SISC
Self-Insured Schools of California
Schools Helping Schools

PROPERTY AND LIABILITY
BOARD OF DIRECTORS MEETING
OCTOBER 20, 2022
1:00 P.M.

AGENDA

I. Consent Agenda

A. Approval of Minutes for September 2022 Board of Directors Meeting — Nick Kouklis

B. Approval of Payment of Student Insurance Claims in the Amount of $63,987.73 and No Tackle Football Claims for the Month of September 2022 — Nick Kouklis

Moved_____2nd_____

Yes_____No_____Abstain_____Roll Call Vote_____

II. Public Comment

III. Closed Session- Property and Liability Claims

The board may be required to adjourn to closed session for discussion of matters regarding a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability, authorized by Government Code 54956.95.

District	File Number	Claimant
Bakersfield City School District By Ty Taylor	2020038305	N.O. (a minor) L-BI
Upland Unified School District By Ty Taylor	2019035043	M.T. (a minor) L-BI
Atascadero Unified School District By Pat Tumbarello	2019035817	Paige Arnold L-BI
Standard School District By Ryan Bourget	2022043135	Property
Norris School District By Hilda Tabora	2023043845	Property

IV. Reconvene To Open Session

A. Reports from Closed Session, if Required

V. Action Items

A. Report of Property and Liability Claims in the Amount of $2,437,918.63 for the Month of September 2022 and Ratification of Payment of this Amount — Robert Kretzmer

Moved_____2nd_____

Yes_____No_____Abstain_____Roll Call Vote_____

B. Financial Report – Presentation of Financial Statements for the Month of September 2022 Will Be Submitted for Approval — Kim Sloan

Moved_____2nd_____

Yes_____No_____Abstain_____Roll Call Vote_____

VI. Information and Discussion Items

A. Review of Active Shooter Training — Robert Kretzmer

B. Review of Defense Counsel Summit — Robert Kretzmer

C. Comments from the Board of Directors Will Be Heard — Nick Kouklis

D. Next Meeting: — Nick Kouklis
Thursday, November 17, 2022
10:30 a.m.
Room 204, 2nd Floor – Larry E. Reider Education Center
2000 K Street, Bakersfield, CA 93301

E. Adjournment — Nick Kouklis

Moved_____2nd_____

Yes_____No_____Abstain_____Roll Call Vote_____

Any materials required by law to be made available to the public prior to a meeting of the Governing Board of the SISC II JPA can be inspected at the following address during normal business hours at:
2000 K Street, Bakersfield, CA. 93301
For more information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation to participate in the public meeting, please contact Kristy Comstock at 661-636-4682 or krcomstock@siscschools.org

*The number of Board Members needed to form a quorum for this meeting is eight

PROPERTY & LIABILITY TERMINOLOGY

1. **AMERICANS WITH DISABILITIES ACT (ADA)** - A federal act designed to set standards to remove the barriers to employment, transportation, public accommodations, public services, and telecommunications that exist for those members of our society who have physical disabilities. The act encompasses aspects of everyday life and generates wide ranging implications for almost every business or service.

2. **CIVIL RIGHTS VIOLATIONS** - The term applied to tort claims involving issues of sexual harassment; wrongful termination; employment, age, gender or race discrimination; ADA; employment harassment. If Plaintiff prevails, even partially, this type of case entitles plaintiff to also collect attorney fees.

3. **CLAIM TYPES** – The internal coding systems for claims includes:

ABI – Auto Bodily Injury	BM – Boiler/Machinery	LPD–Liability Property Damage
ACL – Auto Collision	CF – Crime/Fidelity	P - Property
ACP – Auto Comprehension	LBI – Liability Bodily Injury	SE – Special Education
AGK – Auto Garage Keepers	LPI – Liability Personal Injury	
APD – Auto Property Damage		

4. **COMPARATIVE NEGLIGENCE** - A more modern system of allocating damages between two or more persons than the method of contributory negligence. Under comparative negligence, the damages collectible in relation to another person are diminished in proportion to one's degree of negligence. In most instances, damages cannot be collected at all if the claimant's negligence were greater than that of the other party. Currently, in a few instances, the courts have awarded both parties damages as a percent of the total damages, depending on respective degrees of fault.

5. **DECLARATORY RELIEF ACTION** - Remedy for the determination of a judicial controversy where a plaintiff or defendant is in doubt as to their legal rights. No consequential relief is awarded.

6. **ERRORS AND OMISSIONS (E&O)** - A form of Professional Liability insurance which provides coverage for mistakes made in a profession not involved with the human body (lawyers, architects, engineers) or for mistakes made in a service business (insurance, real estate, and others). Also a form of coverage for financial institutions protecting against loss to lending institutions which fail to effect insurance coverage.

