report has not been audited by either McGladrey & Pullen or Advanced Risk Management Techniques, Inc. and it was not possible to reconcile these amounts with historical figures developed by County Counsel's office. It was necessary to obtain cost data from several sources - County Counsel's office, RIMA, Auditor Controller's office, and the Board of Supervisors. The costs contained in Section III of this report include liability expenditures in three major categories - judgments and settlements, automobile and general liability, and medical malpractice. The costs of these three categories are for all funds (General, Special, Enterprise) and the County's Central Reserve Fund.

III. TORT LIABILITY IN LOS ANGELES COUNTY

Tort liability has become a major issue in Los Angeles County government, manifested in claims and lawsuits for medical malpractice, automobile liability, and general liability. Tort liability is the legal exposure associated with responsibility for negligent acts, errors and omissions that are the proximate cause of bodily harm or property damage.

SELF INSURANCE FOR TORT LIABILITY

Los Angeles County, like other public agencies throughout California and the United States, has experienced significant increases in tort liability cost since the 1970s. In response, public agencies implemented risk management and self-insurance programs. In 1975, Los Angeles County was one of the early pioneers in employing a professional risk manager responsible for administering the County's self-insurance programs. Prior to this, the County risk management and self-insurance activities were performed on a part-time basis by County staff and the County's insurance brokers.

Damages Paid Directly

Currently the County is totally self-insured for its tort liability exposures. This means that all tort liability costs – judgments, settlements, legal defense costs, and claims administration fees are paid directly by the County. No risk or costs are transferred to a commercial insurance company or risk-sharing pool. This is typical for public agencies with as large an operating budget as that of Los Angeles County. It is very unlikely that there are any insurance companies willing to underwrite the liability loss exposures of public entities as large as Los Angeles County at a reasonable cost.

Other public agencies in California which are totally self-insured include:

- State of California
- City of Los Angeles
- City and County of San Francisco
- City of San Diego
- County of San Diego

All of the other 55 California counties not totally self-insured are partially self-insured. These counties either are in risk-sharing joint powers authorities (a pool), or maintain an individual self-insured retention (similar to a deductible) and purchase commercial excess insurance to protect against catastrophic losses.

Common Incidence of Exposure

Based upon our discussions with County staff and a review of the available information, the most common liability exposures are generated from the following:

- Medical Malpractice (hospital professional liability)

- Law Enforcement
  - Excessive force
  - False arrest
  - Lack of adequate supervision
  - Pursuit
  - Illegal search and seizure

- Property Damage
  - Wrongful taking or loss in values
  - Zoning decisions
  - Land Movement/Subsidence

- Streets and Roads
  - Design liability
  - Road maintenance
  - Improper or inadequate signing, markings, or signals
  - Inadequate lighting

- Beaches and Harbors
  - Drownings and diving accidents
  - Bike paths
  - Failure to warn of dangerous conditions

- Parks and Recreational Areas
  - Playground accidents
  - Drownings or diving incidents in bodies of water

- Automobile Liability
  - Accidents involving negligent operation or condition of County vehicles

- General Liability/Personal Injury
  - Slips and falls on public property
  - Hazardous conditions on public property
  - Emotional distress
  - Violation of civil rights

- Errors and Omissions
  - Lack of due process
  - Errors in administrative acts

- Child Custody to Foster Homes
  - Improper referral
  - Lack of adequate supervision and control of foster care homes

Data regarding each area's specific portion of total liability exposure was not available during the research done for this report.

Reasons for Cost Increases

The reasons normally cited for tort liability cost increases experienced by California public agencies in recent years are:

- Erosion of statutory immunities by legislative actions and judicial decisions;

- Increasing litigiousness of society;

- The theory of joint and several liability, which makes public agencies target defendants often responsible for financial liability greater than their share of actual negligence (hence the term "deep-pocket defendants").

A number of research articles have speculated as to what factors have caused these cost increases. A major study by Andres Blum identified these factors as "...an explosion in the nontraditional use of civil rights statutes - most important, Sec. 1983 of the Civil Rights Act of 1871 - to include cases involving such areas as zoning and land development"; loss of immunity from civil lawsuits under the doctrine of sovereign immunity due to increases in the provision of services resembling those handled by the private sector; greater awareness among the population as to their civil rights due to television; the general litigiousness of our society; a rise in police-related cases due to lack of emphasis on police training; fee incentives to plaintiff attorneys under the Civil Rights Act, Sec. 1988, encouraging them to sue public sector entities; the perception that any governmental body is a "deep-pocket defendant"; unanticipated changes in tort liability; and the general tendency of people to sue the government.[1]

Another recent article by Allen Meyerson added a few more factors to this: zealous trial lawyers; fraudulent claims; plaintiff-sympathetic juries ruled more by emotions than facts; and the growing tendency for citizens and juries to use the courts to "get even" with governments that have cut services to them.[2]

A recent survey of the membership of the National Institute of Municipal Law Officers (NIMLO) conducted in August-September 1992 requested public entities throughout the Unites States to identify those factors which "most contributed to [their] jurisdiction's rising litigation costs over the past three years."[3] With the exception of jury awards (which were cited as a major factor by only 11.5%) the results confirm the observations of the articles by Blum and Meyerson. The factors ranked the highest by the respondents are listed in Figure 1.

---

[1] Andres Blum, "Lawsuits Put Strain on City Budgets," *The National Law Journal*, 18 May, 1988, 32-33.

[2] Allen R. Meyerson, "Soaring Liability Payments Burdening New York," *New York Times*, 29 June, 1992, B Section, 1-2.

[3] Susan A. McManua, *Litigation as a Budgetary Constraint: Problem Areas and Costs* (University of South Florida, Tampa, 1992), n. pag.

FIGURE 1

Factors Contributing to Rising Litigation Costs

Factor	Percent of Respondents Citing as Major Factor
Increase in frivolous cases	48.2 %
Greater need for outside counsel	48.2 %
Increased case load	45.4 %
Increased case complexity	41.7 %
Higher incidence of employee suits	39.0 %
Higher incidence of private citizen suits	34.9 %

TORT LIABILITY COST INCREASES

Los Angeles County has felt the impact of society's increased litigiousness and the associated costs. Based upon financial records obtained from the Board of Supervisors and County Counsel's office, total liability expenditures have increased 251% in three years, from $53.6 million in fiscal year 1988/89 to $134.3 million in fiscal year 1991/92, as shown in Figure 2 on page 18.

Tort liability costs are comprised of a number of components. These are:

- Administration of risk management and loss control activities;
- Claims processing administration;
- Settlements and judgments;
- Litigation fees and expenses;
- Costs for subrogation recoveries.

Risk Management and Claims Administration

All claims, settlements, judgments, and related expenses are paid from the Judgment and Damages Budget Unit. Expenditures from this consolidated budget unit are from three separate categories:

1. Automobile and general liability;
2. Medical malpractice;
3. Judgments and settlements.

FIGURE 2

No single department or agency has the total expenditure amount for these major categories of costs resident in their files.

Costs in fiscal year 1991/92 were greatest in the Judgments and Settlements portion of the Judgment and Damages Budget Unit ($89.9 million), followed by medical malpractice ($28.8 million), and general and automobile liability ($15.6 million). The costs and percentage increases since fiscal year 1988/89 through fiscal year 1991/92 are shown in Figure 3.

FIGURE 3

Liability Costs
(In $ Millions)

Category	Fiscal Years 1988/89	Fiscal Years 1991/92	Dollar Increase	Percent Increase
Judgments and settlements	$ 25.5	$ 89.9	$ 64.4	353 %
Medical malpractice	21.9	28.8	6.9	32 %
General and automobile liability	6.2	15.6	9.4	252 %
Totals	$ 53.6	$ 134.3	$ 80.7	251 %

Comparison of Settlement and Legal Defense Expenses

Closer examination shows that the major contributing factor to such increases is rising legal defense costs. Figure 4 illustrates these increases in graphic form. During fiscal years 1984/85 through 1991/92, legal defense costs for automobile and general liability claims increased from $930,105 to $8,581,373 (a 923% increase), and for medical malpractice claims from $3,400,000 to $8,300,000 (a 244% increase). Legal defense costs for judgments and settlements (not shown in Figure 4) increased from $13.8 million in fiscal year 1988/89 to $44.7 million in fiscal year 1991/92 (a 224% increase). Figure 5 provides a comparison of judgments and settlements costs and legal defense costs to the total.

FIGURE 4

As a result of such tremendous increases during the last seven years, the County now expends 46% of all liability program costs for outside legal defense and related expenses. With the inclusion of $5,735,950 for in-house legal expenses, the total amount for legal defense expended in fiscal year 1991/92 was $67,268,024, 48% of total liability costs.

FIGURE 5

Comparison of Settlements and Awards to Legal Defense Costs

Fiscal Year	Settlements and Judgements	Percent of Total	Legal Defense	Percent of Total	Total
1991/92	$ 73,057,317	54 %	$ 61,232,074	46 %	$ 134,289,391
1990/91	65,109,698	61 %	41,804,195	39 %	106,913,893
1989/90	57,023,494	64 %	32,370,439	36 %	89,393,933
1988/89	31,142,690	58 %	22,326,365	42 %	53,469,055
Total	$ 226,333,199	59 %	$ 157,733,073	41 %	$ 384,066,272

The fiscal year 1992/93 budgeted legal defense expenditures for all funds within the Judgments and Damages Budget Unit is $49,527,472, (41% of total expenditures) as reflected in Figure 6 below:

FIGURE 6

Judgments and Damages
Budgeted Expenditures by Fund
Fiscal Year 1992/93

	Settlements and Awards	Legal Expenses	Projected Total
General Fund	$ 14,092,436	$ 13,119,847	$ 27,212,283
Enterprise Funds	28,071,000	12,053,000	40,124,000
Special Funds	11,145,900	12,301,748	23,177,648
Central Reserve	9,173,400	4,784,377	13,957,777
General and Auto Liability	8,200,000	7,268,500	15,468,500
	$ 70,682,736	$ 49,527,472	$119,940,208
Other[(1)]			5,135,486
			$125,075,694

Notes: (1) Although no amounts have been budgeted in this category, $5,135,486 has been expended as of March 1, 1993, of which $5,036,206 is for one claim paid against the Retirement Board.

