
ANNUAL REPORT OF UNIVERSITY OF CALIFORNIA
LEGAL EXPENSES FOR OUTSIDE COUNSEL
FY 2009

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ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

EXECUTIVE SUMMARY

For fiscal year 2009 the University of California paid gross legal expenses¹ of \$84.2 M, a 15 percent reduction from the prior fiscal year² and a 20 percent reduction from projections based on the prior ten-year trend. (Tables 1, 2) The reduction is believed to be the result of aggressive cost management efforts and a formal outside counsel cost reduction program initiated by the General Counsel with substantial support from the Office of Risk Services beginning in the spring of 2008, combined with reduced service use in select categories.

The reduction reversed a ten-year trend of annual increases averaging 10 percent per year. Without the formal reduction program legal expenses were projected to increase by five percent, the result of outside counsel rate increases, other inflationary costs of legal service delivery and, increasing costs of defending litigation in the professional liability and employment practices areas given the generally escalating verdicts and settlement values in those areas.

Given the scope, scale and complexity of the University's enterprise, and the fact that the legal issues presented by the University's affairs are often nuanced, difficult and novel, continued substantial reliance on outside counsel can be expected. However, with the demonstrated success of formal efforts to reduce outside counsel expense, the General Counsel expects that outside counsel expenses will remain flat or continue to trend downward over the next two years, representing a seven to ten percent reduction over the ten-year trend. The General Counsel believes that the next major phase in reducing outside counsel expenses will entail increasing in-house capacity in areas such as health care, environmental and labor and employment categories given that dollars spent on outside counsel exceed that spent on in-house staff by a four-to-one margin, and in-house legal costs on average are at least 100 percent lower than the most competitive hourly rates charged for the same services by outside counsel.

This Report is organized into four sections:

- Introduction of the University's legal function with organization and operation of the General Counsel's Office
- Summary review of the three main outside counsel expense categories: Risk Services Program Litigation; UCOP Innovation Alliances and Services (IAS) – formerly Office of Technology (OTT); and Core Legal Services -- the balance of the University's outside counsel uses
- Comparative analysis of expenses in the two most recent fiscal years
- Summary of the OGC Outside Counsel Reduction Program initiated in the Spring of 2008

¹Gross legal expenses include all legal expenses paid by the University, including in the Technology Transfer area where up to 75 percent of the expenses are reimbursed by third parties. (Table 1)

² OGC reported overall savings of 7.8 percent in its 2009 Annual Report of its operations. The difference is the result of a correction downward in expenses incurred in the Technology Transfer (IAS) category in FY 2009.

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INTRODUCTION – THE UNIVERSITY’S LEGAL FUNCTION

The University’s legal function is performed under the general direction of the Vice President, Legal Affairs and General Counsel, pursuant to Bylaw 21.2, and is managed through the Office of the General Counsel (OGC). OGC comprises attorneys and support staff in Oakland, on the campuses, in the medical centers, and at the Lawrence Berkeley National Laboratory. There are approximately 75 in-house attorneys working for the University, 27 of whom are located on eight of our campuses, all five medical centers and at the Berkeley Laboratory.³

The legal function consists of three segments: (1) the resident counsel located at the campuses; (2) the Oakland-based attorneys located at the central office; and (3) outside counsel retained to supplement the services of OGC. The resident counsel serves as the first legal resource for the University’s campus activities. They serve on the executive leadership teams at the locations and provide general legal advice and counsel on a broad range of matters facing the locations, many of which represent multi-billion dollar, stand-alone enterprises. The size of campus-based legal staffs range from eight attorneys at UCLA to a part-time attorney (1/3 time) at UCM. On average, the larger campuses employ two campus-based and two hospital-based attorneys, while the smaller campuses employ one campus and one hospital-based attorney.

The 48 Oakland-based attorneys perform legal services for The Regents, the President, the Office of the President and Offices of the Regents’ Officers, and directly supervise all of the University’s litigation. Organized into five specialty practice groups, these attorneys provide substantial legal support to the attorneys and managers on the campuses and medical centers in specialized areas of law. These include labor and employment, construction, real estate, environmental, technology transfer, educational affairs, governance and compliance, commercial transactions and national laboratory affairs.

Outside counsel are retained when the legal work can be performed more efficiently by outside counsel, such as when OGC lacks a particular expertise or the requisite systems and infrastructure to support the service. Outside Counsel are also retained when the volume of work exceeds the capacity of the OGC to provide appropriately timely service. Typically, the litigation managed through the University’s Risk Services Programs can be more efficiently performed by outside counsel who are retained under cost-contained, negotiated hourly rates with direct legal oversight from OGC attorneys. This practice area alone represents over one-third of the outside counsel expense. Immigration law is another practice area more efficiently handled by outside counsel, working at cost-contained, flat rate fee structures to process hundreds of visa and other similar applications for faculty recruited from foreign countries.

The University’s complex organization, disparate funding, novel business transactions and heavily regulated activities create many legal challenges that are often of first impression. A number of these challenges benefit from the unique expertise that can only be obtained by an outside counsel specialist with broad experience across a range of clients and industries. Specialists are retained, for example, in areas of health care investigations and compliance; health care contracts; patent

³ On a per-student or per-employee basis, this total number is less than half the number at major private universities (Stanford, Harvard, Yale), and seven times less per employee than local public agencies (Cities of Oakland and San Francisco).

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prosecution and infringement actions; complex real estate transactions; complex litigation with system-wide implications and other like matters.

BACKGROUND RE OUTSIDE COUNSEL EXPENSES

The University's outside counsel expenses are segmented into three broad "buckets," each representing roughly one third of the total annual cost:

- Outside counsel expenses for litigation managed through the General Counsel and UCOP Risk Services (OPRS) Self-Insurance Litigation Program;
- Expenses for patent prosecution, defense, infringement and other matters related to the UCOP Innovation Alliances and Services (IAS) and technology transfer offices on the campuses (collectively referred to as IAS);
- All other outside counsel expenses for various core legal services, both litigation and non-litigation.⁴

The first two buckets of outside counsel expense largely concern court or administrative processes in a few relatively discrete and predictable (in terms of volume) areas of the University's legal practice. These buckets are supported by reliable budgets and have dedicated funding sources for payment of the legal expenses. The Risk Services bucket of expenses is funded by annual fees assessed against The Office of the President, the campuses and the medical centers, determined by actuaries and based on a number of factors including payroll, headcount, and loss experience. Funds in this program are held in trust and administered by the University's Chief Risk Officer under the auspices of the Vice President, Finance. The IAS bucket of expenses is paid largely from royalty revenue and other campus sources and can include reimbursement for administrative overhead as appropriate under the University's patent policy. These funds are administered by the Executive Director – Research Administration and Technology Transfer under the auspices of the Vice President -- Research and Graduate Studies. Each campus is responsible for the funding and staffing of its technology transfer activities, including providing financial resources for the legal support of those functions.

