



Office of Missouri State Auditor  
**Nicole Galloway, CPA**

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**State Legal Expense Fund**



**Nicole Galloway, CPA**  
Missouri State Auditor

# CITIZENS SUMMARY

## Findings in the audit of State Legal Expense Fund

### Background

The State Legal Expense Fund (LEF) is used for payments in resolution of judgments or claims for damages from injured parties arising out of the actions of state employees, agencies, contracted physicians, and the condition of state property. The Office of Administration's Risk Management Unit and the Office of Attorney General provide various administrative and defense functions related to the LEF. Claimants seek payment for damages from the LEF.

### Expenditure Trends

Total expenditures from the State Legal Expense Fund (LEF) have been volatile and increased significantly in fiscal year 2017. Cases with large settlement or judgment amounts disproportionately affect total LEF expenditures.

### Fund Oversight and Budgeting

Systems in place to track LEF activity are insufficient to adequately monitor fund activity for administrative purposes, or to adequately estimate fund activity for budgetary purposes. As a result, LEF activity is not sufficiently tracked to provide adequate oversight throughout state government and the fund is not accurately or effectively budgeted. Expenditures from the LEF have exceeded estimated fund appropriation amounts by approximately \$25 million over the past 3 fiscal years.

Because of the limited objective of this review, no overall rating is provided.

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# State Legal Expense Fund

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## **NICOLE GALLOWAY, CPA** **Missouri State Auditor**

Honorable Eric R. Greitens, Governor  
and  
Members of the General Assembly  
and  
Josh Hawley, Attorney General  
and  
Sarah H. Steelman,  
Commissioner of the Office of Administration  
Jefferson City, Missouri

We have audited certain operations of the administration of the State Legal Expense Fund (LEF) related to payments stemming from lawsuits against the state, in fulfillment of our duties under Chapter 29, RSMo. The LEF was created, pursuant to section 105.711, RSMo, to provide for payments arising from claims or judgments against the state. The scope of our audit included, but was not necessarily limited to, the year ended June 30, 2016. The objectives of our audit were to:

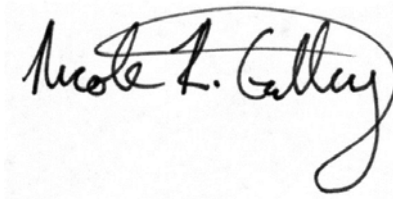
1. Evaluate internal controls over significant management and financial functions related to the LEF.
2. Evaluate compliance with certain legal requirements related to the LEF.
3. Evaluate the economy and efficiency of certain management practices and operations as it relates to the LEF.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

For the areas audited, we identified (1) no significant deficiencies in internal controls related to the LEF, (2) no significant non-compliance with legal requirements related to the LEF, and (3) the need for improvement in management practice and operations related to the LEF.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the agencies management and was not subject to the procedures applied in our audit.

The accompanying Management Advisory Report presents our findings arising from our audit of the State Legal Expense Fund.

A handwritten signature in black ink that reads "Nicole R. Galloway". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Nicole R. Galloway, CPA  
State Auditor

The following auditors participated in the preparation of this report:

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# State Legal Expense Fund

## Introduction

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### Background

The State Legal Expense Fund (LEF) is used for payments in resolution of judgments or claims for damages from injured parties arising out of the actions of state employees, agencies, contracted physicians, the condition of state property, and other litigation costs. Claims often relate to motor vehicle accidents, injuries sustained on state property, medical malpractice, employment discrimination, or other matters. Claims often involve lawsuits filed in state or federal court. Under the authority of the Commissioner of Administration, the Office of Administration's Risk Management Unit (OARM) is primarily responsible for making payments from the LEF with the approval of the Office of Attorney General. The Office of Attorney General's Litigation Division (AGO) is primarily responsible for adjudicating claims covered by the LEF. The state's General Revenue Fund (GRF) provides most of the reimbursement to the LEF for expenditures from the fund.