Source: County Counsel, Financial Management Unit.

IV. RISK MANAGEMENT AND LOSS CONTROL

Risk management and loss control functions are in a state of transition. They are currently fragmented, with several areas remaining to be more clearly defined and addressed.

EXISTING ORGANIZATION

Responsibility for overall liability cost containment activities is currently divided between two County agencies - RIMA, an agency with the CAO's office, and County Counsel's office.

RIMA is responsible for administering the County's risk management and insurance activities. The stated objective of RIMA is to minimize the County's cost of risk - which is defined as the sum of:

- All losses assumed by the County (not transferred to an insurance company);
- Program administration and loss control expenses;
- Claims and claims handling expenses;
- Insurance premiums;
- Employee benefit program costs, including workers' compensation and disability benefits.

RIMA has primary responsibility for providing technical loss control assistance to departments and special funds, but does not have access to the majority of the necessary information to support loss control efforts. RIMA also is responsible for maintaining and improving the Countywide integrated risk management database, but has no direct control over the contract claims adjusters through whom the data flows, or County Counsel's office which has its own specific data needs.

County Counsel's office is responsible for all claims and litigation management, claims adjusting contract management, and budgeting and cost allocation activities.

MANAGEMENT EMPHASIS AND ALLOCATION OF RESOURCES

Currently, RIMA's budget for salaries, benefits, services, and supplies is $9,020,161. The Agency is divided into six divisions with a total of 98.5 budgeted full-time equivalent (FTE) positions, of which 92 are presently filled. The unit within RIMA most directly involved with the tort liability exposures of the County is the Property and Casualty Division. This Division currently has five FTEs (5% of RIMA's total) and a total budget of $392,688 (4% of RIMA's total).

Program Organization

The major programs administered by the Division are:

- <u>Insurance Administration</u> - The County purchases various insurance policies, primarily property insurance policies. Total premiums for all policies for fiscal year 1992/93 is approximately $5,440,496.

- <u>Financial Information</u> - This includes the development and maintenance of the Insurance and Division administrative budgets. Prior to a transfer of responsibility to County Counsel, the Property and Casualty Division was responsible for managing the automobile liability, general liability, and medical malpractice programs. This involved overseeing the firms contracted for claims administration services, which included claims adjusting, risk management information (loss runs), and certain loss control activities. Responsibility for those activities was transferred to County Counsel effective July 1, 1992.

- <u>Information/Resources</u> - This activity involves providing departments with risk management information and loss control consultation. According to the workplan of the Division, its goal is "to develop an integrated risk management information system and risk management manual as resource tools for departments." The Division also sponsors and conducts educational workshops for County staff on such matters as claims information systems, claims handling procedures, and contract review.

- Risk Assessment/Analysis - The Division reviews requests for proposals and renewal service contracts, agreements, permits, and leases for all departments to ensure appropriate indemnification and insurance requirements. The Division also reviews driver records (MVRs) for infractions which may affect the driver's qualification to operate County vehicles or personal vehicles on County business. The Division staffs the County Risk Management Advisory Committee, a Board appointed committee to provide advice on risk management and insurance matters.

In addition to other activities, the Property and Casualty Division conducts driver training education which affects both workers' compensation and public liability loss exposures.

Since the transfer of responsibility from RIMA, County Counsel's office now is responsible for the financial and contract management activities related to the general and automobile liability and medical malpractice programs.

Observations

A recent survey of public agencies throughout the United States found that most liability risk management departments have been centralized within the City Manager/CAO's Office (39%). Twenty-nine percent (29%) reported to the Chief Financial Officer. The remaining 32% reported either to the personnel department, directly to the governing body, or to other departments such as general services.[4]

Nearly all large, urban counties and cities in California have developed formal risk management programs administered by a separate unit, although not a separate agency or department. Los Angeles County is one of the few public entities with a separate agency-level organization such as RIMA. Most risk management units operate either as staff of the CAO/City Manager, finance department, general/internal services, or human resources/ personnel. Of the major public entities in California contacted during our study, responsibility for liability program management and risk management assignments are listed in Figure 7.

---

[4] PRIMA, *Risk Financing Survey*, (1991-92), n. pag.

FIGURE 7

Risk Management Responsibility

Entity	Responsible Agency
California, State of	General Services/Attorney General
Alameda County	CAO's Office
Contra Costa County	CAO's Office
Sacramento County	Human Resources Department
San Bernardino County	Human Resources Department
Santa Clara County	General Services
Anaheim, City of	City Manager's Office
Southern California RTD	Treasurer-Controller

Conclusions

Most risk management units of public agencies devote significantly greater emphasis to liability exposures and program costs than does Los Angeles County. Generally, a county's risk management unit devotes 40 - 60% of staff time and financial resources to liability program management – *which, by comparison with Los Angeles County at near 5%, indicates that liability program management is not a major priority*.

In addition, nearly all large public entities have at least one staff position for loss control and safety. This individual is typically an experienced or certified liability/safety professional. This function is not being performed at RIMA by anyone of this background.

ASSISTANCE TO DEPARTMENTS

Frequently, it was commented during the interviews that insufficient resources and technical knowledge exist at all department levels to properly respond to and address liability exposures. The major departments (Public Works and Sheriff) cited that loss prevention support would assist in identifying and controlling liability exposures.

Analysis

While RIMA has partial responsibility for risk management and loss control activities, individual departments or programs (funds):

> ...ultimately are held accountable for their ability to identify, control, and reduce losses. As such these departments have some discretion as to which loss control services they will acquire and from whom. RIMA's role is explicitly to support, promote, and coordinate departments' decentralized loss control efforts and to recover the costs of providing loss control services through flexible, market-driven prices.
>
> The decentralization of loss control responsibility to individual County departments places such responsibility in the hands of department managers who are better able to identify and control that department's potential exposure to loss events.[5]

While departments have front-line knowledge of risks and potential tort liability exposures, they are not staffed with risk management experts.

Recommendation

The centralized body that controls County risk liability needs to provide guidance and technical support to department managers so that they have a clear understanding of issues and methods for risk control since it is County policy to have departments assume responsibility for their actions that create liability.

CONSOLIDATED ADMINISTRATION

Based upon our limited review of job responsibilities and workload with RIMA and County Counsel's Office, we estimate that there are approximately 13.0 full-time equivalent employees devoted to liability program and risk management activities – five within RIMA's Property and Casualty Division and eight within County Counsel's office. This operational separation of functional duties and responsibilities is ineffective and results in an inefficient use of available resources.

---

[5] *RIMA Business Plan* (May 1989), n. pag.

Loss control and liability risk management need to be consolidated under one agency or department assigned the responsibility and authority to affect loss control measures and to implement and oversee liability cost containment activities. The financial and human resources currently allocated to risk management by RIMA and County Counsel should be consolidated in a single liability program unit. Loss control activities (at RIMA) are the driver behind claims management and liability cost allocation (at County Counsel). The risk management database encompasses all these activities and should be used to guide and facilitate the total risk management effort. For success, these functional units belong in the same administrative group.

V. CLAIMS ADMINISTRATION

Persons or entities requesting payment for damages or injuries allegedly caused by the County or an employee of the County are required by State law (Government Code Section 900) to file a formal claim against the County. Claims for death, injury to person, or injury to personal property must be filed not later than six months after the occurrence. Claims for damages to real property must be filed not later than one year after the occurrence. Claims submitted after these time limits may be returned on the basis of their untimeliness.

Claims must be filed with the Executive Office of the Board of Supervisors, after which the claims are reviewed by County Counsel and, depending on the type of injury alleged, are referred for administration to either one of the Third-Party Administrators (TPAs) or County Counsel, as outlined in Figure 8.

FIGURE 8

Claims Processing Responsibility

Company/Department	Type of Claim
Carl Warren & Company	General Liability and Automobile Liability
Professional Risk Management	Medical Malpractice
County Counsel	Sheriff Confidential and other Liability Actions

After receipt and review of the claim by Carl Warren & Co. (CWC), Professional Risk Management (PRM), or County Counsel, a copy of the claim document is forwarded to the involved department. The designated department contact then reviews the allegations made in the claim and provides any relevant information that would assist the adjuster in responding to those allegations. For example, if the claim alleges that the County owns and maintains a particular area or location, the department would advise whether or not this is in fact the case. Many times the County does not own or have control over the maintenance of the property.

In certain cases, it is not possible to resolve a claim through the claims process. In these cases, the third-party may then serve the County of Los Angeles with a lawsuit (summons and complaint). In most cases, the summons and complaint will be served directly upon the Board of Supervisors.

SETTLEMENT AUTHORITY

The County has extended settlement authority of $3,000 to CWC and PRM for liability claims, except claims involving the Public Works Department or foster parent claims. Claims in excess of $3,000, and those involving foster parent and Public Works general liability, must be submitted to County Counsel's office for approval. County Counsel's office has settlement authority up to $20,000. Claims over $20,000 are submitted through County Counsel to a three-member County Claims Board.

