## SECTION 1983 LITIGATION BEST PRACTICES FOR CITIES TO MANAGE AND MITIGATE RISK IN A CHANGING WORLD

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# The Problem

### **Frequency of Severity**

- Sharp increase in the number of Law Enforcement Liability (LEL) claims
- Travelers 22/23 LEL Liability Update
  - 250% increase in average cost of indemnity claims between 2016 & 2021
  - Probability of a \$500k+ claim 6x higher in 2022 than 2016
  - 50% increase in \$1M+ claims
- US Cities spent \$3B to settle police misconduct lawsuits between 2010-2019\*



\* Source: Marshall Project

# Nuclear Verdicts on the Rise

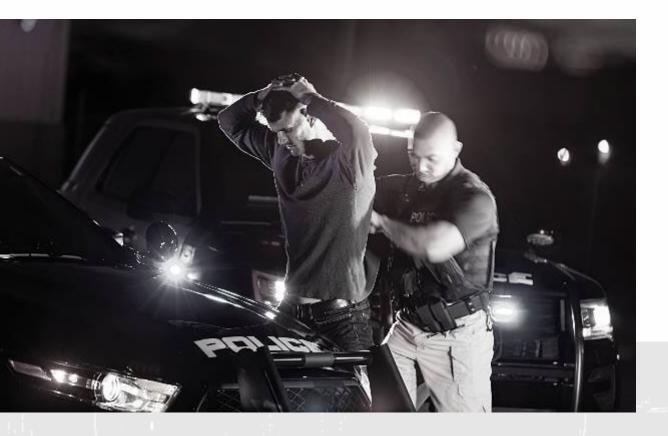
- On
- No

e unique to difficult venues like CA and WA v seeing \$10M+ verdicts across the country US Public Entity Large Losses		
Claim Amount	Number of Claims	
\$50M or Greater	7	
\$25M or Greater	24	
\$10M or Greater	98	
\$1M or Greater	328	
ource: AmWins informal tally since 2012. Likely understated		

### Causes

### General distrust of police

- "Defund the Police"
- Assumption of guilt
- Escalating scrutiny
  - Political, Societal 0
  - Media coverage 0
- Leading to passive policing, staffing shortages, recruitment standards, decreased funding
- Increased exposure
  - Mental health and substance abuse crisis 0
  - General increase in criminal activity 0



## Impact on Insurance

### Carriers adjusting underwriting appetite

- Some are leaving the market entirely
- Increasing deductibles/self-insured retentions 0
- Reducing limits and implementing aggregates 0
- Restricting coverage (exclusions) 0
- Increasing rates Ο

### Stand-alone market

- Limited number of carriers 0
- Potential for gaps in coverage 0
- Expensive 0



# Impact on Insurance (cont'd)

- Underwriting scrutiny including review of:
  - Accreditation status 0
  - Officer training 0
  - Use of body cameras and dash cameras 0
  - Use of force, high-speed pursuit and de-escalation policies 0
  - Loss experience and officer incident histories Ο



## Legislation

- States trying to share the costs and legislate personal responsibility among officers
  - Colorado law could cause officers to be held partially responsible for 0 wrongdoing
  - Officers could be made to pay up to 5% or up to \$25k of a verdict Other states are considering legislation that would require police officers to 0 purchase their own professional liability coverage



# **Municipal Activities**

### Combating Staffing Shortages

- Increasing compensation packages
- Offering signing bonuses 0
- Enhancing training and support

### Implementing Community Policing

- Police develop relationships with residents and businesses
- Work together to solve problems

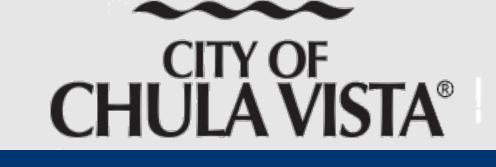
### Predictive Analytics

- 5% of policing workforce show an elevated risk
- Account for about 66% of all incidents  $\bigcirc$
- Analytics can identify the 5% and be used to modify behavior