### Administering agencies

The OARM and AGO provide various administrative and defense functions related to the LEF. Principal LEF-duties of the OARM are as follows:

- Procures insurance as needed (OARM has purchased commercial property and liability insurance for state aircraft and errors/omissions bonding for state employees);
- Receives reports from state agencies and employees of any damages and possible claims related to state vehicles and property - referred to as motor vehicle (MV) and general liability (GL) claims, respectively;
- Pursuant to authority granted by the AGO, settles small cost claims - those with expected costs less than \$7,500 (personal injuries) or \$15,000 (property damage) - related to MV and GL claims;
- Refers large cost MV and GL claims to the AGO for resolution;
- Processes all payments from the LEF as required by section 105.711, RSMo, through the state's accounting system (SAM II);
- Makes transfers from the reimbursing fund to the LEF; and
- Develops annual budget estimates for the LEF.

The AGO approves all payments from the LEF as required by section 105.711, RSMo, except small cost MV and GL claims approved by the OARM pursuant to the AGO's delegated authority, and provides legal defense for most claims brought against state employees, agencies, and property as required by section 105.716, RSMo. That statute requires claims related to the Department of Conservation (MDC), Department of Transportation (MoDOT), and public 4-year universities be defended by



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## State Legal Expense Fund Introduction

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legal counsel of those agencies. Claims of the MDC and MoDOT are either paid directly by those agencies, or paid by the LEF and reimbursed by funds of those agencies as noted below. The AGO contracts for the defense of medical malpractice cases to specialized attorneys. The AGO is notified by state agencies of new claims and upon conclusion of its defense efforts, the AGO notifies them of the case outcome.

### Claims

Claimants seek payment for damages from the LEF. The amount of damages sought may vary significantly based on the type and nature of each case. Damages may often be economic (i.e. lost wages or medical expenses or property repair costs) or non-economic (i.e. mental anguish and pain and suffering). Additionally, courts may award the claimant punitive damages, generally to punish the defendant, and/or reimbursement of costs for legal counsel.

Various sections of state law create causes of action covered by the LEF and some statutes limit the amount of damages payable from the LEF. For MV and GL cases, section 105.711, RSMo, limits non-economic damages to about \$428,000<sup>1</sup> and section 537.610, RSMo, limits total liability for all claims on a single accident or occurrence to about \$2.7 million<sup>1</sup> and total liability for any one person from a single accident or occurrence to about \$410,000.<sup>1</sup> Additionally, section 537.610, RSMo, prohibits punitive damages on MV and GL cases. For medical malpractice and employment discrimination cases, section 510.265, RSMo, limits punitive damages to \$500,000 or 5 times the net amount of the judgment awarded to plaintiff against defendant. Additionally, for medical malpractice cases, section 538.210, RSMo, limits non-economic damages to about \$407,000<sup>2</sup> for personal injury and about \$712,000<sup>2</sup> for catastrophic personal injury or death, and section 105.711, RSMo, sets aggregate limits of \$1 million for one act in a single cause against a physician. These limits may not apply to claims brought on federal charges in federal court.

### Processing

The AGO often negotiates settlements with the claimants before a court trial, but some claims go to trial. The AGO will often appeal trial court verdicts. The negotiated settlement amounts are often for amounts much less than the original demands of the claimant. For settlements, the claimant generally agrees to forego any further legal action in exchange for lump-sum payment from the LEF. Small cost MV or GL cases may be settled within weeks, but large damage cases involving personal injuries, torts, or human rights violations could take months or years to reach settlement or

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<sup>1</sup> Section 537.610.5, RSMo, provides for the limit to be updated annually based on inflation. The amount cited is the 2016 updated limit.

<sup>2</sup> Section 538.210.8, RSMo, provides for the limit to be increased annually by 1.7 percent. The amount cited is the 2016 updated limit.