Broadly speaking, expenses in the Risk Services bucket can be viewed as a University cost of risk associated with the operation of its enterprise. In contrast, IAS expenses can be viewed as an investment in the University's intellectual property to encourage industry to bring inventions to market, thereby fulfilling the University's mission of creating public good from its research programs. Of particular note, three University inventions have generated over \$300 M in revenue, nearly a third of the total revenue generated by the University's patent portfolio over the past ten years. (See Table 4) Moreover, nearly 75 percent of the IAS legal expenses were reimbursed by licensees and other third parties over the past two fiscal years, thus substantially reducing the overall legal expense in this area.

The third bucket, Core Legal Services, spans a broad spectrum of practice areas and consists of significant training, counseling, compliance, and business transactions activities, as well as highly complex litigation. While largely associated with legal risk management and compliance, the Core

⁴ Generally OGC incurs legal expenses only as a pass through. OGC expenses paid are recharged to the department requesting the service.

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Legal Services bucket also includes business-related investments in the form of healthcare alliances and affirmative litigation, in which the University is plaintiff seeking to recover damages or other funds. Appendix Table D shows the University's \$67 M in affirmative recoveries in the fiscal year.) Such affirmative litigation includes trust and estates, bankruptcy, commercial transaction, and securities and investments litigation. Affirmative litigation is estimated to have generated more than \$300 M in revenue over the past six years, the majority coming from the \$200 M recovery in the AOL/Times Warner securities case and the \$40 M recovery in the Enron securities class action matter.

As is shown in Appendix Tables C and D, Summary of Legal Expenses by Category and Summary of Top Categories by Location, the legal work performed in the Core Legal Services bucket is highly reflective of the sensitive and/or large initiatives at each location and, therefore, more difficult to predict and budget for than the work of the other two buckets. It also offers the greatest opportunities for rethinking the University's service needs, funding and delivery methods.

This report relies on data from three primary sources: the Office of the President Risk Services (OPRS) claims management system; the Office of Innovation Alliances and Services (IAS) financial system, and the General Counsel's billing database. Given payment cycles and accruals, totals generated by these sources and do not match the University's general ledger. However, the data compiled from these sources provide the necessary granularity not available in the general ledger to enable management interpretation and analysis. A careful comparison of data sources has revealed that the results are sufficiently accurate for purposes of this analysis. The figures used for FY 2008 have been revised from last year's report to include costs as well as worker's compensation expenses in the Risk Services bucket, and legal expenses in Core Legal Services paid by units other than the OGC, both of which were excluded from last year's report. In addition, for FY 2008 OGC did not have its billing/tracking system in place. OGC relied on outside counsel billings to compile Core Legal Services data. Accordingly, the FY 2008 Core Legal Services figures are estimates of actual total expenses. This year, in partnership with OPRS and as one of the cost savings measures, the OGC implemented a new billing/tracking system using the same Third Party Administrator as OPRS. This new service has resulted in more efficient billing practices and importantly, an improved ability to track and report expenses that is expected to lead to a more complete calculation of the University's total cost of risk. As such, the figures reported in Core Legal Services in this report will be used going forward for comparative purposes.

ANALYSIS Summary

Total legal expenses for FY 2009 were \$84.2 M, as compared with \$99.4 M in the prior year. The difference (\$15.2 M) represents a 15 percent overall reduction. (Tables 1, 2) IAS experienced an eighteen percent decrease, from \$38.6 M to \$31.5 M, although net expenses were flat. The Risk Services Program experienced a 15 percent overall reduction (\$33.1 M in FY2008 to \$28.3 M in FY2009), and a 20 percent reduction in the civil litigation programs, excluding the worker's compensation program (Table 3). This is particularly noteworthy given that verdicts and settlement values in the medical malpractice (PL) and the employment practice (EPL) areas have been steadily increasing, and given that the PL Program continues to fund settlements from the UC Irvine Medical Center's now defunct Liver Transplant Program and Center for Reproductive Health.

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The 10 percent decrease in Core Legal Services is believed to be the result of mandatory decreases in outside counsel hourly rates, improved billing and collection monitoring through the General Counsel's newly created third party billing program (discussed below), and lower overall usage of outside counsel in select matters.

TABLE 1
Summary of Outside Counsel Expenses
FY 2008 and FY2009

In Millions

FY	2007-2008	2008-2009	\$ Difference	% Difference
Core Legal Services	\$27.7*	\$24.4**	(\$3.3)	(12%)
Self Insurance Litigation	\$33.1	\$28.3	(\$4.8)	(15%)
IAS	\$38.6	\$31.5***	(\$7.1)	(18%)
Gross Total	\$99.4	\$84.2	(\$15.2)	(15%)
IAS Reimbursements****	\$24.1	\$23.0	(\$1.1)	(5%)
IAS Net Expenses	\$8.7	\$8.6	(\$0.1)	(.01%)
Total Net Expenses	\$75.3	\$61.2	(\$14.1)	(19%)

* Core Legal Services reported in last year's Annual Report was based on invoices received from outside counsel and excluded certain payments and costs paid by others. As such, approximately \$5M of legal expenses excluded from last year's report are now included in the total, which is based on the General Ledger.

** OGC previously reported \$26.2 M for this expense. In this report \$1.8 M of expenses associated with IAS has been excluded as it is reported in the IAS "bucket."