Analysis

These settlement authorities are low compared to other large public entities. Several entities contacted during the course of the study reported settlement authority levels as follows:

FIGURE 9

Liability Settlement Authority Levels

Entity	Authority	Levels
Southern California RTD	Claims Adjusting Firm	$10,000
	Settlement Committee	Unlimited
San Bernardino County	Claims Adjuster	$50,000
California, State of	Staff Adjuster	$15,000
	Senior Staff Adjuster	$25,000
	Division Chief	$50,000
	Agency Head	Unlimited
Sacramento County	Adjusting Firm	$ 5,000
	Risk Manager	$20,000

A criticism leveled against the County by the Los Angeles Trial Lawyers Association (LATLA) is that settlements are not instituted on a timely and cost effective basis in cases of clear County liability:

> Unfortunately, we are unaware of a single claim against the County where discussions were even begun until a lawsuit was filed. In this case, delay in the process can and does end up costing the County millions of dollars in attorneys fees, since once a lawsuit is filed, informal discovery, discussions and negotiations tend to become swamped by the more rigorous and expensive process of legal discovery, law and motion and case posturing.
>
> If the process were properly utilized, claims with strong factual basis and significant exposure could often be resolved quickly and inexpensively before a lawsuit is even filed. Even in cases that enter the litigation process, this system could provide significant savings by emphasizing early and informal investigation, early identification of issues, and innovative and cost-effective dispute resolution.
>
> If the County operated its claims process with the intent of early and cost effective resolution of claims, much of the costs currently going to litigate claims could be saved. One simple step that could result in enormous savings would be active use of arbitration, both as a claims evaluation procedure for claims with difficult liability or damage issues, and as a binding resolution mechanism.[6]

The allegations of the LATLA have been disputed by County Counsel. In a letter from Assistant County Counsel S. Robert Ambrose, County Counsel contends that less than one-sixth of the 6,200 claims filed in fiscal year 1991/92 resulted in lawsuits against the County and about 300 claims were settled while in the claims stage. They also argue that they only litigate claims they view as unjustifiable in liability or in damages.

All public entities contacted during our study indicated that a major component to their liability cost containment program was early settlement of legitimate claims involving clear liability and verified damages.

In February 1992, RIMA instituted an Accelerated Claims Settlement program on a pilot basis with the Sheriff's Department. Minor automobile bodily injury and property damage claims against the County are to be settled on an expedited basis. Evaluation of this pilot program was reassigned to County Counsel's office, whose analysis has not been completed.

---

[6] Letter from Steve Pingel, Legislative Committee Chair, Los Angeles Trial Lawyers Association to Gunther Burke, Chair of the Citizens' Economy & Efficiency Commission, County of Los Angeles, dated June 2, 1993.

Recommendation

We recommend that the County's claims adjusting firms (CWC and PRM) and County staff be given greater settlement authority. This will allow for the more timely disposition of claims and litigated matters, resulting in a decrease in defense and settlement costs. Requiring submission of settlement matters over $20,000 to the Claims Board increases the time necessary to affect early resolution and the likelihood of litigation with added defense costs being incurred.

The County should also provide a mechanism for settling cases during trial to prevent runaway verdicts due to unforseen circumstances. This authority should rest with the Principal Deputy County Counsel in charge of the claim and the Chief Deputy County Counsel.

CLAIMS CONTRACT MANAGEMENT

The County contracts with CWC to adjust general and automobile liability claims and PRM for medical malpractice.

Fees

CWC is compensated on a time and expense basis, subject to a maximum annual fee. The current contract allows for the maximum fee to be exceeded if the number of new claims referred to CWC exceeds a certain number (1,800 during the contract period August 1, 1991 to August 1, 1992). During this period, the County referred 2,100 claims to CWC, thereby exceeding the maximum number and allowing the contract costs to exceed the maximum fee of $1,316,650 by $807,000 ($2,124,000 was paid to CWC).

The maximum fee during the contract period August 1, 1992 to August 1, 1993 is $1,409,000. This maximum fee is again subject to waiver if the number of new claims referred to CWC exceeds 1,800.

Through March 1993 (eight months of the contract period), CWC has been paid $1,377,000 - 98% of the maximum contract fee. New claims referred to CWC have averaged 147 per month, 1,764 on an annual basis, slightly below the 1,800 allowable under the contract.

Based upon the County's past experience, it is very likely that the number of new claims referred to CWC will exceed 1,800, as occurred in contract year 1991/92. If the contract has not been renegotiated and this occurs, we project that the County will owe $951,571 above the maximum fee of $1,409,000.[7]

Oversight of Claims Adjusting Firms

The claims adjusting of CWC and PRM are monitored by County Counsel's Office. Prior to July 1, 1992, they were monitored by the Property and Casualty Division of RIMA. Contract management of CWC and PRM is performed by a Technician and an Administrative Services Manager, respectively. Neither individual has previous experience in liability claims or claims management. The previous duties of each employee within County Counsel's Office have not been transferred to other employees and, as a result, these additional responsibilities have increased their workload.

The contract managers have continued the practice instituted by RIMA of performing monthly on-site audits of CWC and PRM case files. These audits take approximately one full day a month during which 1% of open claims files are reviewed after a random selection from all open claim files.

No other large public entities contacted during our study have assigned claims adjusting contractor oversight responsibilities to inexperienced staff, nor do any conduct monthly on-site audits. All engage the services of an independent claims auditor to evaluate the performance of their claims adjusting firms. Such independent claims audits are performed at least biannually, and annually in cases of reviews indicating substandard performance.

Independent Audit

No in-depth audit of either PRM's or CWC's performance has been conducted by a qualified independent auditor.

---

[7] Total CWC fees of $2,360,571 are projected for the period August 1, 1992 to August 1, 1993 based upon a monthly average of $196,714 paid through March 1993.

Third-Party Administrator (TPA) Contract Supervision

The County should negotiate with CWC a reasonable additional fee for handling the claims in excess of the contracted 1,800, in order to avoid paying the higher standard fee which will cause amounts significantly higher than the maximum contract fee of $1,409,000. If it is not possible to negotiate a reasonable fee for claims in excess of 1,800, the County should arrange alternative claims processing and discontinue referring new claims to CWC once the total has reached 1,800. These claims might be handled by County staff or referred to another contract administrator at a negotiated rate.

The current practice of on-site audits of CWC and PRM by County Counsel staff should be discontinued. In their place, the County should assign oversight of the adjusting firms to qualified and experienced staff within a consolidated risk management department.

In addition, the County should engage the services of an independent claims auditor to review the reasonableness of fees and charges, and quality and level of services provided by PRM and CWC. Such audits should be performed annually, or at least every other year.

VI. LEGAL DEFENSE AND SUBROGATION

Legal defense costs have increased exponentially during the last seven years for both general and automobile liability (923%) and medical malpractice (244%). Nearly all litigated claims are referred to outside defense counsel. Defense counsel is monitored either by PRM (medical malpractice lawsuits), CWC (automobile and general liability lawsuits), or County Counsel (all other liability lawsuits).

As cited in Section III of this report, legal defense costs are a major contributing factor to the County's increasing liability expenditures. Outside defense costs during fiscal year 1991/92 were $61.5 million, 46% of total liability costs. These figures do not include the cost of the 21 attorneys and support staff within the Civil Litigation Unit of County Counsel's office, which is just under $5.7 million. Total defense costs during 1991/92 were $67.2 million, 48% of the total expenditures due to tort liability.

LEGAL DEFENSE EXPENDITURES

Legal defense costs of Los Angeles County are proportionately higher than other large public entities contacted during the course of this study. A comparison of Los Angeles County figures, at 46%, to the five public entities with comparable data for comparing outside defense costs in fiscal year 1991/92 is shown below.

FIGURE 10

Outside Legal Defense as a Percentage of Total Liability Costs

Public Entity	Defense Cost Ratio
Contra Costa County	27.2 %
San Bernardino County	33.8 %
Santa Clara County	31.2 %
Southern California RTD	39.0 %
Sacramento County	34.5 %

Implement a Legal Cost Containment Program

The County should implement a program specifically focusing on procedures to reduce internal and outside legal defense costs. This program should include greater oversight of outside defense firms and evaluation and implementation of cost containment and quality assurance measures.

SUBROGATION

Subrogation actions are efforts to recover money from negligent third parties. Claims involving subrogation potential are referred to the Internal Services Department or the County Tax Collector. They are not referred to CWC or PRM. Subrogation for Workers' Compensation claims is handled separately and is outside the scope of this report.

Finding

This is an unusual practice and is different from that followed by all other public entities contacted during our study. Subrogation activities, in all cases, were handled by the claims adjusting unit (if in-house) or assigned to the contract claims adjusting firm.

In July 1990, the Southern California RTD instituted a subrogation program through its contract adjusting firm. The firm assigned one full-time position to pursue subrogation recoveries which totalled $1.2 million during fiscal year 1991/92. This service is provided on a contingency fee basis (i.e., a percentage of recoveries).

Recommendation

A program similar to that developed by SCRTD should be considered. Responsibility for subrogation could be assigned to PRM and CWC.

VII. BUDGETING AND ACCOUNTING

In response to direction from the Board of Supervisors, RIMA developed and was responsible for implementing a liability cost allocation system. In summary, the plan is to decentralize the liability costs (Judgment and Damages/Insurance) from the General Fund to the departmental budgets. A copy of the report submitted by CAO Richard Dixon is included in Appendix B. This memorandum outlines the purpose, scope, and methodology for increasing departmental accountability through a cost sensitive budgetary allocation plan. Programs which receive federal or state funds such as in Enterprise Funds (hospitals and contract cities) and Special Funds (Public Works, Road, and Flood funds) were previously charged actual liability expenditures incurred during the current, or immediately following, fiscal year. The plan uses a five-year average departmental liability cost to establish the subsequent year's contribution to the Judgment and Damages/Insurance budget line item.

PLAN TO INCREASE DEPARTMENTAL ACCOUNTABILITY

During the transition of risk management responsibility, County Counsel's office has been unable to properly, and in a timely manner, administer the previously adopted cost allocation plan.