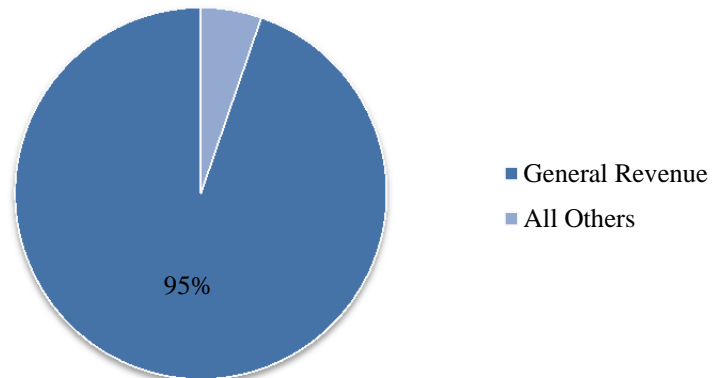


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court judgment as witnesses and experts are deposed and other court processes and settlement negotiations occur.

LEF costs for claims related to the MDC (Conservation Commission Fund), MoDOT (State Highway and Transportation Fund), Department of Public Safety - Missouri State Highway Patrol (State Highway and Transportation Fund) and Department of Natural Resources (Park Sales Tax Fund and Soil and Water Sales Tax Fund) are reimbursed from the fund related to the agencies' appropriations. All other LEF costs are reimbursed by the GRF. The GRF is responsible for the majority of payments to the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. Figure 1 depicts the relative proportion of amounts transferred to the LEF from the GRF and other contributing funds from fiscal year 2012 through fiscal year 2017 (as of February 28, 2017).

Figure 1: Funding Sources  
from Fiscal Year 2012  
through Fiscal Year 2017 (as  
of February 28, 2017)



Source: Prepared by the State Auditor's Office (SAO) using SAM II data. "All Others" include Conservation Commission, Park Sales Tax, Soil and Water Sales Tax, and State Highway and Transportation Funds.

LEF expenditures have generally been paid from an estimated (E) appropriation. Expenditures for E appropriations can exceed the appropriation amount without further legislative approval. E appropriations are utilized as a budgetary practice for those appropriations where the amount is difficult to estimate and/or could vary based on external factors. For the LEF appropriation for fiscal year 2014, the general assembly removed the E designation and LEF expenditures that year could not exceed the appropriation amount. The general assembly reinstated the E designation for LEF appropriations beginning in fiscal year 2015.

LEF expenditures are primarily for payments for case settlements or judgments, contracted attorney services, and reimbursements to the Kansas City and St. Louis Board of Police Commissioners, and those expenditures comprised about 70 percent, 15 percent, and 11 percent, respectively, of total LEF expenditures from fiscal year 2012 through 2016. Smaller





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amounts are also expended for court services and insurance premiums. See appendix A for a comparison of annual expenditures by type from fiscal year 2013 through fiscal year 2017.

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## Scope and Methodology

The scope of our audit included, but was not necessarily limited to, the year ended June 30, 2016. We analyzed total expenditures for the LEF using records of the state's accounting system (SAM II) for fiscal years 2012 through 2016 and fiscal year 2017 through February 2017.

We reviewed and evaluated OARM and AGO procedures for approving and processing payments, OARM procedures for monitoring expenditures and producing budgetary estimates, and OARM and AGO systems for tracking cases and costs.

We reviewed recent OARM reports of cases and expenditures.

We reviewed expenditures and various supporting documents for 15 cases with settlement payments during fiscal year 2016. The cases reviewed accounted for about 62 percent of total fund expenditures for fiscal year 2016.

We reviewed expenditures and settlement or verdict documents on the highest cost case from each year during fiscal years 2012 through 2016 and fiscal year 2017 through February 2017.