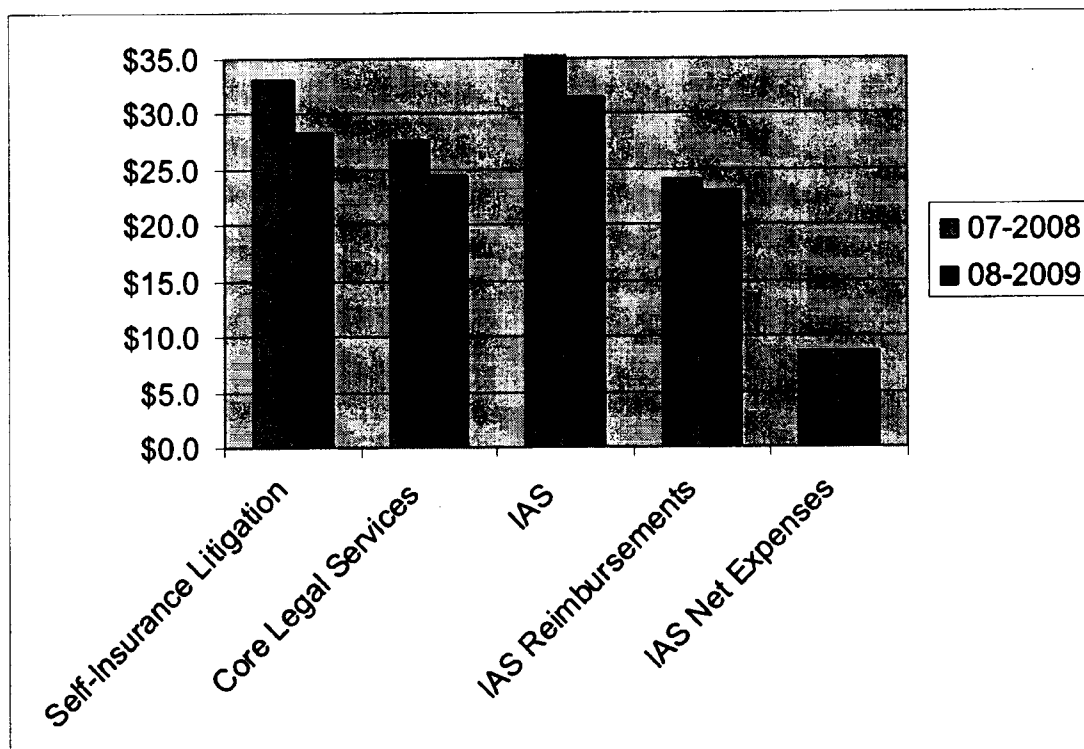
***OGC has reported this expense as \$37.1 M previously. The above figure is the corrected figure.

****Licensees share substantially in the legal expenses associated with the patent prosecution and infringement litigation.

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TABLE 2
Comparison of Outside Counsel Expenses
FY 2008 and FY2009

In Millions



ANALYSIS By Category

Risk Services Litigation

The Risk Services Self-Insurance Litigation Program encompasses approximately 95 percent of the litigated cases against the University by volume and is administered jointly by OPRS and OGC. For purposes of this analysis, the program can be divided into four subparts -- Professional Liability (PL) (medical malpractice) Employment Practices (EPL), General Liability (GL) and Auto Liability (AU).⁵

⁵ Workers Compensation expenses are included in the total gross legal expenses (Tables 1, 2) but excluded from this analysis as it is considered a stand-alone administrative program. Workers Compensation claims -- approximately 6,000 per year -- are not adjudicated in civil courts. They are administered through the Workers Compensation Appeals Board and result in benefits paid on behalf of UC employees who are injured in the course and scope of their University service. These claims are administered by OPRS in conjunction with a retained Third Party Administrator (TPA) without active participation from OGC. The TPA retains counsel in claims only where the injured worker is represented by legal counsel. The average annual legal expense of \$5.5 M represents approximately seven percent of the total annual payout in this program.

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Litigation in the Risk Services Program is a high volume practice area involving over 1,000 open claims and litigated matters at any one time. OGC and OPRS regularly review the defense bar in these areas, and retain the state's leading trial experts to serve on the University's established defense panels at aggressively negotiated billing rates. OGC and OPRS also closely manage defense costs through comprehensive defense panel guidelines, through strict billing requirements and through the retention of a Third Party Claims Administrator to help oversee the management of the litigation and to review and process the billing invoices. OGC and OPRS hold biennial defense panel seminars for training and education purposes. The partnership formed among OGC, OPRS and the outside defense panels has created a model program that is efficient, with clear and substantial accountability and control processes.

The PL program is the largest of the programs, encompassing approximately 500 open matters, ranging from minor incidents to multi-million dollar malpractice lawsuits emanating from the five medical centers, ten hospitals and many medical clinics operated by the University.

The Auto Program is the smallest of the Risk Services Programs, averaging \$500,000 in annual legal expenses over the two reported years. This program covers all personal injury and property damage caused by University-owned rolling stock and non-owned vehicles (rental cars and employee-owned vehicles) used in the course and scope of employment.

The Employment Practices Liability Program covers employment torts, including wrongful termination, whistleblower retaliation, discrimination, harassment, defamation and other employment-related torts.

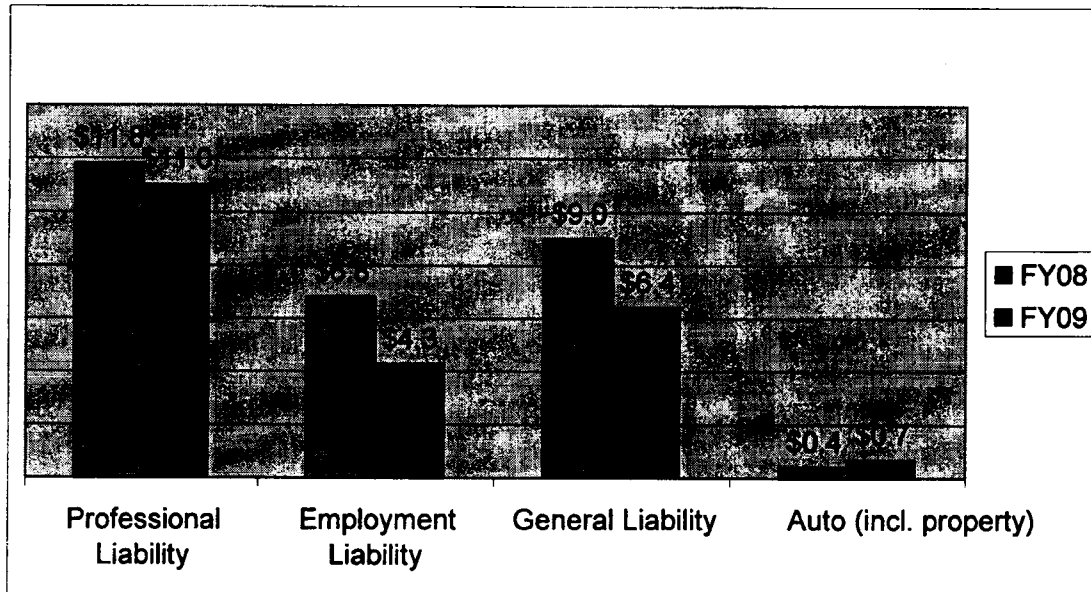
The General Liability Program includes damages claims arising from corporate and employee-created liability, including police misconduct, student harassment, whistleblower claims, dangerous condition of property and other similar torts.

As shown in Table 3, Risk Services Litigation (excluding Worker's Compensation expenses) experienced a significant 20 percent overall reduction in legal expenses from \$28 M to \$22.5 M. (Expense by location in these programs is shown in Appendix Table A.) The Employment Practices and General Liability Programs experienced substantial reductions in expenses (37 and 40 percent) believed to be the result, in large measure, of a formal claims closure program implemented jointly by the OGC and OPRS, discussed below.