Analysis

As of the end of March 1993, with three-quarters of the fiscal year completed, no departmental charges for liability costs had been levied. As a result, the Board of Supervisors' policy directive to decentralize liability costs in order to make departments more accountable has been weakened. In order for such a policy to be effective, it must be administered consistently, on a timely basis, and in a manner easily understood by department managers. The current system, both in its design and implementation, does not fulfill these needs.

Information obtained during interviews with County Counsel staff and the Auditor-Controller's office indicates that a new system of cost allocation will be used during fiscal year 1992/93. This new system is entirely different from the one previously developed by the CAO's office and approved by the Board. Although no written documentation of this new system was available for review, it was described as follows: individual departments will be charged up to 150% of their liability budgeted amounts for fiscal year 1992/93. For example, if a department has $100,000 budgeted for liability costs, but the County pays $200,000 in liability costs for that department, it would be charged $150,000. The amount in excess of $150,000 (150% maximum) would be charged to the general Judgment and Damages budget line item.

Conclusion

We find that the current cost allocation plan is deficient in the following areas:

a. Lack of management goals and performance measures.
b. Lack of consistent application of the plan.
c. Lack of departmental understanding of the plan and its consequences to departmental budgets.
d. Lack of timeliness of cost applied charges.

Recommendation

A meaningful cost allocation plan needs to be in place as one of the primary methods of increasing departmental awareness of and accountability for liability costs.

BUDGET PROJECTIONS

The current management information systems in use by County Counsel (and previously by RIMA) do not provide for accurate, timely tracking of current and projected expenditures. As a result, the amounts budgeted and actually expended the last several years for the Judgment and Damages/Insurance budget units have varied significantly.

This fiscal year County Counsel's office has been unable to provide the departments and Special Funds with accurate information of amounts paid-to-date and amounts reserved for future payment. Consequently, neither the departments nor the CAO's budget division is able to make reasonable budget projections for fiscal year 1993/94. In absence of such data, County Counsel's office has recommended that the same amounts be budgeted for fiscal year 1993/94 as were for fiscal year 1992/93.

Recommendation

Integration of the CAO budgetary and accounting databases is recommended to provide departments with current and accurate financial information.

FINANCIAL RESERVES ON CLAIMS INCURRED BUT UNPAID

While financial case reserves are set on claims administered by PRM and CWC, claims and lawsuits handled internally by County Counsel (and those referred to outside defense counsel) are not. As a result, the County is unable to project with a degree of accuracy the outstanding financial liability for its claims and lawsuits.

Observations

This inability to accurately estimate its case reserves may have a negative impact on the County if Governmental Accounting Standards Board (GASB) Rule 10 is applied to individual public entities. GASB Rule 10 required the full recognition of ultimate predictable costs of risk, such as self-insured claims, for risk-sharing pools. GASB Rule 10 became effective for such organizations beginning with fiscal years starting after June 15, 1990. In fiscal year 1990/91, GASB Rule 10 was to apply to individual self-insured entities, such as Los Angeles County, for fiscal years beginning after June 15, 1994 (fiscal year 1994/95). It is not certain whether GASB Rule 10 will, in fact, be applied to individual entities.

A recent communication from GASB suggests that if an exposure draft is adopted, the full impact and intent of GASB Rule 10 for individual entities will not be realized until such time that GASB Rule 11 becomes effective. It is not certain that GASB Rule 11 will go into effect.

Recommendation

The existence of case reserves will more accurately reflect the financial impact of liability at the time it is incurred to better inform management of current activities and obligations. Prudent financial management dictates that, regardless of whether GASB Rule 10 applies to public entities such as Los Angeles County, case reserves on all open claims should be established, accumulated and recorded, modified as necessary, and reported to financial managers and planners.

VIII. RISK MANAGEMENT INFORMATION SYSTEMS

Risk management and loss control statistics for the County are scattered among many departments in a variety of locations. No department has access to a complete data set from which to identify data relevant to their respective needs.

FRAGMENTED INFORMATION

The County maintains multiple databases at different sites containing liability program costs and other statistical information. None of these systems are connected to provide a single source of data for County users. The main databases are:

- RIMA - RIMA, through CWC, has developed a database for general and automobile liability costs. This database is provided by a Risk Management Information Service provider, Corporate Systems of Amarillo, Texas, through a subcontract arrangement. The cost to the County for this system runs between $70,000 and $80,000 per year, depending on the level of use by the County, specifically the volume of custom reports.

  The information provided through this database is extremely detailed and oriented more toward insurance companies and large corporate users. It is a mainframe system accessible through dial-up via personal computers.

- County Counsel - County Counsel has four primary databases:

  (1) Fiscal - for budgetary and other financial purposes;

  (2) Court Docket - for identification of basic case information on civil litigation matters (all active cases);

  (3) General Litigation - for information tracking of cases by individual attorneys within the Civil Litigation Unit of County Counsel; and

(4) Contract Law Firms - for tracking expenditures (by type) to outside contract law firms. Separate costs accounted for are legal fees, depositions, transcripts, and expert witness fees.

- Sheriff's Department - In response to the Koltz study, the Sheriff's Department has undertaken the development of an in-house system. The primary purpose of the system is to identify officers with frequencies of alleged, or actual, instances of wrongful acts, such as excessive use of force.

- Department of Public Works - As a Special Fund, the Department is charged the cost of tort liability settlements, judgments, and defense costs. To track such costs and to assist in future loss control efforts, the Department of Public Works maintains a basic computer program.

Observations

Los Angeles County is unique when compared to other public entities in California in that separate databases are maintained by multiple departments. All cities and other counties contacted during this project indicate that one database is maintained for all tort liability claims and expenses. These databases contain claims information on general liability, law enforcement liability (Sheriff's confidential claims), street and road claims (Public Works), and other miscellaneous claims or lawsuits paid from the self-insurance reserves.

These databases typically used by other agencies are then used as the primary tool for loss control, claims management, litigation control, departmental cost allocations, and budgetary purposes.

To most uninsured, or self-insured public entities, development and maintenance of a single integrated database is of primary importance to the risk management cost containment program.

Computerized statistical reporting is an invaluable aid in (a) assessing the overall financial exposure of a self-insured program and (b) breaking information down by year, department, location of loss, type of loss, cause, defense and plaintiff counsel, status, dates, reserves, and payments.

A good computerized claim run provides several basic, concise, and comprehensive reports which will be presented in a format which promotes understanding by lay people and management. Additionally, specialized reports should be available to help track loss causation, costs, development patterns, and numerous other indices for loss control purposes. A good system will also integrate related functions such as check production, check registers, Index Bureau submissions, and file set-up activities. Some systems will also offer the capability of making actuarial projections.

A framework for a good data management system is a single database of information accessible to the body of users. In this way, information is entered only one time and then reported in various ways as users require. This greatly simplifies gathering and understanding the data available. The biggest problem in the development of this report was the multitude of databases within the County that contained pieces of cost information. Considerable time was devoted in researching the databases to collect cost data that reflected the complete picture.

Recommendation

Los Angeles County needs a single tort liability database that is the repository of all financial and statistical information relevant to managing risk and controlling loss.

RMIS OVERSIGHT BODY

There is no oversight body responsible for coordinating information system projects and information processing throughout the County departments. Also, we found no evidence of any general systems plan for a comprehensive assessment of County information systems requirements developed by any agency for the entire County.

Finding

While there are advisory bodies providing insight and support to help manage information flow and data processing activities for related departments and agencies, there is no central body charged with ensuring the success of departments in developing productive and meaningful information systems that are not redundant but contribute an important link to the systems within the County.

Until last year, there was a CAO Office of Information Resources that coordinated information systems planning and policies County-wide. Due to budget cutting, this department was eliminated. However, the need for this kind of general oversight and coordinating agency still remains, as is evidenced in that departments are creating and maintaining their own individual systems without the benefit of taking advantage of other existing County information systems.

Recommendation

The County needs an umbrella information systems organization in order to plan and coordinate data processing activities for all County departments. This body should have the authority to establish data processing policy and procedures and monitor compliance.

MANUAL ALLOCATIONS

As of April 1993, allocations have not been transmitted to County departments. Many departments report they will use last year's budget figures for next year which will result in a budget based on data that is three years old.

Finding

County Counsel's office currently performs manual departmental allocations from computer-generated accounting reports because County RMIS systems are not integrated. Consequently, there is a delay in computing numbers to be sent to General Fund departments for analysis which forms the basis for Judgments and Damages line items in the upcoming fiscal year budget.

County Counsel's accounting department is responsible for the estimation of dollars expected to be spent on settlements and judgments for the next fiscal year. Accounting derives this from consultations with in-house and outside attorneys who estimate win/lose probabilities and amounts. The accounting staff perform data collection, totalling, and reporting.

It was recommended by Corporate Systems in June 1992 to automate the process of allocating liability costs to General Fund departments. This recommendation was referred by RIMA to County Counsel, which was jointly reviewed in November 1992. No action has been taken on this proposal.

Recommendation

The lead time now needed to deliver this information can be reduced significantly by programming County Counsel systems to compute the allocations.

It is recommended that a reevaluation be conducted of automating the process to charge departments for judgments and damages expenses as well as to use in budget preparation, expense monitoring, and control on a timely basis.

DUPLICATE RECORDS

The Department of Public Works uses a combination of old database programs and manual recordkeeping to track the status of cases and claims. They receive summons and complaint data from County Counsel and enter that information into their systems. This is the identical information stored at County Counsel.

The Sheriff's department has been developing custom systems to track cases and identify patterns of incidents. The source of much of this data resides at County Counsel and Internal Services Division. Sheriff's personnel input this data from reports received from County Counsel since there is no system connection to the County Counsel database. Consequently, the information on the Sheriff's database is mostly redundant.

Findings

It is unnecessary for Public Works to maintain a redundant database. As indicated by a Public Works representative, it is against policy for Public Works employees to respond to any outside inquiries regarding the cases and claims they have on file. Should any personnel at Public Works need to know the status of a claim or case, they should be able to access records maintained at County Counsel.