# State Legal Expense Fund Management Advisory Report State Auditor's Findings

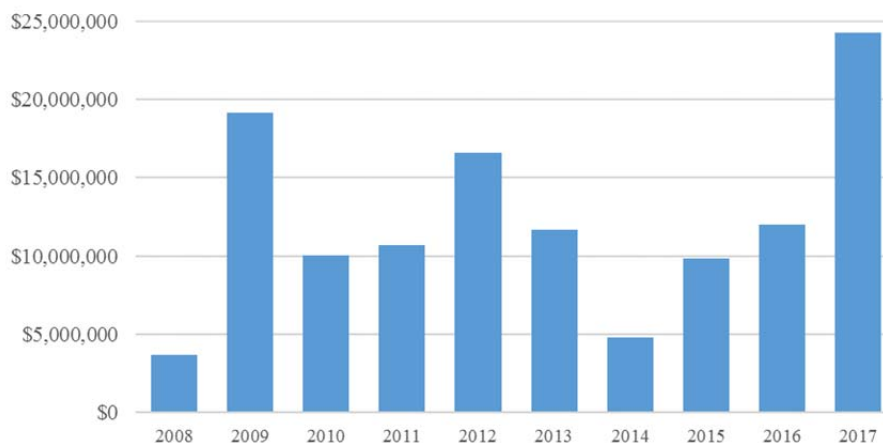
## 1. Expenditure Trends

Total expenditures from the State Legal Expense Fund (LEF) have been volatile and increased in the most recent year. Total annual expenditures are primarily related to large case settlements related to various case types with varying settlement amounts, resolved over long time periods, and related to various state agencies. The fund volatility and case variability necessitate good tracking and monitoring systems.

### Expenditure trends

Total annual fund expenditures have varied significantly and increased in the most recent year. For the 10 fiscal years from fiscal year 2008 through fiscal year 2017, total fund expenditures ranged from about \$3.6 million in fiscal year 2008 to about \$24.2 million in fiscal year 2017, the most recently completed year. The majority of LEF expenditures pertain to tort claims and judgments. Figure 2 shows total LEF expenditures for fiscal years 2008 through 2017.

Figure 2: LEF expenditures, fiscal years 2008 to 2017



Source: Prepared by the SAO using SAM II data.

Note: Processing and payment on some cases during fiscal year 2014 were delayed until fiscal year 2015 according to AGO personnel because the appropriation that year had no "E" designation and therefore expenditures could not exceed the appropriated amount (about \$6.8 million).

Cases with large settlement or judgment amounts are responsible for most of the total expenditures from the LEF. Those cases tend to drive total LEF expenditures, originate from nearly all state agencies, represent various case types, and generally take a long time to resolve.

### Large cases

Cases with large settlement or judgment amounts disproportionately affect total LEF expenditures. Based on a special report the OARM provided the General Assembly in January 2016 and updated through February 2017, the AGO closed 41 cases with settlements or judgments of \$250,000 or more during the 5 fiscal years from fiscal year 2012 through fiscal year 2016 and the first 8 months of fiscal year 2017; payments on those cases totaled about



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\$51.4 million, or roughly 68 percent of total LEF expenditures during the period. See Table 1 for a breakdown of these large cases by case type, and Table 2 for a breakdown by originating agency.

The 41 cases referenced above include 14 cases with payments exceeding \$1 million, with 2 of those cases each requiring payments of more than \$9 million. Payments on the 14 cases totaled about \$40 million, or about 53 percent of total LEF expenditures from July 1, 2011 to February 28, 2017. Although it is not easily determined from OARM systems how many cases were settled in any given timeframe, the 41 cases seem to represent a relatively small portion of total claims.

The settlement or judgment amounts varied significantly among the large closed cases, even among cases with similar types of claims as noted in Table 1.

Table 1: Large closed cases, July 1, 2011 through February 28, 2017, by type

Case Type	Number of Cases	Low Amount	High Amount	Total All Cases
Employment discrimination	11	\$ 275,000	\$ 2,000,000	\$ 9,649,972
Medical malpractice	8	300,000	2,375,000	8,033,060
Wrongful death	6	250,000	9,025,000	11,921,651
Motor vehicle injury	3	376,378	1,410,654	2,211,220
Other personal injury	4	347,308	410,185	1,575,678
Negligence/gross negligence	2	376,174	9,785,141	10,161,315
Assault	2	285,000	4,287,691	4,572,691
Other	5	300,000	1,008,638	3,258,992
Total	41			\$ 51,384,579

The large cases originated from claims related to most of the state's 15 departments and also the state Office of Administration (OA), Office of State Courts Administrator, and Office of Public Defender as noted in Table 2.