7. **HOLD HARMLESS AGREEMENT** - A contractual arrangement whereby one party assumes the liability
Inherent in a situation, thereby relieving the other party of responsibility. Such agreements are typically found in leases and easements and construction contract agreements. Agreement or contract in which one party agrees to hold the other without responsibility for damage or other liability arising out of the transaction involved.

8. **INJUNCTIVE RELIEF ACTION** - Legal action filed for prohibitive or equitable relief. An action filed to forbid an act or to restrain someone from continuing an act which is considered unjust or injurious.

9. **MOTION FOR SUMMARY JUDGMENT** - Rule of civil procedure permitting either side in a civil suit to move for dismissal when it is believed that there is no genuine issue of material fact that would allow the other side to prevail as a matter of law. The "motion" may include all or part of a claim.

10. **PERSONAL INJURY** - Injury, other than bodily injury, results from oral or written communication.

11. **PUNITIVE DAMAGES (Exemplary)** - Damages awarded separately and in addition to compensatory damages, usually on account of malicious or wanton misconduct, to serve as a punishment for the wrongdoer and, possibly, as a deterrent to others. Sometimes referred to as "exemplary damages" when intended to "make an example" of the wrongdoer. By law, government entities are immune from punitive damages.

12. **SUBROGATION** - In insurance, the substitution of one party (insurer) for another party (insured) to pursue any rights the insured may have against a third party liable for a loss paid by the insurer.

13. **TORT** - A legal wrong arising from a breach of duty fixed by law, except under contract, causing injury to persons or property and redressible by legal action for damages. Government entities are ruled by the Tort Claims Act.

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PROPERTY AND LIABILITY
BOARD OF DIRECTORS MEETING
SEPTEMBER 22, 2022
10:30 A.M.

MINUTES

The Regular Meeting of the Board of Directors of SISC II Property and Liability Program was called to order by Director Kouklis at 10:30 a.m. on Thursday, September 22, 2022 in room 204, 2nd floor of the Larry E. Reider Building, 2000 K Street, Bakersfield, California 93301. The following individuals were in attendance:

MEMBERS PRESENT:
Nick Kouklis
Steve Martinez
Ty Bryson
Christine Cornejo
Bill Ridgeway
Jackie Martin
Paul Miller (left from 11:12-11:22)

ALTERNATES PRESENT:
Dr. John Mendiburu
Sue Lemon
Chris Meyer

OTHERS PRESENT:
Kim Sloan
Megan Hanson
Kristy Comstock
Rich Edwards
Fred Bayles
Robert Kretzmer
Ty Taylor
Ryan Bourget
Roxann Dailey-Webb
Pat Tumbarello
Hilda Tabora

Consent Agenda

Motion was made by Director Bryson, seconded by Director Ridgeway and by roll call vote of 9-Yes, 0-No, and 0 Abstention (9-0-0) to approve the Consent Agenda as follows:

Minutes

Approval of Minutes for August 2022 Board of Directors Meeting

Student Insurance and Tackle Football Claims

Approval of payment of Student Insurance Claims in the Amount of $22,943.33 and No Tackle Football Claims for the month of August 2022.

Public Comment

None

Closed Session – Property & Liability Claims

The Board went into closed session at 10:31 a.m.

Reconvene to Open Session

The Board reconvened into open session at 11:39 a.m.

Director Kouklis reported on the following cases:

With respect to the claim filed by E.N., a minor against Delano Union Elementary School District after discussion, motion was made by Director Bryson, seconded by Director Ridgeway and by roll call vote of 9-0-0 the board approved the payment of $95,000.00 for the settlement of this claim with E.N., a minor.
With respect to the claim filed by P.S., a minor against McFarland Unified School District after discussion, motion was made by Director Lemon, seconded by Director Miller and by roll call vote of 8-0-1 (abstention by Director Bryson) the board approved the payment of $175,000.00 for the settlement of this claim with P.S., a minor.
With respect to the claim filed by D.H., a minor against Winton School District after discussion, motion was made by Director Ridgeway, seconded by Director Cornejo and by roll call vote of 9-0-0 the board approved the payment of an undisclosed amount for the settlement of this claim with D.H., a minor.
With respect to the claim filed by Ignacio De La Cruz-Santiago against San Luis Coastal Unified School District after discussion, motion was made by Director Cornejo, seconded by Director Miller and by roll call vote of 9-0-0 the board approved the payment of $37,500.00 for the settlement of this claim with Ignacio De La Cruz-Santiago.
With respect to the claim filed by Lake Elsinore Unified School District after discussion, motion was made by Director Ridgeway, seconded by Director Lemon and by roll call vote of 9-0-0 the board approved the payment of $55,287.44 for the repairs to a bus damaged in a vehicle collision.
With respect to the claim filed by Raelene Gallagher against Santa Barbara Unified School District after discussion, motion was made by Director Bryson, seconded by Director Cornejo and by roll call vote of 8-0-0 the board approved the payment of $125,000.00 for the settlement of this claim with Raelene Gallagher.