It is unnecessary for the Sheriff's department to devote resources to maintain their separate systems. While this department adds information to the database needed for their specific and unique internal claim and case pattern identification, this data can be added to a single database and then reported as required.

Recommendation

Meaningful, accurate, and current claim and case data needs to be made accessible to department personnel for better risk management analysis.

There are numerous possible approaches to accommodate this information reporting requirement. The source of the data for the departments is the database system at County Counsel. The County can provide access to that data in various ways with varying degrees of associated cost. The County may opt to connect departments to a centralized information databank. This databank can be on a mainframe at Internal Services or at a file server at County Counsel. The County may also link together the existing microcomputer systems at County departments. This would be the creation of a wide area network that would share data among departments. Access to confidential data would be controlled by proper security measures.

IX. IMPLEMENTATION OF RECOMMENDATIONS

Each recommendation presented in this report addresses an issue of improvement to the County Risk Management program. Together, they formulate a conceptual approach for the administration of risk management for tort liability in overall County operations.

The recommendations are specific, yet may be implemented in various ways. For instance, consolidation of risk management and loss control under one agency may be accomplished within the department of the CAO or County Counsel, alternatively. Other recommendations will also need to be assessed and evaluated as to their administrative impact and the optimum means of implementation. The primary concern is that action be taken to improve the program in order to obtain the available benefits of good risk management and loss control.

The Board of Supervisors must determine both the extent of the implementation deemed necessary and which County agency or department should be charged with the responsibility to undertake these tasks. On Figure 12, page 57, County resources are suggested for implementing the recommendations. While we believe these resources are appropriate to the suggested task, alternatives may be selected for considerations outside the scope of this study. The Board should direct the appropriate agency to analyze the recommendations and evaluate each action step to determine the most appropriate course of action for accomplishing the objectives set out below.

RISK MANAGEMENT AND LOSS CONTROL

Consolidate Risk Management and Loss Control Into a Unit Within the County with General Responsibility for Liability Program Management

The responsibilities of the new unit would be to:

- Develop and administer the County's liability cost control program;
- Provide technical loss control services and assistance to the various County departments;
- Oversee the performance of the County's contract claims adjusting firms;

- Manage the development of the necessary risk management information system(s);
- Coordinate with County Counsel's office and RIMA the implementation and cost containment program;
- Serve as the central coordinator for evaluating claims against the County and collecting necessary information from the departments;
- Provide periodic management reports to upper management and the Board of Supervisors;
- Administer the cost allocation program for distributing liability costs to County departments; and
- Prepare the annual budget for liability program related categories.

We propose that the existing staffing levels and positions be changed to allow for the formation of a consolidated Liability Program Unit staffed with six full-time positions.

These positions would be:

Liability Program Manager

The Liability Program Manager would have overall responsibility for management of the County's liability cost containment program. In addition to program management responsibilities, the position would be involved in settlement negotiations of significant claims and lawsuits.

Claims Adjuster/Investigator

The Claims Adjuster/Investigator would be responsible for coordinating the claims and accident investigation activities of the departments, would be involved in claims settlements, and would oversee the performance of the County's contract claims adjusting firms.

Litigation Coordinator

The Litigation Coordinator would be assigned responsibility for the day-to-day administration of a legal defense cost containment program.

Loss Control Specialist

The Loss Control Specialist would provide technical support and training to the departments in the area of public safety.

Management Information Coordinator

The Management Information Coordinator would be responsible for developing and maintaining the integrated, comprehensive liability database. Standard and ad hoc reports would be generated to support and evaluate the effectiveness of the County's liability cost containment program, to perform the liability cost allocation distribution, and to provide necessary information for budgetary purposes.

Accountant

The Accountant would maintain the necessary financial records of the liability program for cost allocation and budgetary purposes. In addition, the accountant would monitor, and audit when appropriate, invoices from service providers such as legal defense counsel and claims adjusting firms.

By reallocating current positions and assignments in RIMA and County Counsel's office, establishment of the new unit would result in first year net savings to the County of $36,700 as detailed on Figure 11. Such restructuring would allow for greater emphasis on risk management, contract service provider management, and loss control services to departments and Special Fund programs.

Organizationally, we recommend the Liability Program Unit be placed within either the CAO's office (Fiscal & Budget Division or RIMA) or County Counsel's office. If placed within the County Counsel's office, RIMA's remaining functions would be insurance procurement, contract and lease review, and employee motor vehicle record license review. These activities would continue to be performed by the Property and Casualty Division of RIMA. If the Property and Casualty Division is unable to perform all remaining responsibilities, contract and lease review might be transferred to County Counsel's office and motor vehicle record review to the Liability Program Unit Loss Control Specialist. By comparison, the State of California, with an insurance portfolio of $15 million, is staffed by two analysts.

FIGURE 11

Los Angeles County
Administrative Staffing and Costs
Current and Proposed

	Current FTE*	Current Adjusted Salary	Proposed FTE*	Proposed Adjusted Salary
RIMA (Property and Casualty Division)				
1. Division Chief	1.00	$ 78,000	1.00	$ 78,000
2. Specialist IV	1.00	67,000	-	-
3. Specialist II	1.00	48,000	-	-
4. Specialist II	1.00	48,000	-	-
5. Senior Secretary	1.00	37,000	-	-
Subtotal	5.00	$ 278,000	1.00	$ 78,000
County Counsel				
1. Administrative Service Manager	.75	$ 30,000	.25	$ 7,000
2. Department Technician	.75	28,000	.25	7,000
3. Supervisor Administrative Assistant	.50	28,000	.25	7,000
4. Accounting Manager	.67	27,000	.50	20,000
5. Accounting Clerk	1.00	32,000	.25	8,000
6. Accounting Clerk	1.00	32,000	.25	8,000
7. Accounting Assistant	.50	15,000	-	-
8. Computer Programmer	.33	10,000	.10	3,000
9. Administrative Deputy	.25	20,000	.20	15,000
10. Head, Finance Management	.25	20,000	.20	15,000
11. Temporary Accountant	2.00	50,000	-	-
Subtotal	8.00	$ 292,000	2.25	$ 90,000
Liability Program Unit				
1. Program Manager	-	$ -	1.00	$ 78,000
2. Claims Adjuster/Investigation	-	-	1.00	67,000
3. Litigation Coordinator	-	-	1.00	67,000
4. Loss Control Specialist	-	-	1.00	48,000
5. Management Information Coordinator	-	-	1.00	67,000
6. Accountant	-	-	1.00	48,000
Subtotal	-	$ -	6.00	$ 375,000
Benefits (salary x 36%)		$ 205,200		$ 195,500
Totals	13.00	$ 775,200	9.25	$ 738,500

* Full-time equivalent positions

Increase Loss Control Services to County Departments

At present few County resources are devoted to liability loss prevention. The $125,000,000 budgeted expenditure for fiscal year 1992/93 is for claims and lawsuits after incidents occur. Of RIMA's total budget of $9,020,160, only a small portion is used for liability loss control activities. A normal rule of thumb used by insurance companies and public agencies is to allocate 2% of premium dollars, or self-insurance costs, for loss control. Two percent of the County's liability program costs would generate $2.4 million in safety/loss control funding. This compares to the total Property and Casualty Division budget of $392,688, of which we estimate less than half is allocated to loss control. There is no position within County Counsel's office with responsibility for safety and loss prevention activities.

To partially address this service and funding deficiency, it is recommended that the County designate at least one new position within the proposed Liability Program unit to oversee Countywide safety activities for the prevention of liability claims and lawsuits. The position would be responsible for providing technical assistance and training to County departments. County departments, particularly Sheriff and Public Works, should be encouraged to develop their own specialized loss control and risk management programs.

CLAIMS ADMINISTRATION

Monitor the Activities and Costs of the County's Contract Claims Administrators

The County's current program for monitoring the services of its contract claims adjusters, CWC and PRM, should be restructured. To more effectively monitor the activities and costs of the County's claims administrators, we recommend that:

- The contract management activities currently performed by staff in County Counsel's Office be assigned to the proposed Liability Program Unit.

- The County engage an independent, qualified individual to perform a claims audit of both CWC and PRM.

The audit must:

(1) Assess the accuracy of reserving and the timeliness of payments.

(2) Verify that files are closed in a timely manner and that associated reserves are adjusted accordingly.

(3) Identify inefficient claim investigation techniques and provide recommendations for improvements.

(4) Identify any deficiencies in litigation management, with an emphasis on control of defense costs, and provide recommendations.

(5) Analyze supervisory input on claims to ensure that the quality of case management is acceptable.

(6) Analyze the caseload currently undertaken by each adjustor and make recommendations for necessary changes.

(7) Analyze methods and aggressiveness of subrogation pursuit and make recommendations for improvement, if necessary.

(8) Evaluate the County's claims management information system to verify its capabilities are fully implemented.

(9) Conduct additional analysis to uncover other problem areas.

(10) Assess settlement authority level of TPAs and make recommendations for changes, if applicable.

(11) Review case billing procedures of TPAs to identify any unnecessary expenditures.

- The CWC contract for August 1, 1992 to August 1, 1993 be monitored carefully so that the maximum fee of $1,409,000 is not exceeded. ($1,376,933 has already been expended through March 1993, an eight-month period).