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Table 2: Large closed cases, July 1, 2011 through February 28, 2017, by agency

Agency	Number of Cases	Total Payments
Public Safety	5	\$ 12,118,479
DIFP <sup>1</sup>	1	9,785,141
Health and Senior Services <sup>2</sup>	9	8,409,438
Mental Health	6	6,464,566
Corrections	5	4,209,576
Labor and Industrial Relations	1	2,000,000
Higher Education <sup>3</sup>	4	1,960,919
Revenue	1	1,772,275
Social Services	2	1,432,826
Office of Administration	1	1,000,000
Agriculture	2	786,359
Elementary and Secondary Education	2	650,000
Office of State Courts Administrator	1	495,000
Office of Public Defender	1	300,000
<b>Total</b>	<b>41</b>	<b>\$ 51,384,579</b>

<sup>1</sup> Department of Insurance, Financial Institutions, and Professional Registration

<sup>2</sup> Most cases pertained to medical malpractice claims on contracted physicians.

<sup>3</sup> Cases pertained to public universities.

Additionally, most of these high-cost cases took 1 year or more to resolve. Based on dates of filing and closure in the AGO system, the cases typically required from 1 to 8 years to resolve, including any appeals.

## Conclusion

Total annual expenditures of the LEF have historically been volatile due to the volatility in settlement and judgment amounts on a relatively few high-cost cases. Those high cost cases often take several years to resolve, originate from various agencies, and relate to various case types. While the OARM was able to generate data on these high cost cases in response to a special legislative request, such information is not readily available to the agencies administering the fund. Such data is necessary to report, and analyze the cases being processed, and to effectively monitor fund activity. See MAR 2 for additional information regarding weaknesses in the information systems in place.

## 2. Fund Oversight and Budgeting

Systems in place to track LEF activity are insufficient to adequately monitor fund activity for administrative purposes, or to adequately estimate fund activity for budgetary purposes. As a result, LEF activity is not sufficiently tracked to provide adequate oversight throughout state government and the fund is not accurately or effectively budgeted.

### 2.1 Systems outdated and inadequate

Systems used by the OARM and AGO for tracking LEF cases are insufficient to effectively monitor trends and activity of the fund. The OARM uses the Legal Expense System (LES) to track LEF activity. The



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LES is a significantly outdated system and is not capable of producing electronic reports or processing basic data queries. According to OARM personnel, the LES is approximately 20 years old and is only capable of producing simple hardcopy reports of LEF data. The AGO's case tracking system does not designate which cases are eligible for the LEF, does not include all cases, and does not track the status of LEF cases.

The LES lacks necessary data

The LES does not capture some case data information necessary for analysis and tracking purposes. For example, the LES contains no information about the progress or status of open cases handled by the AGO because the system is updated only upon AGO request for payment. Also, while the AGO handles multiple case types that often result in large expenditures, such as medical malpractice, employment discrimination, wrongful death, gross negligence, among others, the LES only tracks payouts in two categories; medical malpractice and all others. Additionally, other useful information elements about case descriptions and components of damage awards are not contained on the LES. Tracking more useful information on the system such as case status, case types, descriptions, and awards would allow more meaningful reports of LEF activity to be produced.

As a result of the weaknesses in the data tracked, the LES cannot easily produce special reports with selected data elements queried or sorted in designated ways or time periods. OARM personnel review standard monthly and annual financial reports produced from the system data from programs written by the OA Information Technology Services Division (ITSD). Any custom reports have to be manually prepared from existing records. For example, to satisfy the requests of the legislature about expenditures for large cost cases during 2015 and 2016, OARM personnel had to obtain information from the AGO about the claim description, case type, damage award types, and unpaid verdict awards and, use that information along with information from the LES to create the necessary reports.

Given the number of agencies affected by LEF cases and the variability of the records, in terms of case types and length to case resolution, it is important that OARM users have the ability to customize reports to help identify trends and problems. Improving the data capabilities of the LES will allow the OARM to more effectively monitor LEF cases, and more effectively monitor the state's risk as it relates to such cases.

AGO system doesn't identify  
LEF cases and their status

The AGO does not specifically designate LEF cases on its system, excludes some LEF cases from its system, and does not indicate the status of the cases.