With respect to the claim filed by O.B., a minor against Santa Barbara Unified School District after discussion, motion was made by Director Ridgeway, seconded by Director Meyer and by roll call vote of 9-0-0 the board approved the payment of an undisclosed amount for the settlement of this claim with O.B., a minor.

Action Items

Report of Property and Liability Claims – August 2022

Robert Kretzmer presented the Report of Property and Liability Claims. There were 47 new claims, 78 claims were closed and no claims reopened in August, resulting in 432 pending claims. Robert reviewed the check register for August 2022, reporting on six checks that were in excess of $25,000.00. After discussion, motion was made by Director Ridgeway, seconded by Director Miller and by roll call vote of 9-0-0, approving payment of Property and Liability Claims in the amount of $1,884,587.04 for the month of August 2022.

Financial Report

Kim Sloan reviewed with the Board the Financial Report for the period ending August 31, 2022. Kim reported the LAIF rate for the month of August 2022 increased to 1.28% from last month at 1.09%. After discussion, motion was made by Director Lemon, seconded by Director Martinez and by roll call vote of 9-0-0, approving the Financial Reports as submitted.

Information and Discussion Items

Defense Counsel Summit Reminder

Robert Kretzmer reminded the Board that they are invited to the Defense Counsel Summit on October 19th at Lucia Mar Unified School District in Arroyo Grande.

Discussion on Active Shooter Training

Robert Kretzmer discussed the Active Shooter Training that Steve Wilmes will be implementing for Imperial County. Robert will be attending this training and will report on it at October's Board Meeting.

Update on SELF Resource

Robert Kretzmer discussed the resources that will now be accessible through Schools Excess Liability Fund (SELF).

Comments from the Board of Directors

Director Kouklis introduced new board member Chris Meyer, Director of Human Resources & Risk Management for the Tulare County Office of Education. Director Kouklis also reminded the board members of the SISC Annual Board Meeting next month.

Adjournment

There being no further business to come before the Board, motion was made by Director Cornejo, seconded by Director Ridgeway and by roll call vote of 9-0-0, adjourning the meeting at 11:59 a.m.

Next Meeting

The next meeting of the Board of Directors will be held **Thursday, October 20th at** 1:00 p.m. in the Georgie O'Conner Board Room, Lucia Mar Unified School District, 602 Orchard St., Arroyo Grande, CA 93420

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Bill Ridgeway, Secretary

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SUMMARY OF ACTIVITY
SEPTEMBER 2022

	STUDENT INSURANCE	SUPPLEMENTAL COVERAGE	TACKLE FOOTBALL
Opened	61	0	24
Closed	54	0	3
Events	23	0	0
Total Open & Event claims	802	1	65
Amount Paid	$ 63,987.73	$ -	$ -
Credit	$ -	$ -	$ -
Net Paid Current Month	$ 63,987.73	$ -	$ -
Net Paid YTD	$ 124,150.21	$ -	$ -

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SISC II
CLAIM AND LOSS MANAGEMENT SUMMARY

		SEPTEMBER 2022
FILES RE-OPENED		2
FILES OPENED		31
FILES CLOSED		21
TOTAL PENDING CLAIMS		447
EVENTS LIABILITY		7
TOTAL LIABILITY EVENTS		75
PENDING INDEMNITY RESERVES		$26,042,681.68
PENDING EXPENSE RESERVES		$7,594,774.44
	TOTAL RESERVES	$33,637,456.12
INDEMNITY PAID, CURRENT MONTH		$1,611,407.80
EXPENSES PAID, CURRENT MONTH		$791,510.83
	SUB-TOTAL	$2,402,918.63
PRIOR MONTH VOIDS		($2,968.87)
RECOVERIES & COLLECTIONS		($413,119.34)
REFUNDS/ADJUSTMENTS		($4,311.51)
	NET PAID CURRENT MONTH	$1,982,518.91
INDEMNITY PAID YEAR-TO-DATE		$3,670,354.07
EXPENSES PAID YEAR-TO-DATE		$1,343,545.90
	SUB-TOTAL	$5,013,899.97
CREDITS YEAR-TO-DATE		($84,600.66)
RECOVERY YEAR-TO-DATE		($448,608.72)
REFUNDS YEAR-TO-DATE		($4,311.51)
	SUB-TOTAL	($537,520.89)
	NET PAID YEAR-TO-DATE	$4,476,379.08