# Ground Level Lessons from Chula Vista

- Quick Facts Police calls/incidents
- Claims
- Litigation 0



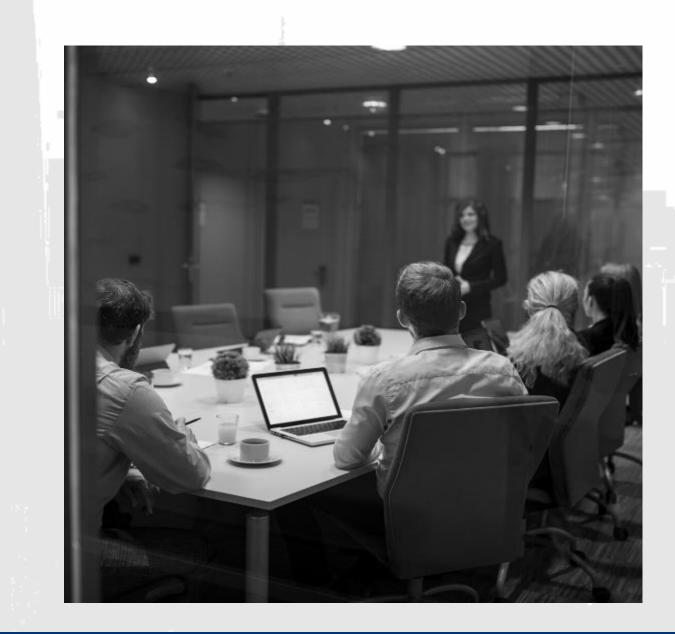
### **Non-Litigation/Overall Strategies**

Relationships & Communication are key 0

- Police Department & Community/Special Interest groups: not just when things go wrong
- City Attorney & Risk Manager: ongoing from first learning of an incident
- City Attorney & Police Department re: CPRA requests, critical incident briefings, general ongoing communication



- **Non-Litigation/Overall Strategies** •
  - Relationships & Communication (cont'd) 0
    - City Attorney & client: Mayor and Council briefings, City 0 Manager, when incidents arise
    - CVPD proactive programs, policies, transparency efforts: 0
      - Compassionate policing 0
      - Implicit bias training 0
      - Use of body worn cameras
      - DFR 0
  - Regional working group of government defense attorneys to share strategies, war stories, resources



### Claim/Pre-Litigation Stage

- Most effective: Informal body worn camera viewings to reduce claims and 0 litigation
  - Used sparingly, when viewing contradicts allegations or shows no violations
- Candid discussions with client re: how a jury will perceive the evidence 0
  - Ongoing communication helps build trust
- Settling early where liability is certain or other circumstances warrant



### Litigation Stage

- Continuous evaluation of case throughout discovery
- Checking in with pool representative early and often if case is reportable to the pool
  - Seeking input on what they are seeing statewide: experts, verdicts
- Maintain good working relationship with opposing 0 counsel to foster best outcome
- When outside counsel is used stress the need for realistic assessment of liability and settlement value



### Claims Handling Resources

- Pool staff have experience with a variety of police 0 cases in various jurisdictions
- Pools have claims handling staff who can make 0 recommendations on:
  - Outside Counsel
  - Experts 0
  - Mediators 0
  - Jury consultants/vendors



### Claims Handling Resources (cont'd)

- Staff can also provide information re: judges and opposing counsel
- Staff know what law enforcement claims are settling for which is helpful in 0 determining a claim's potential value
- Data re: cost of law enforcement claims  $\bigcirc$



### **Risk Control Services**

- Development and updating of use of force policies, police pursuit policies, etc. 0
- Education in a variety of areas of policing 0
- How to handle public recording of police 0
- De-escalation training 0
- Body worn camera programs Ο
- Correctional Facility checkpoint resources 0



### **EAP Programs**

- Pools are working with their members to devise EAP programs specific to 0 officers
  - Breaking down barriers that have kept officers from using EAP services in the past
  - Specific counselors who are trained in helping officers Goal to get officers the help they need which can help avoid both liability
  - and workers' compensation claims
  - Also helps to keep more officers on the street





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