The AGO system has no specific identifier for LEF cases. AGO staff use 1 of about 35 classifications to identify each case by legal matter on the



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system. While some of those classifications seem specific to LEF cases such as "MHRA employment discrimination," "risk management motor vehicle," and "risk management dangerous condition of property," the AGO also classifies some LEF cases into other more general classifications that could also refer to non-LEF cases such as "civil judicial action - general" and "civil judicial action - federal statutes." Four of 14 closed LEF cases tested that were handled by the AGO had been assigned to one of those 2 general classifications. Consequently, the AGO cannot easily identify open LEF cases, or produce reports detailing or summarizing pending LEF activity.

In addition, medical malpractice cases contracted to external attorneys and LEF cases handled by attorneys from source agencies (i.e. 4-year public universities) are not included on the AGO system. As indicated in Tables 1 and 2, 8 of 41 (20 percent) high-cost cases closed from fiscal year 2012 through 2016 were medical malpractice cases, and another 4 of those 41 (10 percent) cases related to 4-year public universities. As the number of these cases represent a significant portion of the high-cost cases, without these cases on the AGO system, the database is an incomplete record of pending LEF cases.

The AGO does not fully indicate cases statuses on the system. The dates of litigation filing, system creation, and closure for each case are captured on the system, but other significant intermediate dates such as settlement, trial, or appeal dates are not recorded. Given the often long time span between case open and closure as noted in MAR finding number 1, capturing meaningful intermediate dates could provide useful information to report users about case status and progression.

## Conclusion

Without the ability to track and query LEF claims by detailed type the OARM and AGO cannot effectively monitor fund activity. Such abilities would be necessary to monitor trends in claims over time for risk management and administrative purposes. For example, such information would allow the OARM or AGO to identify if a particular agency was experiencing an unusually high number of a particular type of claim. Based on such an analysis, the OARM or AGO could notify the Governor's Office and the source agency of the trend for consideration and investigation of the cause and allow the potential concern to be addressed timely. By addressing the cause for increases in certain cases, agencies may be able to reduce the number of such future cases.

## 2.2 Budgetary weaknesses

Expenditures from the LEF have exceeded estimated fund appropriation amounts by approximately \$25 million over the past 3 fiscal years. This condition is a result of the OARM and AGO not having adequate systems to track pending LEF activity, and due to the General Assembly not following OARM budget recommendations. Actual expenditures have exceeded the approved appropriation amount in 5 of the last 6 fiscal years, and only



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remained under the appropriation amount in 2014 due to legal challenges to the use of E appropriations.

Table 3 lists OA's requested budget, the appropriation approved by the General Assembly, and actual total expenditures from the LEF for fiscal years 2012 through 2017.

Table 3: Annual budget requests, appropriations, and expenditures, fiscal year 2012 through 2017

Fiscal Year	Budget Request	Appropriation Approved	Actual Expenditures
2012	\$ 6,757,435E	\$ 6,757,435E	\$ 16,588,194
2013	6,757,435E	6,757,435E	11,688,921
2014	6,757,435E	6,757,435	4,795,106
2015	12,807,435E	6,757,435E	9,869,376
2016	12,757,435E	6,757,435E	11,991,400
2017	10,757,435E	6,757,435E	24,233,446

Source: Prepared by the SAO using budget information published on the OA's website <<https://oa.mo.gov/budget-planning/budget-information>>; appropriation amounts from House Bills; and expenditures from SAM II.

Most of the variance between expenditures and appropriations pertained to the GRF-funded portion. Of the total LEF expenditure appropriation, the amounts appropriated for LEF reimbursement via transfer from the GRF and other funds totaled \$6 million and \$757,435, respectively; while actual reimbursements from the GRF averaged about \$12.1 million per year from fiscal years 2012 through 2017.