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TABLE 3
Risk Services Expense Summary

In Millions



Core Legal Services

Core Legal Services encompasses the University legal work outside of Risk Services Litigation and IAS, spanning a broad spectrum of practice areas and consisting of significant training, counseling, compliance and business transactions activities, as well as complex litigation. Since these matters arise out of the discrete individual legal needs of a campus or OP unit, the expenses associated with this bucket are the most difficult to predict and to budget for. (See Appendix Tables B and C) Billings in this category totaled \$24.4 M in FY 2009 as compared with \$27.7 M in FY 2008, a \$3.3 M or 12 percent decrease.

The collective activities of the Office of the President, which include the Treasurer's Office, Human Resources, Employee Benefits, systemwide Labor Management, Academic Affairs, Research and Agriculture and Natural Resources, has accounted for the largest share of Core Legal Service expense over the past two years, at approximately one third of the total. This expense also includes administrative ownership of litigation with system-wide impact, such as the recent *Kashmiri* and *Luquetta* student fee cases. (Described in more detail below in Expenses by Location)

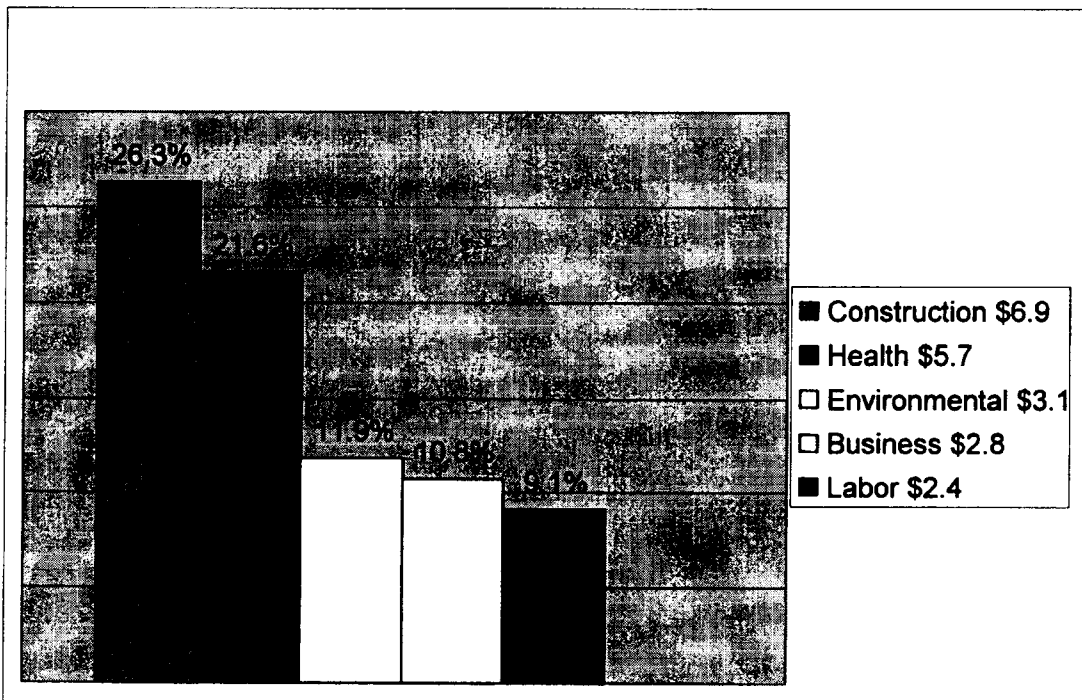
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Core Legal Expenses by Category

Table 4 shows the top five categories of expense in Core Legal Services for FY 2009. These combined categories -- health care, construction, environmental, business and labor/employment represent nearly 80 percent of all Core Legal Services expenditures in the year, and remain the University's highest legal expense categories over the prior two years. (Tables 4 and 5)

TABLE 4
Core Legal Expenses
Top Five Categories of Expense and Percent of Total

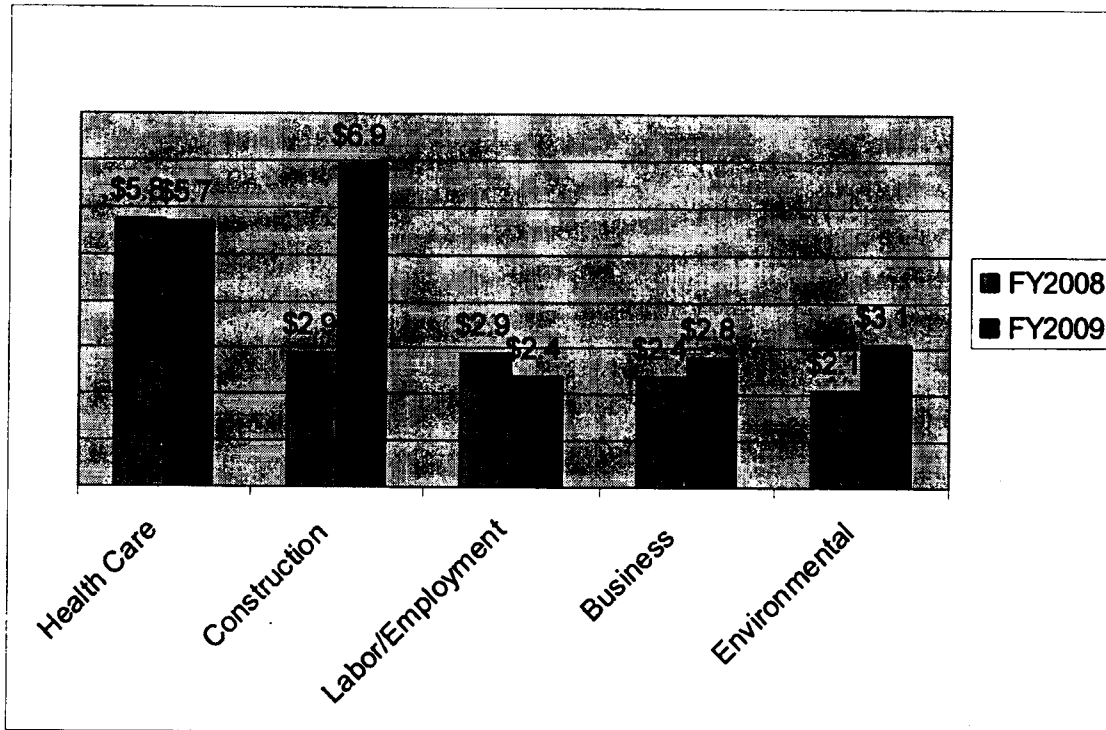
In Millions



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TABLE 5
Comparison of Largest Billing Categories
Core Legal Services
FY 2008/2009