LEGAL DEFENSE

Implement a Legal Defense Cost Containment Program

The focus of this program should be to reduce future defense costs by:

- Closely monitoring litigation plans and costs of outside legal defense firms,

- Auditing the performance and costs of outside defense firms with annual billings to the County exceeding $3 million per year;

- Monitoring and reporting to management the costs and results of individual defense firms and lead attorneys within those firms. Such results would include:

  - Trials won or lost;
  - Arbitrations won or lost;
  - Financial results of settlements or awards (compared to case reserves); and
  - Final defense costs (legal fees, depositions, expert witness fees, and transcripts);

- Considering a reduction in the 49 firms currently on the approved defense panel – retaining firms with proven success ratios and cost containment activities; increasing in-house legal defense resources and, thereby contracting out fewer cases to outside firms;

- Greater use, when practical, of alternative dispute resolution forums such as arbitration and mediation;

- Auditing the performance of in-house legal staff, particularly the quality of representation in cases which involved multimillion-dollar settlements or judgments during the last three years;

- Assigning accident investigation and discovery support activities to the proposed Liability Program Unit;

- Exploring the possibility of creative arrangements with outside defense firms, such as flat fees, annual retainers, bulk case deals, compensation based upon speed of case resolution and outcome, and incentives for reduced discovery costs; and

- Developing a more aggressive subrogation program.

BUDGETING AND ACCOUNTING

Redesign the Liability Program Cost Allocation System in Order to Increase Departmental Accountability

It is recommended that:

- A New Cost Allocation System Be Developed

  The current, unwritten cost allocation plan should be replaced with one consistent with the Board's previous policy directive. The plan should (1) promote departmental accountability; (2) be easy to understand and administer; (3) be equitable; and (4) not be unreasonably punitive in nature. The final adopted plan should be documented, computerized, and communicated to all department managers.

  The new cost allocation plan should be developed, which:

  - Charges costs to departments that generate them;
  - Allows the County to obtain cost reimbursement from outside sources;
  - Makes departments aware of risk management costs;
  - Promotes cooperation with risk management and loss control programs.

Each department's share of the total risk management costs should be allocated through the plan. These costs include:

- Liability claims settlements and judgments;
- Loss adjusting fees and expenses;
- Legal defense fees and expenses;
- Administrative and other costs to operate the program;
- Reductions for subrogation recoveries;
- Risk transfer costs (i.e., insurance premiums).

For the plan to be effective, the departments must be educated on how the allocation system operates and what they must do to reduce their charges. If departmental managers are not accountable for reducing costs, or given some incentive to reduce costs, there may be no value in charging costs to departmental budgets.

- Costs Be Transmitted to All Departments on a Timely Basis

Central Funds should receive allocations monthly or quarterly, in a format easy to understand, with year-to-date figures and budget-to-actual comparisons.

Departmental accountability cannot be promoted without timely information regarding fiscal incentives and penalties.

- Case Reserves Be Established on All Open Claims and Lawsuits

Sound financial and claims management dictate that case reserves be established and reviewed periodically, and changed as necessary. This should be done on all claims and lawsuits managed by County Counsel's office, including litigated cases referred to outside defense counsel. The case reserve should be the estimated probable settlement or judgment value of the claim.

- The Potential Effect of GASB Rule 10 Should Be Evaluated

Discussions should be held with the County's financial auditors about the potential impact of GASB Rule 10 on the County, if it is promulgated as an official rule. If a serious negative impact is likely, steps should be taken to develop a program to fully or partially plan the estimated liabilities.

- The Method for Charging Liability Costs Should Be Reviewed

  The County Counsel and County Administrator's offices should carefully analyze whether the County's current method of charging contract cities for liability costs is adequate to recover the actual costs. During the interview process, numerous concerns were expressed about the adequacy of past and current charges (normally levied as a percentage of the overall contract costs). Major increases by the County have been proposed recently and questioned by the contract cities. A clear understanding of the past and future costs associated with such services is necessary. Without such an understanding, the County runs the risk of subsidizing the contract cities or charging more than is necessary.

RISK MANAGEMENT INFORMATION SYSTEMS

A comprehensive information systems plan would save the County from acquiring unneeded data processing technology and resources. Efficiencies would result because the plan would mitigate duplication of effort among County departments in the development and management of their own data processing systems. Departments would not get involved in programming systems and buying computers to develop software that already exists at other County sites.

Develop a Strategic Information Systems Plan

The County should undertake to develop a strategic information systems plan serving all County departments. This plan would provide the County with a comprehensive and structured approach to map future information systems strategies. It would determine the proper mix of data processing centralization and decentralization that most benefits the user departments at the least cost to the County. This project would assess the strengths and weaknesses of existing and planned County systems. It would identify specific departmental requirements and ascertain the most viable systems alternatives to satisfy those requirements.

RMIS Oversight

The County RMIS oversight body should also be responsible for developing strategic information systems plans for County departments that serve the needs of the departments individually as well as in the aggregate. These plans should eliminate the occurrence of unintentioned redundancy and misallocation of resources within the County's total information system.

Consolidate and Coordinate Liability Data Systems

It is recommended that the developmental work underway modifying the existing systems be suspended until a consolidated, coordinated approach can be evaluated. It is also recommended that RIMA staff discontinue requesting custom reports from Corporate Systems until there is an evaluation of standard reporting offered by Corporate Systems through CWC. These standard reports are already included in fees paid to CWC.

A comprehensive, integrated database of tort liability should allow for:

- Management review and decision making;
- Budgeting, accounting, and financial planning;
- Case file management;
- Loss control analysis;
- Litigation management;
- Departmental (cost centers) information needs – management/budgeting/loss control;
- Actuarial and statistical analysis;
- General program analysis; and
- Cost allocations.

The responsibility for managing a countywide integrated risk management system should be assigned to the Liability Program Unit. This activity should be administered by the Management Information Coordinator in the proposed Liability Program Unit.

Automate Merging Cost Data

Most of this data already exists in the County Counsel database and the rest resides on the database at Internal Services Division, to which County Counsel has system access. A program should be written to extract the required records from the databases and merge them into a report that provides the County with this information on a monthly basis. This data can then feed an allocation program to distribute these charges to their respective departments.

FIGURE 12

Implementation Plan Outline

Task	Resource	Estimated Time Frame
Consolidation of risk management responsibility	CAO/RIMA	120 days
Claims audit of CWC and PRM	Outside audit firm	90 days
Legal defense audit	Outside audit firm	120 days
Increase in-house counsel	County Counsel	180 days
Recommend new contractual arrangement with outside defense firms	County Counsel	90 days
Initiate aggressive subrogation program	CAO/County Counsel/ RIMA	60 days
Develop new cost allocation plan	CAO/Outside Consultant/ Auditor Controller	90 days
Establish case reserves	Auditor Controller	60 days
Evaluate GASB Rule 10 impact	Auditor Controller/ Auditing Firm	30 days
Assign resources to MIS oversight body	CAO	60 days
Develop strategic information systems plan	MIS Oversight Body/ Outside Consultant	90 days
Automate cost data reporting and expense allocation reporting	CAO/Outside Consultant	30 days

X. NET FISCAL BENEFITS AND COSTS

Net fiscal benefits easily justify the implementation of the recommendations.

COST SAVINGS ASSUMPTIONS

Reduction in Tort Liability Expenditures – Extrapolated Estimates

Tort liability expenditures have increased during the period of 1988 to 1992 at an annual average rate of 35.8%, as exhibited in Figure 3 showing escalation of total costs. Total liability costs paid in 1992/1993 are assumed to be at least the same as paid out in fiscal 1991/1992, for purposes of projecting savings in this report. If it is also assumed that future annual expenditures will increase at half the historical rate, about 18%, total liability expenditures will rise to over $260 million by 1996/1997, without the recommended liability cost containment program in place. These projected expenditures are shown in Figure 13.

The ratio of outside legal defense costs to total liability costs listed in Chapter VII show an average of 33.1%. A target ratio for the County of 35% is assumed to be reached at the end of the four years, down from 46% in 1991/1992. To accomplish this requires an average cost reduction of 15% each year, as shown by projected legal costs in Figure 13.

Additionally, as a target decrease in settlements and judgments, a 5% decrease is assumed each year as part of projected costs in Figure 13.

FIGURE 13

Projected Tort Liability Expenditures
Fiscal Years 1993 Through 1996
(In $ Millions)

	93/94	94/95	95/96	96/97	Total
Projected expenditures	$ 158.5	$ 187.0	$ 220.7	$ 260.4	$ 826.6
Projected legal costs	(52.3)	(44.5)	(37.8)	(32.1)	(166.7)
Projected settlement costs	(69.2)	(65.7)	(62.4)	(59.3)	(256.6)
Projected savings	$ 37.0	$ 76.8	$ 120.5	$ 169.0	$ 403.3

Reduction in Tort Liability Expenditures – Budgetary Estimates

The difference in this estimate of legal costs projection compared to the extrapolated approach used above is that the assumption is not made that expenditures will rise at 18% over the next four years. Instead, this projection assumes that the budgeted cost of $120,000,000 for fiscal 1992/93 will be as high as expenditures rise from 1993 to 1996 without the recommended cost containment programs.

The target reduction for defense costs remains at 15% for this projection, too. Also, the annual target decrease of 5% for settlements and judgments is included as part of the computation. This alternative estimate of savings is in Figure 14.

FIGURE 14

Alternative Projected Tort Liability Expenditures
Fiscal Years 1993 Through 1996
(In $ Millions)

	93/94	94/95	95/96	96/97	Total
Projected expenditures	$ 120.0	$ 120.0	$ 120.0	$ 120.0	$ 480.0
Projected legal costs	(41.9)	(35.6)	(30.3)	(25.8)	(133.6)
Projected settlement costs	(67.2)	(63.8)	(60.6)	(57.6)	(249.2)
Projected savings	$ 10.9	$ 20.6	$ 29.1	$ 36.6	$ 97.2

The data is based on budget data shown in Figure 6.

Claims Administration Savings

Claims adjusting fees are reduced from $2,360,000 to the contract maximum of $1,409,000. An additional cost of $114,000 is added to adjust claims in excess of 1,800 per year, resulting in a net savings of $837,000.

