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
  o 250% increase in average cost of indemnity claims between 2016 & 2021
  o Probability of a $500k+ claim 6x higher in 2022 than 2016
  o 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

- Once unique to difficult venues like CA and WA
- Now seeing $10M+ verdicts across the country

<table>
<thead>
<tr>
<th>Claim Amount</th>
<th>Number of Claims</th>
</tr>
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<tbody>
<tr>
<td>$50M or Greater</td>
<td>7</td>
</tr>
<tr>
<td>$25M or Greater</td>
<td>24</td>
</tr>
<tr>
<td>$10M or Greater</td>
<td>98</td>
</tr>
<tr>
<td>$1M or Greater</td>
<td>328</td>
</tr>
</tbody>
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Source: AmWins informal tally since 2012. Likely understated.
Causes

- **General distrust of police**
  - “Defund the Police”
  - Assumption of guilt
- **Escalating scrutiny**
  - Political, Societal
  - Media coverage
- **Leading to passive policing, staffing shortages, recruitment standards, decreased funding**
- **Increased exposure**
  - Mental health and substance abuse crisis
  - General increase in criminal activity
- Cases often not subject to tort caps
Impact on Insurance

- **Carriers adjusting underwriting appetite**
  - Some are leaving the market entirely
  - Increasing deductibles/self-insured retentions
  - Reducing limits and implementing aggregates
  - Restricting coverage (exclusions)
  - Increasing rates

- **Stand-alone market**
  - Limited number of carriers
  - Potential for gaps in coverage
  - Expensive
Impact on Insurance (cont’d)

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

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

• **Combating Staffing Shortages**
  o Increasing compensation packages
  o Offering signing bonuses
  o Enhancing training and support

• **Implementing Community Policing**
  o Police develop relationships with residents and businesses
  o Work together to solve problems

• **Predictive Analytics**
  o 5% of policing workforce show an elevated risk
  o Account for about 66% of all incidents
  o Analytics can identify the 5% and be used to modify behavior
Ground Level Lessons from Chula Vista

- Quick Facts
- Police calls/incidents
- Claims
- Litigation
What’s Working for Chula Vista in Police Litigation

• **Non-Litigation/Overall Strategies**
  - Relationships & Communication are key
    - 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
What’s Working for Chula Vista in Police Litigation

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

- **Claim/Pre-Litigation Stage**
  - Most effective: Informal body worn camera viewings to reduce claims and litigation
    - Used sparingly, when viewing contradicts allegations or shows no violations
  - Candid discussions with client re: how a jury will perceive the evidence
    - Ongoing communication helps build trust
  - Settling early where liability is certain or other circumstances warrant
What’s Working for Chula Vista in Police Litigation

- **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 counsel to foster best outcome
  - When outside counsel is used – stress the need for realistic assessment of liability and settlement value
Risk Pools and Resources

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

- **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 determining a claim’s potential value
  - Data re: cost of law enforcement claims
Risk Pools and Resources

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

• **EAP Programs**
  - Pools are working with their members to devise EAP programs specific to 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
Questions?

We’re Here to Help!

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