In Millions



Large increases in discrete categories (construction and environmental) are directly tied to high priority, and/or legally contentious initiatives at specific locations. The 135 percent increase in construction (\$2.9 M to \$6.9 M) is the result of the construction disputes arising out of the UCLA Westwood and Santa Monica Hospital projects, which collectively account for 80 percent of the total construction expenses for the 2009 fiscal year. The 50 percent increase in environmental expense is the result of the highly contentious CEQA and related “tree-sitter” companion litigation efforts arising out of UCB’s Student High Performance Athletics Center project adjacent to the football stadium. This litigation constituted 65 percent of the total environmental expenditures in the fiscal year. Appendix Table D shows the top category of expenses by location. As is shown in Appendix Table D, expenses at each location are highly individualized and reflect the high profile and/or contentious initiatives at each location.

With only two years of data collected, there is no clearly apparent trend in Core Legal Services thus far. However, the General Counsel assumes that expenses in the above five categories will continue to predominate Core Legal Services over the five-year horizon. The General Counsel will continue to compare Core Legal Service by year by category to determine whether, at some future

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point, trends become apparent that will assist in predicting these costs and/or allowing them to be delivered more efficiently.

Core Legal Expenses by Location

As a result of the core services provided by UCOP to the rest of the University, including the Treasurer's Office, Human Resources, Employee Benefits, systemwide Labor Management, Academic Affairs, Research and Agriculture and Natural Resources, systemwide legal issues and litigation, UCOP has the largest share of Core Legal Expense, averaging one third of the total over the two-year period. Significantly, UCOP expenses were reduced in FY 2009 by 40 percent from the prior year (\$10.7 M to \$6.5 M).

In FY 2009, UCOP's largest expenses by category were for systemwide health and labor/employment matters, bond/external finance, the student fee litigation over which OP has administrative "ownership" and Treasurer's investments. (Table 6) As shown in Table 6, these five categories account for 75 percent of UCOP's total.⁶

TABLE 6
UCOP Expenses by Category

UCOP	
Health Combined	\$2,181,834
Labor/Employment	\$947,190
Bond/External Finance	\$837,911
Student Fee Litigation	\$476,591
Treasurer Investments	\$444,625
Subtotal	\$4,888,151 75%

As expected, UCLA with the largest operating budget and the new hospital construction projects accounted for the next highest share of Core Legal Expenses in FY 2009 at 24 percent, and a two-year average of 17 percent. As mentioned, UCLA experienced exceptional outside counsel expenses in 2009 as a result of the substantial claims arising out of the Westwood and Santa Monica Hospital projects. The UCLA Medical Center also experienced unusually high expenses, in part the result of the aforementioned construction disputes combined with the breach of privacy investigations arising out of the widely publicized alleged breaches of patient privacy early last year. The combined UCLA/ UCLA Medical Centers accounted for \$9.7 M in FY 2009 Core Legal Expenses, \$7.3 M (75 percent) of which relate to the two billing categories. As a result, UCLA's combined expenses represent 40 percent of the total FY 2009 Core Legal Services, and UCOP and the combined UCLA/UCLAMC accounted for more than 65 percent of the FY 2009 total Core Legal Services expenditures. (Table 8)

⁶ Because this is only the second year OGC has been able to compile these data, there are no observable trends in usage.

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TABLE 7
UCLA and UCLAMC Expenses by Category

UCLA		
Construction	\$4,432,452	76%
Immigration	\$604,150	
Environmental	\$193,619	
Real Estate	\$165,922	
Probate/Gifts	<u>\$131,929</u>	
TOTAL	\$5,528,074	95%
UCLAMC		
Construction	\$1,719,988	
Privacy Breach Investigations	\$1,216,515	
Managed Care contracts	<u>\$327,926</u>	
TOTAL	\$3,264,430	85%

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TABLE 8
Expenses by Location
FY 2008 and FY 2009

Location	2007-2008 Adjusted	2008-09
UCOP (Inc. Treasurer, system-wide labor)	\$10,699,377	\$6,523,030
UCLA	\$3,162,800	\$5,833,896
UCSF	\$3,015,174	\$1,480,567
UCSC	\$1,126,019	\$927,815
UCLAMC	\$606,629	\$3,855,355
UCB	\$2,019,447	\$2,145,830
UCSB	\$835,588	\$678,094
UCD	\$681,906	\$650,434
LLNL	\$757,646	N/A
UCI	\$759,912	\$481,227
UCSDMC	\$27,160	\$159,682
UCSD	\$487,734	\$421,115
UCDMC	\$546,697	\$422,940
LBNL	\$359,285	N/A
UCM	\$476,854	\$469,054
MCI	\$8,878	\$135,064
UCR	\$123,795	\$99,951
UCSFMC	\$234,253	\$136,125
LANL	\$7,263	N/A
Other	\$1,753,630	N/A
TOTAL	\$27,690,058	\$24,420,179

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While UCOP accounted for the largest share of legal expenses, it also experienced the largest overall decrease – 40 percent from the prior year. (Table 8) UCOP and UCSF experienced the largest decreases in expenses (\$4.2 M and \$1.5 M). (Table 9) As shown in Table 9, other locations also experienced significant decreases by percentage in FY 2009. It is also noteworthy that UCB's expenses remained flat even though the campus expended nearly \$2 M on environmental litigation. This means that virtually all other UCB core legal expense needs were fulfilled by OGC at no additional cost to the campus.

TABLE 9
Largest Decreases in Expenses by Location
Core Legal Services

In Millions

Location	\$ Decrease	% Decrease
UCOP	\$4.2	40%
UCSF	\$1.5	50%
UCI	\$.28	37%
UCSB	\$.16	19%
UCDMC	\$.12	22%
TOTAL	\$6.2	

Innovation Alliances and Services

Outside counsel expenses related to IAS patent activities are paid as administrative costs largely from patent royalty revenue, but also from other campus sources. Outside counsel is retained to assist in the patent development process, for prosecution efforts before the U.S. Patent and Trademark Office and for litigation associated with the protection of the University's foreign and domestic patents. Litigation has resulted in substantial recoveries for the University. Notable cases include the Monsanto, Genentech and Eolas cases which, collectively, netted the University lump sum payments totaling \$330 M and additional annual royalty fees of \$5 M since February of 2006.

