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# 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

- Once unique to difficult venues like CA and WA
- Now 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

*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**
  - Colorado law could cause officers to be held partially responsible for 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 purchase their own professional liability coverage



# Municipal Activities

- **Combating Staffing Shortages**

- Increasing compensation packages
- Offering signing bonuses
- 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
- 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**

- Relationships & Communication (cont'd)
- City Attorney & client: Mayor and Council briefings, City Manager, when incidents arise
- CVPD proactive programs, policies, transparency efforts:
  - Compassionate policing
  - Implicit bias training
  - Use of body worn cameras
  - DFR
- 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

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- **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

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- **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

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- **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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