YEAR-TO-DATE FROM CLAIM LOSS MANAGEMENT SUMMARY	4,476,379.08
YEAR-TO-DATE FROM THE FINANCIAL STATEMENT	4,468,584.48
YEAR-TO-DATE FROM THE FINANCIAL STATEMENT(CONSULTING)	17,507.00
YEAR-TO-DATE NET DIFFERENCE	(9,712.40)
June stale date posted in Ivos in July- will remain all year	18,389.09
Sep stale date to be posted in Ivos in Oct	(8,676.69)
	9,712.40
YEAR-TO-DATE DIFFERENCE	0.00

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558116	09/01/2022	ROSENDA LOPEZ	2023043951	APD	Property	Bakersfield City	**1,910.49**
558117	09/01/2022	JOHNSON, SCHACHTER &	2020035853	LBI	Attorney Fees	Bret Harte Union	**1,580.00**
558118	09/01/2022	ZIMMER AND MELTON, LLP	2015015956	LPI	Attorney Fees	Kern Community	**207.10**
558119	09/01/2022	JUDGE DONALD BLACK (RET.)	2019035039	LBI	Legal-Other	Winton School	**1,666.00**
558120	09/01/2022	CALIFORNIA HIGHWAY	2023044044	ACL	Adjusting	Kern County Supt	**10.00**
558121	09/01/2022	LAW OFFICES OF SAMUEL	2020038303	LBI	In Full	Antelope Valley	**535,941.70**
558122	09/01/2022	CORDELIA IDOKO AS	2020038303	LBI	Full and Final	Antelope Valley	**600,000.00**
558132	09/06/2022	ATWATER POLICE	2023043949	ACL	Adjusting	Merced County	**23.00**
558133	09/06/2022	PDA CORPORATE STORES	2023043949	ACL	Adjusting	Merced County	**496.92**
558134	09/06/2022	JUDGE DONALD BLACK (RET.)	2019035039	LBI	Legal-Other	Winton School	**1,666.00**
558135	09/06/2022	IMAGINE COURT REPORTING	2020038733	LBI	Legal-Other	Delano Union	**1,645.50**
558136	09/06/2022	General Shafter School District	2021039768	ACL	Deductible	General Shafter	**1,250.00**
558137	09/06/2022	TYSON & MENDES LLP	2021040073	LBI	Attorney Fees	Santa Barbara	**5,240.24**
558138	09/06/2022	TYSON & MENDES LLP	2021039660	LBI	Attorney Fees	Santa Barbara	**23,767.50**
558139	09/06/2022	TYSON & MENDES LLP	2021040363	LBI	Attorney Fees	Santa Maria Joint	**3,967.50**
558140	09/06/2022	HALL, HIEATT, CONNELY &	2019032223	LBI	Attorney Fees	Atascadero Unified	**25,782.09**
558141	09/06/2022	HALL, HIEATT, CONNELY &	2019035817	LBI	Attorney Fees	Atascadero Unified	**3,801.61**
558142	09/06/2022	HALL, HIEATT, CONNELY &	2020038292	LBI	Attorney Fees	Santa Maria Joint	**5,779.00**
558143	09/06/2022	SULLIVAN GROUP OF COURT	2020038292	LBI	Legal-Other	Santa Maria Joint	**1,489.50**
558144	09/06/2022	MC LAW GROUP APC	2022041384	LBI	Attorney Fees	Santa Barbara	**4,305.00**
558145	09/06/2022	MC LAW GROUP APC	2021040358	LPI	Attorney Fees	Orcutt Union	**32,455.57**
558146	09/06/2022	MC LAW GROUP APC	2022042222	LBI	Attorney Fees	Goleta Union	**3,800.00**
558147	09/06/2022	MC LAW GROUP APC	2022040532	LPI	Attorney Fees	Santa Ynez Valley	**2,200.00**
558148	09/06/2022	MCCORMICK, BARSTOW,	2023043817	ADM	Attorney Fees	Kern County Supt	**4,577.50**
558152	09/08/2022	MC LAW GROUP APC	2022042672	LBI	Attorney Fees	Santa Maria Joint	**2,700.00**
558153	09/08/2022	SULLIVAN GROUP OF COURT	2020038292	LBI	Legal-Other	Santa Maria Joint	**805.00**
558154	09/08/2022	Merced County Office of	2023043949	ACL	Collision Loss	Merced County	**3,794.73**
558155	09/08/2022	Santa Maria-Bonita School	2023043826	ACP	Auto	Santa Maria-Bonita	**3,820.89**
558156	09/08/2022	PDA CORPORATE STORES	2023043969	APD	Adjusting	Lake Elsinore	**369.86**
558157	09/08/2022	EVA MIRMOHAMADI	2023043969	APD	Property	Lake Elsinore	**4,314.30**