Gross legal expenses for patent prosecution, for maintaining patents and for infringement actions totaled \$31.5 M in FY2009, an eighteen percent reduction from the prior year. Reimbursements of those expenses over the past two years have averaged nearly 75 percent, compared with the national average of 46 percent of all US research universities, as reported by the Association of University Technology Managers for 2007 (most recent year for which data is available). Legal expenses not directly reimbursed by third-party defendants in infringement actions are also recovered from settlements or judgments when those litigation efforts are successful.

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As the IAS Table shows, the University's patent enterprise is substantial. Over the past 10 years the University's patent portfolio (in combination with the University's legal interventions to protect its property) has generated over \$1 billion in revenue. Over the same period, the University expended \$140 M in net outside counsel expenses. (Table 10)

TABLE 10
IAS Revenue and Net Legal Expenses 2000-2009

Year	Income From Royalties & Fees	Net Legal Expense
2000	\$267,765,000	\$9,107,000
2001	\$72,899,000	\$12,295,000
2002	\$88,148,000	\$13,360,000
2003	\$67,019,000	\$13,629,000
2004	\$79,265,000	\$14,845,000
2005	\$92,902,000	\$17,686,000
2006	\$193,500,000	\$26,951,000
2007	\$97,594,000	\$15,795,000
2008	\$140,297,629	\$8,700,000
2009	\$126,050,790	\$8,600,000
TOTAL	\$1,225,440,419	\$140,968,000

OUTSIDE COUNSEL SAVINGS PROGRAM

In the spring of 2008, OGC began implementing a multi-part outside counsel cost savings program that it had been previewed with several Regents, with the President and other senior administrators, and with the Legal Services Advisory Committee⁷. In first phase, the program targeted expenses in the Risk Services and Core Legal Services expense buckets. The program was projected to produce substantial annual savings within the first 18 months.⁸

The program centered on four key objectives: (1) reducing overall hourly billings rates; (2) aggressively managing outside counsel costs through improved monitoring, proactive management, billing and accountability controls, and improved data collection; (3) terminating redundant or inefficient services, and in-sourcing select practice areas; (4) minimizing and/or avoiding certain

⁷ The LSAC is a group of high-level representatives from each campus and two medical centers established by the General Counsel in January 2008 for purposes of obtaining advice and feedback concerning all aspects of the University's legal services.

⁸ The specific projections at that time were based on assumptions about available resources and other dependencies that have since been modified.

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types of claims through enhanced management training and pre-litigation intervention. OGC projected savings approximating \$5 M or nine percent of the outside counsel expenses incurred in the past two fiscal years could be achieved by the end of calendar year 2009.

Rate Reductions

This project targeted three high billings categories – labor/employment, environmental and academic affairs litigation, which collectively accounted for more than \$6 M in FY2008. Requests for proposal were sent to outside attorneys with experience and/or interest in providing services in the three areas on a state-wide basis. Approved panels of counsel were selected following review of written submissions and interviews. The selected firms are now under contract with the University at negotiated rates that are frozen through FY2011. The project resulted in an average hourly billing rate reduction of 25 percent over the contract period, and an immediate rate savings of 19 percent in the first year.

Aggressive Cost Management

This is was a multi-faceted project that focused on improving the internal controls for retaining and monitoring outside counsel in the area of Core Legal Services. The project features included:

- Improved Outside Counsel Guidelines
- Improved Internal Retention Controls
- Improved External Retention Controls
- Improved Bill Review Processes
- Improved Bill Pay Processes
- Improved Internal Recharge System
- Improved Data Collection, Report Capabilities and Data Management

The most ambitious feature is the use of a Third Party Administrator (TPA) to review and process all counsel billing statements previously processed by OGC. The new process includes a robust claims-tracking database that provides reliable and informative billing data on outside counsel. This new database has allowed the General Counsel (and others) to track and study outside counsel trends – individually and programmatically, and the General Counsel has begun delivering monthly reports of expenditures to the UCOP and campus leadership and campus counsel.

Accelerated Claims Closure

This project continues to target Risk Services litigation expenses and is based on the proven experience of OGC and Risk Services actuaries that litigated claims cost more the longer they remain active. OGC attorneys, working with OPRS and the TPA, target claims in the PL, GL and EL programs that are suitable for early resolution. A resolution plan is developed and implemented, usually through assistance of outside counsel. Metrics for establishing savings are created and tracked by independent actuaries.

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Terminating Select Services

This project was completed in May of 2008. All outside counsel contracts in the Laboratory Affairs/DOE area (including a running retainer agreement with a Washington D.C. lobbyist) were terminated, and that work has been re-assigned to an in-house attorney.

Labor and Employment In-Sourcing

In light of differences in cost structures, OGC attorneys are able to provide labor and employment advice and human resources training on a more cost-effective basis than private law firm attorneys. In 2007, as a result of attrition, OGC staff in the Labor & Employment group fell to only two full time attorneys -- down from seven such attorneys in 2005. This project focused on recruiting additional internal Labor & Employment resources to take on work then being managed by more expensive outside attorneys. As of January 2009, one additional attorney was hired to fill one of two authorized new positions. As of July 2009, the second position was filled.

Enhanced Pre-litigation Training

This project focuses on training and other preventative measures to raise awareness of employment best practices and to improve the workplace environment in areas where, based on loss experience and other factors, the risk has been determined to be high. This project is administered by the Manager of the EPL, GL and Auto Programs in OPRS in coordination with OGC employment attorneys and campus Human Resources departments. Even in the current economic environment, the program has kept an ambitious schedule and has switched from live trainings to webinars:

Date	Topic	Title	Presenters
10/29/2009 Completed	Investigations	Navigating the Waters of a Successful Workplace Investigation	Outside Counsel
12/2/2009 Postponed	Reduction in Force / Special Skills & Abilities	TBD	OGC Labor Lawyers and Labor Panel Counsel
02/27/2010 10:00 – 12:00	Disability Discrimination and Return to Work Part 1	A Facilitated Discussion about Return to Work and Disability Accommodations – Part.1	Outside Counsel
03/24/2010 10:00 – 12:00	Disability Discrimination and Return to Work Part 2	A Facilitated Discussion about Return to Work and Disability Accommodations – Part.2.	Outside Counsel
April 2010	Whistleblower Retaliation and Investigation	TBD	OGC Labor and Employment Attorneys
May 2010	Employment Practices Update	“View from the Trenches”	OGC Labor and Employment Attorneys

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

General Counsel's Request for Across-the-Board Reduction

In August of 2009, the General Counsel delivered a letter to all University outside counsel asking that they reduce hourly rates by 10 to 15 percent, depending on the hourly rate then being charged.

Current Plans

In addition to the above programs, current efforts to further reduce outside counsel costs include targeted hourly rate reductions in the patent prosecution area, an expense that averages \$24 M per year, by 5-10 percent or between \$1.2 M and \$2.4 M annually.