### Budget requests

Budget requests for the LEF are not based on actual pending case information. As stated previously, neither OARM nor the AGO have systems in place to develop estimates of settlement amounts for the upcoming budget year. For budget years 2012 through 2014 the OARM requested the same arbitrary budget amount used in the prior 5 years. Beginning with its budget request for fiscal year 2015, the OARM based its appropriation request on average expenditures from previous fiscal years. While this change resulted in more reasonable estimates, basing budget requests on past fund activity does not provide the most accurate estimate of potential future costs. For example, one wrongful death case was settled in November 2016 for about \$9 million. Since this case was not considered when OARM submitted its budget request, the settlement drove fiscal year 2017 expenditures well over the fiscal year OARM requested budget amount of \$10.8 million. Similarly, fiscal year 2012 had a settlement payment on a case of over \$9 million that on its own exceeded the OARM budget request for that year.

Because LEF expenditures are often disproportionately affected by a few high-cost cases, basing budget requests on actual pending case information from the AGO would allow OARM to more accurately predict the



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budgetary needs of the fund in the upcoming year. However, developing systems at OA and the AGO to more accurately track LEF case information and status is necessary to make the necessary improvements in the budget process.

#### Appropriation levels

From fiscal year 2007 to 2017, the General Assembly approved the same appropriation amount (\$6,757,435) for the LEF despite OARM requests in recent years for higher amounts and significant fluctuations in fund expenditures during the period. Because the LEF appropriation is an estimated (E) appropriation, OARM is allowed to pay expenditures that exceed appropriated amounts. When LEF expenditures exceed appropriated amounts, less monies are available in the applicable reimbursing funds for spending on other governmental purposes. To improve the integrity of the budget process, it is essential the OARM develop reasonable estimates of expected expenditures from the LEF for the upcoming year, and the General Assembly base the appropriation on those estimates.

#### Fiscal year 2018 appropriation

For fiscal year 2018, the General Assembly approved appropriation amounts that were larger than previous years, but the amounts were still not based on estimates of pending cases. The fiscal year 2018, LEF appropriation was approved for \$26 million, while the transfer appropriations to reimburse the LEF from the GRF and other funds were approved for \$16 million and \$10 million, respectively. The E designation was removed from each of the appropriations. According to an OARM official, the \$16 million GRF transfer appropriation was based on expenditures from recent years. The fiscal year 2018 budget request from OARM was not based on actual prior expenditures as was done in the budget requests for fiscal years 2015 through 2017, but returned to the arbitrary E amount (\$6,757,435) used in budget requests of fiscal year 2014 and prior years.

#### Recommendations

The OARM:

- 2.1. Develop adequate systems to track LEF activity, and to produce useful reports for complete monitoring of trends and unexpected fluctuations in fund activity, and monitor such information going forward to minimize the state's risk of future litigation.
- 2.2. Monitor fund activity and work with the AGO to develop estimates of pending cases for use in developing future budget requests. Additionally, work with the General Assembly to ensure OARM budget estimates are reflected in approved fund appropriation amounts.





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The AGO:

- 2.1 Improve case tracking systems to provide additional information on all pending LEF cases, including significant intermediate dates such as settlement, trial, or appeal dates.
- 2.2 Work with the OARM to identify any significant pending cases that may impact the upcoming budget estimate.

The General Assembly:

Consider the budget requests of the OARM when establishing LEF appropriation levels.

## Auditee's Response

*The Office of Administration's Risk Management Unit provided the following response:*

- 2.1 *The OARM will continue to perform its statutory function to make "all payments ... from the state legal expense fund ... with the approval the attorney general" or under his delegated authority (section 105.711.5, RSMo). With the best available information collected within fiscal constraints, the OARM will monitor LEF expenditures. Given the wide fluctuation of historical outcomes in cases of a similar type as noted in the audit, predicting "unexpected" litigation results to minimize the state's future litigation risks could prove challenging.*
- 2.2 *While the OARM does not have sufficient information to develop estimates of pending cases involving potentially significant LEF expenditures, working with the AGO, the OARM will provide budgetary materials to the General Assembly based on the best available information collected within fiscal constraints.*

