
SECTION 1983 LIABILITY

BEST PRACTICES FOR CITIES TO MANAGE
AND MITIGATE RISK IN A CHANGING WORLD

Karen Rogan

Assistant City Attorney
City of Chula Vista

Kevin Bibler

Senior Vice President
Alliant Insurance Services, Inc.

Mike Pott

Chief Operating Officer/
Chief Legal Counsel
PRISM

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

- **A not-so-little border city with some unique circumstances you may not have heard of...**
 - Quick Facts
 - Police calls/incidents
 - Claims
 - Litigation



What's Working for Chula Vista in Police Litigation

- **Non-Litigation/Overall Strategies**
 - Relationships & Communication
 - Discussions between Police Department & Community/Special Interest groups, but not just when things go wrong
 - Discussions between City Attorney & Risk Manager regarding resources
 - Discussions between City Attorney & Police Department re: PRA Reviews, critical incident briefings, and general ongoing communication



What's Working for Chula Vista in Police Litigation

- **Non-Litigation/Overall Strategies**

- Relationships & Communication (cont'd)
- Discussions between City Attorney & client, City Manager, Finance team regarding risk when incidents arise
- DFR
- Compassionate policing
- Implicit bias training
- Use of body worn cameras
- Small regional working group of government defense attorneys



What's Working for Chula Vista in Police Litigation

- **Claim/Pre-Litigation Stage**

- Informal body worn camera viewings to reduce claims and litigation
- Discussion re: how a jury will perceive the evidence
- 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
- Maintain good working relationship with opposing counsel
- When outside counsel is used – stress the need for realistic assessment of liability and settlement value



Risk Pools and Resources

- **Claim 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

- **Claim 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
- 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!

Karen Rogan, *Assistant City Attorney*

City of Chula Vista

619.409.5816

krogan@chulavista.gov

Kevin Bibler, *Senior Vice President*

Alliant Insurance Services, Inc.

916.643.2719

kbibler@alliant.com

Mike Pott, *COO, Chief Legal Counsel*

PRISM

916.850.7300

mpott@prismrisk.gov