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

CONCLUSION

In FY 2009 overall outside counsel expenses were reduced significantly as a result of formal programs initiated by the General Counsel in close partnership with the Office of Risk Services. As a result of these efforts and the results, the General Counsel projects that expenses will remain flat or trend down slightly over the next two years, continuing a reversal of the prior 10-year upward 10 percent per-annum trend. Further substantial reductions in outside counsel expenses will likely require in-sourcing select practice areas as in-house legal staff cost 100 percent less on average than outside counsel billing at standard hourly rates.

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

APPENDIX TABLES

- A. Comparison of Risk Services Litigation Expenses FY2008/2009 by Campus
- B. Outside Counsel Expenses by Practice Area (Core Legal Services)
- C. Summary of Top Categories of Expenses by Location (Core Legal Services)
- D. Affirmative Recoveries to the University FY 2009

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

APPENDIX TABLE A

Comparison of Risk Services Litigation Expenses FY2008/2009 by Campus

Defense Fees and Costs FY 08 and 09

PROGRAM LOCATION	AU		EL		GL		PI	
	FY 08	FY 09	FY 08	FY 09	FY 08	FY 09	FY 08	FY 09
Agriculture and Natural Resources	\$0.00	\$0.00	\$175,495.40	\$2,979.36	\$118,922.02	\$3,910.51	\$0.00	\$0.00
Berkeley Campus	\$197,347.83	\$256,776.77	\$1,439,818.04	\$867,856.09	\$999,849.63	\$329,154.86	\$10,407.08	\$5,272.16
Davis Campus	\$36,179.50	\$37,721.48	\$687,632.64	\$549,109.31	\$893,148.69	\$689,044.82	\$0.00	\$0.00
Davis Medical Center	\$769.50	\$1,007.21	\$366,317.30	\$349,670.08	\$9,068.83	\$119,747.19	\$1,742,178.52	\$1,703,408.52
Irvine Campus	\$11,775.83	\$63,364.40	\$762,582.24	\$319,349.68	\$1,080,186.34	\$619,216.18	\$0.00	\$0.00
Irvine Medical Center	\$0.00	\$0.00	\$147,081.12	\$42,173.89	\$54,659.78	\$287,102.88	\$1,293,886.03	\$1,656,210.27
Los Angeles Campus	\$41,339.68	\$7,459.84	\$1,248,291.70	\$499,954.15	\$1,897,548.99	\$1,800,825.60	\$0.00	\$0.00
Los Angeles Medical Center	\$0.00	\$0.00	\$326,637.57	\$351,301.19	\$638,908.94	\$306,935.77	\$4,001,045.27	\$3,629,978.35
Office of the President	\$0.00	\$0.00	\$116,809.05	\$458,200.42	\$0.00	\$26,209.67	\$0.00	\$0.00
Riverside Campus	\$9,576.59	\$659.40	\$80,561.28	\$39,987.34	\$41,116.26	\$67,211.35	\$22,521.02	\$1,131.08
San Diego Campus	\$833.42	\$0.00	\$316,284.78	\$431,376.02	\$659,844.45	\$130,255.74	\$0.00	\$0.00
San Diego Medical Center	\$0.00	\$0.00	\$0.00	\$7,572.42	\$73,402.51	\$101,894.60	\$1,832,269.52	\$1,759,438.26
San Francisco Campus	\$13,356.46	\$250,923.79	\$733,822.78	\$288,809.97	\$30,589.49	\$130,692.42	\$0.00	\$0.00
San Francisco Medical Center	\$0.00	\$0.00	\$98,525.66	\$40,744.46	\$51,987.44	\$32,593.95	\$2,861,595.66	\$2,310,707.66
Santa Barbara Campus	\$9,681.72	\$0.00	\$111,116.93	\$53,289.07	\$41,695.36	\$87,917.53	\$0.00	\$0.00
Santa Cruz Campus	\$2,105.00	\$24.50	\$44,683.73	\$15,176.29	\$18,465.03	\$74,047.38	\$0.00	\$0.00
The Regents	\$0.00	\$0.00	\$139,779.90	\$0.00	\$2,415,539.64	\$1,621,218.50	\$0.00	\$0.00
Totals by Program by Fiscal Year	\$322,966.13	\$817,637.39	\$8,795,440.12	\$4,317,549.74	\$9,021,333.20	\$5,927,378.05	\$11,763,903.10	\$11,066,146.26
Totals FY 08	\$27,907,242.16							
Totals FY 09	\$22,423,812.38							

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

APPENDIX TABLE B

Summary of Legal Expenses by Practice Area Core Legal Services

Litigated-Construction	\$6,430,868
Non-Litigated-Health-Investigations	\$2,592,658
Litigated-Environmental Land Use	\$1,974,088
Non-Litigated-Health-Counseling (Managed Care Contracts)	\$1,503,115
Non-Litigated-Immigration	\$1,142,437
Non-Litigated-Environmental EH&S	\$1,058,783
Non-Litigated-Bond/Other External Financing	\$837,911
Non-Litigated-Real Estate	\$767,529
Litigated-Admin Hearings/Writs (Non-Student)	\$597,029
Litigated-Labor	\$578,968
Non-Litigated-Labor Relations	\$474,687
Non-Litigated-Treasurer's Investments	\$478,516
Non-Litigated-Employment	\$403,629
Litigated-Student Matters	\$479,907
Non-Litigated-Construction	\$508,635
Non-Litigated-Health-Counseling (Antitrust)	\$292,908
Non-Litigated-Intellectual Property Patent	\$275,927
Litigated-Health (Managed Care)	\$242,899
Non-Litigated-Health-Counseling (Medicare/Cal Reimbursements)	\$236,553
Litigated-Probate/Gifts-Pledges/Trusts-Estates	\$235,126
Non-Litigated-Benefits	\$220,723
Litigated-Benefits	\$222,704
Non-Litigated-Health-Counseling (Mental Health)	\$203,723
Litigated-Records (PRA/IPA/FERPA)	\$178,757
Non-Litigated-Miscellaneous	\$176,007
Litigated-Health (Medical Staff)	\$162,714
Non-Litigated-Real Estate Privatized Transactions	\$369,385
Litigated-Employment	\$214,129
Non-Litigated-Environmental Land Use	\$106,365
Non-Litigated-Tax	\$118,151
Non-Litigated-Health-Counseling (Fraud/Abuse Compl)	\$192,841
Litigated-Whistleblower	\$107,031
Litigated-Miscellaneous	\$93,616
Non-Litigated-Health-Counseling (Transactions)	\$147,917
Non-Litigated-Health-Counseling (Hospital Accreditation/License)	\$83,077
Non-Litigated-Corporate/Business	\$75,407
Non-Litigated-Government Relations/Legislation	\$124,282
Litigated-Breach of Contract	\$73,193
Litigated-Research Compliance/Misconduct	\$53,289
Non-Litigated-International	\$66,304
Non-Litigated-FCC	\$39,730
Litigated-Securities	\$46,7260
Litigated-Personal Rights (Defamation/Privacy)	\$25,215