*The Office of Attorney General provided the following response:*

- 2.1 *Upon assuming office, Attorney General Josh Hawley took new and significant steps to make the Legal Expense Fund transparent and accessible not just to the General Assembly and the OARM, but to every citizen. Attorney General Hawley directed, for the first time in the Office's history, that every settlement and judgment from the Legal Expense Fund, and all costs associated with those settlements and judgments, be made available to both the General Assembly and the public on a monthly basis. These reports include all settlements and judgments paid from the LEF since Attorney General Hawley took office on January 9, 2017.*



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*Additionally, Attorney General Hawley has taken major new steps to improve the management of LEF cases as a part of a broader initiative to overhaul the case and document management systems in the AGO. Upon assuming office, Attorney General Hawley ordered a thorough review of the AGO's case tracking and document management systems. The review concluded that these systems were inefficient and in need of reform. In response, Attorney General Hawley introduced the AGO's first electronic document management system to better share, organize, and deploy litigation and other documents across the AGO. In addition, at Attorney General Hawley's direction, the AGO has reworked its case tracking system to integrate the tracking and document management capabilities, and to clearly designate all cases involving the LEF. The case tracking system also clearly designates significant case dates, such as trial and appeal deadlines.*

- 2.2 *As part of Attorney General Hawley's emphasis on transparency, the AGO is in regular communication with the leadership of the General Assembly and the OARM regarding pending cases implicating the LEF and judgments against the LEF on appeal, to the maximum extent permissible under the Missouri Rules of Professional Conduct. Attorney General Hawley has personally testified to the General Assembly as to pending judgments on appeal and other potential expenses to the LEF.*

*To further increase transparency and help the OARM and the General Assembly monitor historic trends, Attorney General Hawley directed the AGO to publish monthly reports of all LEF judgments and settlements and associated expenses, as noted above. These reports are also made available to the general public on the AGO website. In addition, Attorney General Hawley has directed the AGO to publish and update on a monthly basis the approximate aggregate exposure against the LEF.*

*Finally, the AGO has voluntarily submitted Comprehensive Annual Financial Reports (CAFRs) to OA for years. As the Auditor's office is aware, these reports describe potential legal obligations against the state in the upcoming year. The AGO will continue to communicate this data to OA, subject of course to the Missouri Rules of Professional Conduct, which constrain the information the AGO may share regarding information related to the ongoing representation of a client unless the client provides informed consent.*

## Comparative Statement of Expenditures (From Appropriations)

The following table lists total annual expenditures by budget-object classification for each of the 5 years from fiscal year 2013 through fiscal year 2017.

	Year Ended June 30,				
	2017	2016	2015	2014	2013
Travel	\$ 2,483	4,990	6,554	10,384	20,130
Professional services:					
Attorney <sup>1</sup>	2,228,018	1,908,528	2,921,342	1,026,121	1,437,805
Attorney and settlement payments	16,093,798	2,545,641	1,243,693	1,164,403	1,585,825
Professional court services	379,658	453,666	288,338	150,959	146,341
Other	109,501	14,020	16,374	12,367	11,687
Property and improvements	424,733	0	0	0	0
Equipment rental and leases	13,252	5,785	6,018	3,611	9,816
Miscellaneous expenses:					
Non-physical injury legal settlement	2,486,809	2,025,100	3,346,750	747,407	1,685,649
Personal injury legal settlement	194,500	4,483,493	86,041	138,333	4,811,995
Property damage settlement	456,318	407,610	336,886	283,715	341,210
Insurance and surety bond premiums	140,036	138,901	138,826	139,080	143,982
Other	4,491	3,045	0	32	0
Program reimbursements <sup>2</sup>	1,699,849	621	1,478,554	1,118,694	1,494,481
<b>Total Expenditures</b>	<b>\$ 24,233,446</b>	<b>11,991,400</b>	<b>9,869,376</b>	<b>4,795,106</b>	<b>11,688,921</b>

Source: Expenditures recorded on the state's accounting system (SAM II) (unaudited)

<sup>1</sup> Includes payments to contracted attorneys and payments for plaintiff attorney fees per court judgment

<sup>2</sup> Consists primarily of reimbursements to the St. Louis and Kansas City Boards of Police Commissioners