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558158	09/08/2022	HERR PEDERSEN &	2021039134	LPI	Attorney Fees	Big Oak Flat-	**83.37**
558159	09/08/2022	DEMARIA LAW FIRM, APC	2021039134	LPI	Attorney Fees	Big Oak Flat-	**557.00**
558160	09/08/2022	HERR PEDERSEN &	2018030813	LBI	Attorney Fees	Pioneer Union	**136.00**
558161	09/08/2022	Wasco Union High School District	2022042729	P	Theft Loss	Wasco Union High	**12,015.17**
558162	09/08/2022	DEMARIA LAW FIRM, APC	2021040400	LBI	Attorney Fees	Pioneer Union	**255.00**
558163	09/08/2022	DEMARIA LAW FIRM, APC	2022041780	LBI	Attorney Fees	Winton School	**600.64**
558164	09/08/2022	MAINLINE KAIZEN-SANTA	2022043515	LPD	Property	Orcutt Union	**11,733.84**
558165	09/08/2022	HERR PEDERSEN &	2018031218	LBI	Attorney Fees	Merced County	**866.88**
558166	09/08/2022	Tulare COE (GL)	2021039896	P	Water Loss	Tulare COE (GL)	**305,621.94**
558168	09/13/2022	ROSA WOOD	2023044063	APD	Property	Merced Union High	**1,105.92**
558169	09/13/2022	LEVENFELD WINTER LLP	2023043795	LBI	Legal-Other	Lucia Mar Unified	**23,046.30**
558170	09/13/2022	SULLIVAN GROUP OF COURT	2019032223	LBI	Legal-Other	Atascadero Unified	**7,051.25**
558171	09/13/2022	VERITEXT CORP	2019032223	LBI	Legal-Other	Atascadero Unified	**558.25**
558172	09/13/2022	HALL, HIEATT, CONNELY &	2017027082	LBI	Attorney Fees	Lucia Mar Unified	**994.50**
558173	09/13/2022	DAPRA CONSTRUCTION	2023043723	P	Water Loss	Westside Union	**2,925.30**
558174	09/13/2022	ROBINSON & KELLAR	2021039114	LBI	Attorney Fees	Lake Elsinore	**391.80**
558175	09/13/2022	PDA CORPORATE STORES	2023043845	P	Adjusting	Norris School	**798.33**
558176	09/13/2022	HALL, HIEATT, CONNELY &	2022040712	ABI	Attorney Fees	San Luis Coastal	**4,416.72**
558177	09/13/2022	ROBINSON & KELLAR	2021039203	LPI	Attorney Fees	Lake Elsinore	**873.00**
558178	09/13/2022	MCDONALD HOPKINS LLC	2022043057	CYB	Cyber	Greenfield Union	**7,174.00**
558179	09/13/2022	DEMARIA LAW FIRM, APC	2020038781	LPI	Attorney Fees	Amador County	**3,818.50**
558180	09/13/2022	HERR PEDERSEN &	2017027208	ABI	Attorney Fees	Delano Union	**2,406.00**
558224	09/15/2022	Sierra Sands Unified School	2023044172	ACL	Collision Loss	Sierra Sands	**1,126.57**
558225	09/15/2022	PDA CORPORATE STORES	2023043972	ACL	Adjusting	Bakersfield City	**636.77**
558226	09/15/2022	Bakersfield City School District	2023043972	ACL	Collision Loss	Bakersfield City	**3,154.05**
558227	09/15/2022	Lakeside Union School District	2023043797	ACP	Auto	Lakeside Union	**4,133.02**
558228	09/15/2022	PDA CORPORATE STORES	2022043259	ACL	Adjusting	Lake Elsinore	**1,365.57**
558229	09/15/2022	ZIMMER AND MELTON, LLP	2021039543	ABI	Attorney Fees	Kern County Supt	**1,750.65**
558230	09/15/2022	WALKER & KIRKPATRICK	2020038303	LBI	Attorney Fees	Antelope Valley	**5,294.80**
558231	09/15/2022	DEMARIA LAW FIRM, APC	2023043915	LBI	Attorney Fees	Tehachapi Unified	**146.00**