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

Summary of Legal Expenses by Practice Area Core Legal Services - Continued	
Non-Litigated-Health-Counseling (Med Staff Matters)	\$24,456
Non-Litigated-Real Estate Acquisitions	\$18,006
Non-Litigated-Health-Medicare/Cal Cost Rpt/Bill Appl	\$16,907
Non-Litigated-Development (Gifts, Estates, Trusts)	\$12,488
Non-Litigated-Investigations	\$12,117
Litigated-Bankruptcy	\$12,283
Litigated-Subpoenas	\$8,234
Non-Litigated-Real Estate Endowment	\$6,076
Litigated-Collection	\$3,195
Litigated-Real Estate	\$1,964
Non-Litigated Intellectual Property – Other	\$10,276
Litigated-Health (Other)	\$1,209
TOTAL	\$243,406

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

APPENDIX TABLE C

Summary of Top Categories of Expenses by Location
Core Legal Services

TOP CATEGORIES OF EXPENSE BY LOCATION & PERCENT OF TOTAL FY 2009		
UCOP		
Health Combined	\$2,181,834	
Labor/Employment	\$947,190	
Bond/External finance	\$837,911	
Luquetta/Kashmiri	\$476,591	
Treasurer Investments	\$444,625	
Subtotal	\$4,888,151	75%
UCB		
Environmental	\$1,924,708	90%
UCD		
Construction	\$211,694	
Real Estate	\$142,925	55%
Immigration	\$87,532	
Health	\$53,003	
Subtotal	\$495,156	76%
UCI		
Liver Transplant Program	\$223,318	
Immigration	\$141,183	
Health	\$66,853	
Subtotal	\$431,355	90%
UCLA		
Construction	\$4,432,452	76%
Immigration	\$604,150	
Environmental	\$193,619	
Real Estate	\$165,922	
Probate/Gifts	\$131,929	
Subtotal	\$5,528,074	95%
UCLA MC		
Construction	\$1,719,988	
Privacy Breach		
Investigations	\$1,216,515	
Managed Care contracts	\$327,926	
Subtotal	\$3,264,430	85%
UCM		
Environmental	\$443,513	95%
UCR		
Immigration	\$98,013	98%

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

TOP CATEGORIES OF EXPENSE BY LOCATION & PERCENT OF TOTAL FY 2009-Continued			
UCSD			
Benefits Litigation	\$165,937		
Health	\$117,369		
Subtotal		\$283,306	67%
UCSF			
Personnel Matter	\$730,199		
Real Estate	\$300,265		
Health	\$171,578		
Construction	\$161,753		
Subtotal		\$1,363,797	92%
UCSB			
Construction	\$340,461		
Real Estate	\$129,844		
Environmental	\$93,804		
Subtotal		\$564,110	69%
UCSC			
Real Estate	\$579,950		
Environmental	\$257,435		
Subtotal		\$837,386	90%
TOTAL:		\$20,121,291	

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

APPENDIX TABLE D

Affirmative Recoveries to the University FY 2009

CASE NAME	ISSUE	DISPOSITION	RECOVERY	EXPENSES	COMMENTS	NET RECOVERY
W.R. Grace Bankruptcy	Bankruptcy	Settled	\$1,100,000	(\$254,639)		\$845,361
Estate	Gift Dispute	Settled (7/08)	\$1,120,000	(\$41,500)	Partially Handled in-house	\$1,078,500
Estate	Gift Dispute	Settled (7/08)	\$440,750	\$0	Handled in-house	\$440,750
Blue Cross Rescissions	Contract Dispute	Settled (8/08)	\$97,217	\$0	Partially Handled in-house	\$97,217
Boston Scientific v. Mircus	Patent Infringement	Settled (09/08)	\$2,600,000	\$0	Handled in-house	\$2,600,000
Blue Shield	Contract Dispute	Settled (10/08)	\$2,500,000	(\$97,217)		\$2,402,783
Trust	Gift Dispute	Settled (10/08)	\$14,000,000	(\$110,340)	On surviving spouse's death	\$13,889,660
Trust	Gift Dispute	Settled (10/08)	\$170,202	(\$2,748)		\$167,454
Regents v. Reliant	Antitrust claims	Settled (11/08)	\$9,565,881	(\$22,680)		\$9,543,201
UC v. MTI	Patent Infringement	Settled (11/08)	\$1,000,000	\$0	Handled in-house	\$1,000,000
Boston Scientific v. Cordis	Patent Infringement	Settled (12/08)	\$1,800,000	\$0	Handled in-house	\$1,800,000
Trust	Gift Dispute UCI	Settled (7/30/2008)	\$1,549,504	(\$298,533)		\$1,250,971
Enron	Securities Fraud	Settled (12/08)	\$28,000,000	\$0	Handled on contingency	\$28,000,000
Regents v. Bodell	False Claim	Settled (1/09)	\$140,000	\$0	Handled in-house	\$140,000
Estate	Gift Dispute	Settled (2/09)	\$372,000	(\$3,783)	Primarily handled in-house	\$368,217

ANNUAL REPORT OF OUTSIDE COUNSEL EXPENSES

Affirmative Recoveries to the University FY 2009 – Continued

CASE NAME	ISSUE	DISPOSITION	RECOVERY	EXPENSES	COMMENTS	RECOVERY
Regents v. Blue Cross	Contract Dispute (UCIMC)	Settled (09)	\$199,967	(\$22,812)		\$177,155
Rowe Com, Inc.	Bankruptcy	Settled (09)	\$169,454	\$0		\$169,454
Pacific Lumber Co.	Bankruptcy		\$19,916	\$0		\$19,916
Regents v. Howard S. Wright Construction Company	Construction Defect Claim	Settled (5/09)	\$700,000	(\$197,018)		\$502,982
Regents v. Williams	Natural Gas Antitrust Claims		\$1,359,311	\$0		\$1,359,311
Estate	Challenge to Estate Distribution UCB	Settled (8/12/08)	\$1,650,000	\$0	Handled in-house	\$1,650,000
Regents v. Industrial Ins. Co. of No. America	Breach of Insurance Contract	Settled (1/09)	\$200,000	\$44,586		\$155,414
NET TOTAL TO UNIVERSITY						\$67,658,346