Subrogation Savings

Savings for expanded subrogation and fraud detection is estimated at $250,000 during fiscal year 1993/1994 and increased by ten percent each year thereafter.

Savings From Creating Litigation Unit

The projected decrease in salaries and benefits results in net savings of $36,700 (see Figure 11 for detail) with the consolidation of risk management and cost containment operations.

COSTS OF RECOMMENDATIONS

Claims audit costs are about $9,000 for each third-party administrator ($9,000 for CWC and $9,000 for PRM).

The litigation audit for outside and in-house defense counsel costs about $20,000 and is to be performed every other year.

Additional in-house staffing for County Counsel could be about $600,000 per year for three additional attorneys and four additional support staff.

Costs of the recommended subrogation program are to be financed from recoveries with no additional cost.

The development of a new expense allocation plan may cost $25,000 for outside assistance.

The development of a strategic information system plan may cost about $50,000 for an outside consulting firm to do it. This could be offset by eliminating custom programming at Corporate Systems for RIMA. Current costs for Corporate Systems is approximately $80,000 per year. About $45,000 to $50,000 is for custom reports.

The programming fees to design and write database interfaces and allocation routines for reporting should be about $6,000 to $9,000.

NET SAVINGS

Projected gross savings for this period is estimated at $407,775,150, as shown in Figure 15. This is comprised of the projected legal and settlement savings, as detailed in Figure 13, of $403 million and savings of $4 million from better claims and subrogation management and the consolidation of risk management resources, lines 3 through 5 in Figure 15. Net savings compared to extrapolated costs compute to about $405,340,150.

Total cost of above recommendations during the projected four-year period is about $2,415,000.

Net savings compared to projecting forward current expenditures of $120,000,000 per year compute to approximately $99,440,150, which is the $101.8 million from Exhibit E less the cost of recommendations in Figure 15.

FIGURE 15

Los Angeles County
Liability Program Potential Savings by Recommended Activity

Projected Savings by Activity	1st Full Year (FY 1993/94)	2nd Full Year (FY 1994/95)	3rd Full Year (FY 1995/96)	4th Full Year (FY 1996/97)	Total
1. Reduction in legal defense costs	$ 20,300,000	$ 41,100,000	$ 63,200,000	$ 87,100,000	$ 211,700,000
2. Reduction in settlements and judgments	16,700,000	35,700,000	57,200,000	81,800,000	191,400,000
3. Reduction in general and auto liability, claims administration fee	837,000	837,000	837,000	837,000	3,348,000
4. Expanded subrogation recovery program and implementation of fraud detection activity	250,000	275,000	302,500	332,850	1,160,350
5. Reduction in salaries, benefits, services and supplies	36,700	36,700	36,700	36,700	146,800
Projected gross savings	$ 38,123,700	$ 77,948,700	$ 121,576,200	$ 170,106,550	$ 407,755,150

Projected Costs of Recommendations (See Page 57)	1st Full Year (FY 1993/94)	2nd Full Year (FY 1994/95)	3rd Full Year (FY 1995/96)	4th Full Year (FY 1996/97)	Total
1. Claims audits	$ 18,000	$ -	$ 20,000	$ -	$ 38,000
2. Legal defense unit	20,000	-	24,000	-	44,000
3. Additional in-house legal staff	300,000	624,000	649,000	675,000	2,248,000
4. New cost allocation program	25,000	-	-	-	25,000
5. Management information system strategic planning and programming costs	60,000	-	-	-	60,000
Net costs added	$ 423,000	$ 624,000	$ 693,000	$ 675,000	$ 2,415,000
Projected net savings by year	$ 37,700,700	$ 77,324,700	$ 120,883,200	$ 169,431,550	$ 405,340,150
Projected cumulative savings by year	$ 37,700,700	$ 115,025,400	$ 235,908,600	$ 405,340,150	

APPENDIX A

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Larry J. Monteilh, Executive Officer
Clerk of the Board of Supervisors
383 Hall of Administration
Los Angeles, California 90012

Chief Administrative Officer
County Counsel
Auditor-Controller

At its meeting held October 22, 1991, the Board took the following action:

7

The following statement was entered into the record for Supervisor Molina:

"The County government spends millions of dollars each year on costs associated with liability claims. In the current fiscal year, the County has approximately 38 million taxpayer dollars earmarked for payment of judgements and settlements against the County. Actual liability costs are even greater including County Counsel costs and liability costs associated with non-general fund departments.

"Two weeks ago, the Board approved a 50% rate hike in the surcharge that contract cities pay into the Insurance Liability Trust Fund to fund rising liability costs associated with the Department of Public Works and the Sheriff's Department. The Board of Supervisors will again be asked next year to approve another percentage point rate increase, for a total of 100% increase from current levels. The Contract Cities Association, 'strongly urges that the Board of Supervisors cause aggressive risk management activities be undertaken by County Departments to reduce claims against this trust fund.'

"The County should assure that departments are held more accountable for liability costs to provide an incentive to minimize practices that result in liability to the County.

(Continued on Page 2)

"Currently, there is an inconsistent manner by which County Counsel bills departments for its services. Some departments get billed for County Counsel services, others do not. The departments that County Counsel does not charge for its services have a blank check for attorney usage.

"Additionally, general fund departments do not individually account for liability costs in their respective budgets. Therefore, a department does not necessarily feel the pinch of liability costs."

At the suggestion of Supervisor Molina and on motion of Supervisor Hahn, seconded by Supervisor Antonovich, unanimously carried (Supervisors Molina and Edelman being absent), the Chief Administrative Officer, in concurrence with the County Counsel and the Auditor-Controller were instructed to report within 30 days with the following:

1. Describe the billing practices of County Departments for services rendered by the County Counsel;

2. Describe the disbursement policies and practices from the Judgement and Damages Fund, including an explanation of why some departments do not settle their claims from this fund; and

3. Examine alternatives to increase the accountability of every department for associated liability costs including accounting measures to allocate County Counsel costs, settlement costs and other related costs to the appropriate departments.

In addition, the Board requested the Citizens Economy and Efficiency Commission to conduct a study of the increased liability costs and risk management measures that may be instituted to reduce escalating costs to the County. The final report from the Commission shall be due in 180 days.

(Continued on Page 2)

Further, the Board instructed the Executive Officer of the Board to calendar these reports for the Board's consideration upon their scheduled completion.

31022-2.com

Copies distributed:
Each Supervisor

Letter sent to:
Chairman, Los Angeles County Citizens
Economy and Efficiency Commission

APPENDIX B

COUNTY OF LOS ANGELES
CHIEF ADMINISTRATIVE OFFICE
713 HALL OF ADMINISTRATION LOS ANGELES CALIFORNIA 90012
974-1101

RICHARD B. DIXON
CHIEF ADMINISTRATIVE OFFICER

January 7, 1992

To: Each Supervisor

From: Richard B. Dixon
Chief Administrative Officer

Subject: **CLAIMS COSTS REDUCTION PROGRAMS AND BILLING/BUDGETING PRACTICES**

At the October 22, 1991 meeting, your Board, on motion of Supervisor Molina, instructed this office, in concurrence with the County Counsel and Auditor-Controller, to report on County Counsel billing practices and the allocation of claims costs to County departments.

Additionally, we went beyond this original request and expanded the scope of our review to include preventive programs which should help reduce risk exposure and the payment of claims against the County, as well as heighten departmental awareness of this important issue.

The County's liability exposure continues to grow due to a number of factors, including the increasing tendency of the courts and juries to levy judgments against agencies most able to pay ("deep pockets"), rapidly escalating cost of medical and rehabilitative care which has significantly increased judgments and settlements involving personal injury, and the County's growing population and increasing tendency of individuals to file lawsuits against government agencies as part of our complex, litigious society.

To control or reduce these costs, County department heads, managers, and supervisors must be made aware of the problem, given appropriate education and management tools, and held accountable for the resultant costs to the County.

ACTION PLAN TO REDUCE CLAIMS COSTS

To effectively address this problem, the County Counsel and the Risk and Insurance Management Agency (RIMA) of this office will implement an action plan to reduce claims costs and revise current billing and budgeting practices to support these new approaches to risk management. This action plan will include:

-- Expanded Claims Settlement Program

Pilot programs will be developed to expand the time spent by the third party administrators (TPA'S) on a select group of claims. Based upon our experience with medical malpractice claims, we will attempt to develop the claims data in a more proactive manner with the objective of settling the claims at an earlier stage where warranted. This program would minimize the more expensive costs of attorney fees in defense of litigation resulting from a reactive manner of gathering data.

-- On-Site Risk Reduction Task Forces

On-site risk reduction task forces will be established to assist departments in identifying potential risk exposure and developing proactive programs and training to deal with these issues. Included in these programs will be seminars and other educational programs to help reduce exposure to claims and lawsuits.

Also, interdepartmental communication regarding risk management issues will be improved through periodic bulletins from RIMA advising departments of the problems, strategies and solutions utilized elsewhere in the County to reduce risk and liability costs.

-- Aggressive Pursuit of Tort Reform

State tort laws should be modified to limit the amount of potential damages. Although this is a long-term objective which will be very difficult to achieve, the County should aggressively pursue legislative changes to reduce potential damage awards, especially in the area of non-economic damage awards (pain and suffering/emotional distress).

– **Effective Management Information Systems**

Effective management information and reporting systems are the foundation of any proactive risk reduction program. RIMA is now planning development of a new management information system to target high risk exposure areas and increase departmental awareness of liability issues/costs. This type of information capability will also improve management dialogue and feedback on these important issues.

– **Modification of Billing/Budgeting Practices**

As discussed below and detailed in the attachments, the 1992-93 Budget will include modifications to County Counsel billing practices and the budgeting of settlement and judgment costs. These changes will support the objectives of increased management awareness and accountability of the costs of risk and, hopefully, lead to stabilizing or reducing these costs.