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558232	09/15/2022	DEMARIA LAW FIRM, APC	2021040054	LPI	Attorney Fees	Panama-Buena	**9.50**
558233	09/15/2022	ADR SERVICES, INC.	2019035043	LBI	Legal-Other	Upland USD (GL)	**3,083.34**
558234	09/15/2022	MCCUNE & HARBER LLP	2019033922	LBI	Attorney Fees	Kern High School	**3,039.07**
558235	09/15/2022	ZIMMER AND MELTON, LLP	2022040725	LPI	Attorney Fees	Greenfield Union	**3,829.50**
558236	09/15/2022	OLVERA COURT REPORTING	2019032541	LPI	Legal-Other	Mojave Unified	**775.50**
558237	09/15/2022	OLVERA COURT REPORTING	2019032541	LPI	Legal-Other	Mojave Unified	**768.00**
558238	09/15/2022	ENTERPRISE RENT-A-CAR	2023043969	APD	Adjusting	Lake Elsinore	**352.27**
558239	09/15/2022	JOHNSON, SCHACHTER &	2020035853	LBI	Attorney Fees	Bret Harte Union	**80.00**
558260	09/20/2022	FERRA AND ASSOCIATES	2022040812	ADM	Adjusting	Kern County Supt	**1,007.00**
558261	09/20/2022	FERRA AND ASSOCIATES	2022040812	ADM	Adjusting	Kern County Supt	**627.00**
558262	09/20/2022	TYSON & MENDES LLP	2022042150	LPI	Attorney Fees	Kern County Supt	**512.50**
558263	09/20/2022	HERR PEDERSEN &	2017025182	LBI	Attorney Fees	Merced County	**2,207.75**
558264	09/20/2022	HERR PEDERSEN &	2021040087	LPI	Attorney Fees	Bakersfield City	**7,152.04**
558265	09/20/2022	HERR PEDERSEN &	2022041435	LBI	Attorney Fees	Sierra Sands	**1,573.30**
558266	09/20/2022	HERR PEDERSEN &	2022043271	LPI	Attorney Fees	Tulare COE (GL)	**4,562.25**
558267	09/20/2022	HERR PEDERSEN &	2022043315	LPI	Attorney Fees	Richland School	**1,730.62**
558268	09/20/2022	MCCORMICK, BARSTOW,	2023043817	ADM	Attorney Fees	Kern County Supt	**985.00**
558269	09/20/2022	MCCORMICK, BARSTOW,	2023043817	ADM	Attorney Fees	Kern County Supt	**1,227.50**
558270	09/20/2022	DEMARIA LAW FIRM, APC	2022042555	LPI	Attorney Fees	Bishop Unified	**133.00**
558271	09/20/2022	DEMARIA LAW FIRM, APC	2022043126	LPI	Attorney Fees	Kern County Supt	**278.00**
558272	09/20/2022	DEMARIA LAW FIRM, APC	2022042373	LBI	Attorney Fees	Amador County	**247.00**
558273	09/20/2022	DEMARIA LAW FIRM, APC	2022042091	LPI	Attorney Fees	Amador County	**2,244.00**
558274	09/20/2022	DEMARIA LAW FIRM, APC	2022041018	LPI	Attorney Fees	Lake Elsinore	**3,976.00**
558275	09/20/2022	EDDINGS ATTORNEY	2022040775	ABI	Legal-Other	Hanford Jt. Union	**299.74**
558276	09/20/2022	PDA CORPORATE STORES	2023043916	LPD	Adjusting	Fruitvale School	**228.92**
558277	09/20/2022	PDA CORPORATE STORES	2023044068	ACL	Adjusting	Kern County Supt	**210.66**
558278	09/20/2022	Kern County Supt of Schools	2023044068	ACL	Collision Loss	Kern County Supt	**603.72**
558279	09/20/2022	Kern County Supt of Schools	2023044067	ACL	Collision Loss	Kern County Supt	**52.70**
558280	09/20/2022	PDA CORPORATE STORES	2023044067	ACL	Adjusting	Kern County Supt	**209.00**
558281	09/20/2022	CARPENTER, ROTHANS &	2020038303	LBI	Attorney Fees	Antelope Valley	**462.50**

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558282	09/20/2022	CARPENTER, ROTHANS &	2020037703	LBI	Attorney Fees	Antelope Valley	**68.95**
558283	09/20/2022	CARPENTER, ROTHANS &	2020038645	LBI	Attorney Fees	Upland USD (GL)	**111.00**
558284	09/20/2022	CARPENTER, ROTHANS &	2019031894	LBI	Attorney Fees	Antelope Valley	**5,758.92**
558285	09/20/2022	CARPENTER, ROTHANS &	2020036944	LBI	Attorney Fees	Antelope Valley	**6,550.77**
558286	09/20/2022	CARPENTER, ROTHANS &	2019035125	LBI	Attorney Fees	Palmdale	**172.50**
558287	09/20/2022	CARPENTER, ROTHANS &	2020038371	LPI	Attorney Fees	Palmdale	**275.37**
558288	09/20/2022	CARPENTER, ROTHANS &	2016022410	LBI	Attorney Fees	Palmdale	**74.00**
558289	09/20/2022	NETWORK DISPOSITION	2020038733	LBI	Legal-Other	Delano Union	**956.89**
558290	09/20/2022	WELTY, ANNE C., MD	2020038733	LBI	Legal-Other	Delano Union	**5,550.00**
558291	09/20/2022	WALKER & KIRKPATRICK	2020038371	LPI	Attorney Fees	Palmdale	**2,611.50**
558292	09/20/2022	WALKER & KIRKPATRICK	2018031583	LBI	Attorney Fees	Westside Union	**1,456.25**
558293	09/20/2022	DAPRA CONSTRUCTION	2023043733	P	Adjusting	Kern County Supt	**517.50**
558294	09/20/2022	CARPENTER, ROTHANS &	2021040073	LBI	Attorney Fees	Santa Barbara	**1,138.35**
558295	09/20/2022	CARPENTER, ROTHANS &	2021039660	LBI	Attorney Fees	Santa Barbara	**10,593.46**
558296	09/20/2022	CARPENTER, ROTHANS &	2019034513	LBI	Attorney Fees	Westside Union	**632.16**
558297	09/20/2022	CARPENTER, ROTHANS &	2020038667	LBI	Attorney Fees	Palmdale	**11.95**
558298	09/20/2022	ROBINSON & KELLAR	2019032624	LBI	Attorney Fees	McFarland Unified	**1,740.30**
558299	09/20/2022	ROBINSON & KELLAR	2022043321	LBI	Attorney Fees	Mojave Unified	**2,258.45**
558300	09/20/2022	ROBINSON & KELLAR	2020037687	LBI	Attorney Fees	McFarland Unified	**364.40**
558301	09/20/2022	ROBINSON & KELLAR	2021040282	ABI	Attorney Fees	Kern County Supt	**6,389.33**
558302	09/20/2022	ROBINSON & KELLAR	2022042883	LPI	Attorney Fees	Bakersfield City	**2,166.50**
558303	09/20/2022	ZIMMER AND MELTON, LLP	2022040725	LPI	Attorney Fees	Greenfield Union	**3,829.50**
558304	09/20/2022	ZIMMER AND MELTON, LLP	2021039658	LPI	Attorney Fees	Trona Joint Unified	**2,846.99**
558305	09/20/2022	ZIMMER AND MELTON, LLP	2022042883	LPI	Attorney Fees	Bakersfield City	**1,128.50**
558306	09/20/2022	DAVID REA	2023044134	LPD	Property	Norris School	**1,585.00**
558307	09/20/2022	Antelope Valley Union High	2022040451	P	Theft Loss	Antelope Valley	**1,981.36**
558308	09/20/2022	DENISON WERNER LLP	2020037688	LBI	Attorney Fees	Bakersfield City	**1,301.00**
558309	09/20/2022	DEMARIA LAW FIRM, APC	2023043663	LBI	Attorney Fees	Greenfield Union	**1,079.64**
558310	09/20/2022	DEMARIA LAW FIRM, APC	2022041926	LBI	Attorney Fees	Norris School	**2,303.00**
558311	09/20/2022	DEMARIA LAW FIRM, APC	2022043559	LBI	Attorney Fees	Delano Union	**184.00**