CURRENT COUNTY COUNSEL AND CLAIMS BILLING/BUDGETING PRACTICES

As summarized in Attachments "A", "B", and "C", claims against the County arising from court judgments or settlement agreements are currently paid from different budget units/funds depending on the agency involved and the nature of the claim. The attachments detail the billing, budgeting, and claims processing procedures currently used to manage payment of settlements and judgments against the County.

The County Counsel generally does not bill general fund departments for legal services and litigation costs, but does bill subvened general fund departments, special districts, and the Contract Cities Liability Trust Fund (CCLTF) for its services to recover County costs. For the 1992-93 Budget, this office and the County Counsel will develop procedures to bill departments for the cost of litigation. While legal advice will continue to be provided at no cost to general fund departments, departments will be billed for litigation costs to increase department awareness of the high cost of liability exposure.

NEW BUDGET PRACTICES TO INCREASE DEPARTMENTAL ACCOUNTABILITY FOR LIABILITY COSTS

For several years, this office has increased departmental accountability for all costs associated with their operations by accurately reflecting the true "cost of doing business" in each department's budget. In past years we have decentralized the cost of employee benefits, capital projects, routine building maintenance, utilities, auto liability, and other costs that were traditionally located in a centralized budget unit. In this way, department heads are more aware of all their departmental costs and can be held accountable for the appropriate management of their budgets.

In the 1991-92 Budget, this management concept was further extended to the routine settlement and judgment costs budgeted by RIMA for general fund departments. Under this plan, total liability costs are distributed and billed to general fund departments on a ratio formula based on a five-year average of actual claims, except for medical malpractice costs for which actual costs are billed annually.

As the next phase of this process, and in response to Supervisor Molina's motion, we will allocate the remaining costs for liability expenses administered by County Counsel to departments in the 1992-93 Budget based on a three-year average of actual costs. To the extent funds permit, we will also establish a central pool to protect departments from the impact of large, unanticipated claims.

We believe that the allocation of all self-insurance and judgments/damages costs to all departments is the most direct and effective means to properly reflect these costs in departmental budgets and to further heighten departmental awareness of the enormous cost of the County's liability exposure.

RBD:GAR
EDW:vy

Attachments

c: Executive Officer, Board of Supervisors
County Counsel
Auditor-Controller
Each Department Head
Risk and Insurance Management Agency

claimrev.mos

ATTACHMENT A

CURRENT BILLING PRACTICES FOR PAYMENTS, CLAIMS, SETTLEMENTS, AND JUDGMENTS

Expense	Billing Department	General Fund Departments Non-Subvened	General Fund Departments Subvened	Special Fund/ Districts	Contract Cities
Commercial Insurance	RIMA	Billed Actual	Billed Actual	Billed Actual	Billed Actual
Auto Liability	RIMA	Billed/5-yr Avg.	Billed/5-yr Avg.	Billed Actual	Billed Actual
General Liability Referred to TPA's	RIMA	Billed/5-yr Avg.	Billed/5-yr Avg.	Billed Actual	Billed Actual
Medical Malpractice	RIMA	Billed Actual	Billed Actual	Billed Actual	N/A
General Liability Not Referred to TPA's	County Counsel	Not Billed *	Not Billed *	Billed Actual	Billed Actual

*Recommended for billing in 1992-93 on a multi-year average

CURRENT BUDGETARY PROCEDURES FOR SETTLEMENTS AND JUDGMENTS

The Judgments and Damages/Insurance budget unit, which totals $34.9 million net County cost for 1991-92, is a consolidated budget unit that funds County insurance costs and associated settlements and claims, judgments and damages against the County, and associated litigation support expenses. The "insurance" (self-insurance and commercial insurance) portion of this budget unit is administered by the CAO's Risk and Insurance Management Agency (RIMA) and the judgments and settlements portion is administered by the County Counsel. Settlements are approved by the third party administrators, RIMA, County Counsel, County Claims Board, or the Board of Supervisors, depending on the amount and nature of the case, in accordance with established Board policies.

COMMERCIAL INSURANCE

Due to the size and complexity of County government, and the resultant unusually high exposure to liability claims, commercial insurance is generally unavailable for most categories of liability. However, RIMA does currently administer 18 commercial insurance policies at an annual cost of approximately $5.3 million, which is billed to the departments. These policies insure very specialized areas of County operations such as specialized property/equipment insurance, fine arts, and insurance for Countywide programs such as volunteer services.

SELF-INSURANCE

RIMA administers the budgeting and accounting functions of the County's self-insurance programs for auto liability, medical malpractice, and selected general liability matters. Due to the unavailability of insurance at competitive rates, the County has for several years self-insured for these types of claims. In the 1991-92 budget, the entire net County cost for these programs was allocated out to departments. Based on their last five years' claims experience, a percentage "share" factor was established for each department. Therefore, when a claim is filed against a specific department, all County departments will share in the cost of any settlement or judgment of the claim, based on their percentage "share" except for medical malpractice claims which are billed directly to the responsible department.

JUDGMENTS AND DAMAGES

The net County cost of the Judgments and Damages/Insurance budget unit reflects payment for general fund related judgments and settlements which are administered by the County Counsel and the associated litigation costs. These costs are primarily financed centrally and not presently allocated to general fund departments.

CONTRACT CITIES LIABILITY TRUST FUND

Consistent with the County's policies for contracting to cities, the Contract Cities Liability Trust Fund directly pays for judgments, settlements, and other litigation support expenses arising from claims against the County for services provided to contract cities by County departments. This fund is reimbursed by a surcharge to contract cities and there is no general fund cost.

SPECIAL DISTRICTS/SPECIAL FUNDS

All special district/special fund insurance, judgments/settlements, and other litigation expenses are paid directly by the responsible agency at no cost to the County general fund. This is consistent with Board policy to minimize general fund subsidy of special districts and funds.

prevcl.b

ATTACHMENT C

CURRENT CLAIMS/LITIGATION ADMINISTRATION PRACTICES

All claims and lawsuits filed against the County are reviewed by County Counsel for appropriate disposition. Claims and lawsuits are handled internally by the County Counsel, referred to a third party administrator, or, in those limited instances where commercial insurance has been obtained, referred to the County's Risk Insurance Management Agency (RIMA) for claims administration. A claim which is denied may result in litigation, necessitating further review by County Counsel for determining whether County Counsel or private counsel will handle the legal defense in the case.

Third party administrators, Carl Warren and Company (CWC) and Professional Risk Management (PRM), are under contract with the County to provide professional claims review and management services to the County with the goal of limiting the County's liability exposure and providing efficient claims/litigation services. RIMA shares with County Counsel the oversight of these private administrators.

Specific types of claims and lawsuits are handled as follows:

AUTOMOBILE LIABILITY CLAIMS

1. Claims are received by County Counsel and forwarded to Carl Warren and Company (CWC), the third party administrator which has approval authority up to $3,000. If approved, claim costs are paid from the self-insurance budget and costs are allocated to departments, as detailed in Attachment A.

2. If a denied claim results in a lawsuit, the lawsuit is routed back through the County Counsel for determination of who will handle the legal defense. Occasionally, the County Counsel will represent the County. In most cases, the lawsuits are usually forwarded to CWC for transmittal to a designated law firm.

3. The designated law firm, coordinating with CWC, recommends settlement or litigates the lawsuit under the general supervision of a senior attorney in County Counsel.

4. Any resulting judgment or settlement is paid from the self-insurance budget and costs are allocated to departments, as detailed in Attachment A.

MEDICAL MALPRACTICE CLAIMS

1. Claims are received by County Counsel and forwarded to Professional Risk Management (PRM), the third party administrator, which also has approval authority up to $3,000. If approved, claim costs are paid from the self-insurance budget and costs are billed out, as detailed in Attachment A.

2. If a denied claim results in a lawsuit, the lawsuit is reviewed by County Counsel and then forwarded to PRM for assignment to a contract law firm selected by County Counsel.

3. Based on recommendations from private counsel and PRM, County Counsel determines whether to settle the claim or proceed to trial.

4. Any resulting judgment or settlement is paid from the self-insurance budget and costs are billed out, as detailed in Attachment A.

GENERAL LIABILITY CLAIMS

1. All claims are received and reviewed by County Counsel and are either forwarded to Carl Warren and Company (CWC) or are retained by County Counsel based on several criteria including type of case, complexity, special nature or sensitivity of the case, etc. Sheriff confidential cases are not handled by Carl Warren (see below).

2. If a claim is approved, the cost is either paid centrally by Judgments & Damages budget (County Counsel claims); or by the self-insurance budget (CWC claims) and costs allocated to departments as detailed in Attachment A.

3. If a denied claim results in a lawsuit, County Counsel will again review the matter and retain the case "in-house" or transmit it to CWC for assignment to a contract law firm selected by County Counsel.

4. Any resulting judgment or settlement is either paid centrally by Judgments and Damages budget (if it originated from a County Counsel claim); or by the Insurance budget (if it originated from a CWC claim) and the costs are allocated to departments as detailed in Attachment A.

SHERIFF CONFIDENTIAL CLAIMS

1. Sheriff confidential claims (officer-involved shootings or alleged misconduct) are received by County Counsel and retained until the matter is resolved.

2. If a claim is approved, cost is paid centrally from the Judgments and Damages budget or CCLTF and not billed to the Sheriff budget.

3. If denied claim results in a lawsuit, County Counsel, or a private contract law firm, will represent the County. County Counsel determines which lawsuits are assigned to private contract attorneys and a senior County attorney is assigned to review and monitor each contract law firm handling Sheriff cases.

4. Any resulting judgment or settlement is currently paid centrally from the Judgments and Damages budget or CCLTF and is not billed to the Sheriff budget. Beginning in 1992-93, it is recommended such costs be billed to the Sheriff's department.

prevcl.c