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558312	09/20/2022	DEMARIA LAW FIRM, APC	2022042991	LPI	Attorney Fees	Tehachapi Unified	**57.00**
558313	09/20/2022	DEMARIA LAW FIRM, APC	2021039753	LBI	Attorney Fees	Bakersfield City	**700.50**
558314	09/20/2022	DEMARIA LAW FIRM, APC	2021039223	LPI	Attorney Fees	Norris School	**680.00**
558315	09/20/2022	DEMARIA LAW FIRM, APC	2020038305	LBI	Attorney Fees	Bakersfield City	**14,750.28**
558316	09/20/2022	DEMARIA LAW FIRM, APC	2020036640	LPI	Attorney Fees	Eastern Sierra	**398.00**
558317	09/20/2022	DEMARIA LAW FIRM, APC	2020038733	LBI	Attorney Fees	Delano Union	**13,683.78**
558318	09/20/2022	OLVERA COURT REPORTING	2020037687	LBI	Legal-Other	McFarland Unified	**751.00**
558319	09/21/2022	MC LAW GROUP APC	2016018849	LBI	Attorney Fees	Santa Maria Joint	**140.00**
558320	09/21/2022	YESENIA SANDOVAL	2023043916	LPD	Vehicle Damage	Fruitvale School	**4,579.16**
558321	09/21/2022	CARPENTER, ROTHANS &	2022040918	LPI	Attorney Fees	Upland USD (GL)	**259.00**
558322	09/21/2022	CARPENTER, ROTHANS &	2022040518	LBI	Attorney Fees	Palmdale	**37.00**
558323	09/21/2022	MYERS, GREG, LAW OFFICES	2019035039	LBI	Attorney Fees	Winton School	**2,173.00**
558324	09/21/2022	MYERS, GREG, LAW OFFICES	2019033922	LBI	Attorney Fees	Kern High School	**688.50**
558325	09/21/2022	MYERS, GREG, LAW OFFICES	2019032624	LBI	Attorney Fees	McFarland Unified	**799.50**
558326	09/21/2022	MAGDALENA SERGIO	2023044044	ACP	Property	Kern County Supt	**7,996.74**
558327	09/21/2022	MCCORMICK, BARSTOW,	2021039660	LBI	Attorney Fees	Santa Barbara	**495.00**
558328	09/21/2022	CARPENTER, ROTHANS &	2021039694	LPI	Attorney Fees	Antelope Valley	**199.50**
558329	09/21/2022	CARPENTER, ROTHANS &	2019035043	LBI	Attorney Fees	Upland USD (GL)	**462.50**
558330	09/21/2022	Amador County Unified SD (GL)	2023043690	SE	Attorney Fees	Amador County	**17,505.00**
558331	09/21/2022	Atascadero Unified School	2023043809	SE	Attorney Fees	Atascadero Unified	**19,460.00**
558332	09/21/2022	Bellevue-Santa Fe Charter	2023043691	SE	Attorney Fees	Bellevue-Santa Fe	**6,838.00**
558333	09/21/2022	Buellton Union School District	2023043830	SE	Attorney Fees	Buellton Union	**11,308.00**
558334	09/21/2022	CALAVERAS COUNTY SELPA	2023043692	SE	Attorney Fees	Calaveras COE	**12,117.00**
558335	09/21/2022	Fruitvale School District	2023043831	SE	Attorney Fees	Fruitvale School	**2,379.00**
558336	09/21/2022	Goleta Union School District	2023043696	SE	Attorney Fees	Goleta Union	**72,205.00**
558337	09/21/2022	Kern County Supt of Schools	2023043832	SE	Attorney Fees	Kern County Supt	**5,156.00**
558338	09/21/2022	Lucia Mar Unified School District	2023043810	SE	Attorney Fees	Lucia Mar Unified	**58,772.00**
558339	09/21/2022	Orcutt Union School District	2023043833	SE	Attorney Fees	Orcutt Union	**14,179.00**
558340	09/21/2022	Panama-Buena Vista Unified	2023043749	SE	Attorney Fees	Panama-Buena	**66,228.00**
558341	09/21/2022	Paso Robles Joint Unified School	2023043811	SE	Attorney Fees	Paso Robles Joint	**18,245.00**

Check Register - Property & Liability September 2022

September 2022

Check Number	Check Date	Payee	Claim Number	Claim Type	Payment Type	Insured	Check Amount
558342	09/21/2022	Tehachapi Unified School District	2023043812	SE	Attorney Fees	Tehachapi Unified	**42,305.00**
558343	09/21/2022	Templeton Unified School District	2023043698	SE	Attorney Fees	Templeton Unified	**5,797.00**
558344	09/21/2022	Tuolumne County SELPA	2023043847	SE	Attorney Fees	Tuolumne Cnty	**7,311.00**
558345	09/21/2022	Wasco Union Elementary School	2023043722	SE	Attorney Fees	Wasco Union	**4,720.00**
558346	09/21/2022	Westside Union Elementary	2023043834	SE	Attorney Fees	Westside Union	**79,399.00**
558353	09/22/2022	CARPENTER, ROTHANS &	2022042589	LBI	Attorney Fees	Palmdale	**37.00**
558354	09/22/2022	CARPENTER, ROTHANS &	2020038371	LPI	Attorney Fees	Palmdale	**1,021.28**
558355	09/22/2022	CHAIN COHN CLARK, A LAW	2020037688	LBI	Trust Account -	Bakersfield City	**35,000.00**
558361	09/22/2022	CHAIN COHN CLARK CLIENT	2020037688	LBI	Trust Account -	Bakersfield City	**35,000.00**
558398	09/29/2022	Lake Elsinore Unified School	2022043259	ACL	Collision Loss	Lake Elsinore	**50,287.44**
558399	09/29/2022	Merced Union High School	2023044197	P	Theft Loss	Merced Union High	**4,737.03**
558400	09/29/2022	LIEBERT CASSIDY WHITMORE	2021040407	LPI	Attorney Fees	Kern Community	**7,556.95**
558401	09/29/2022	LIEBERT CASSIDY WHITMORE	2021040407	LPI	Attorney Fees	Kern Community	**3,710.50**
558402	09/29/2022	MCCORMICK, BARSTOW,	2020038303	LBI	Attorney Fees	Antelope Valley	**1,397.50**
558403	09/29/2022	CLARITY SCIENTIFIC, INC.	2022040775	ABI	Legal-Other	Hanford Jt. Union	**1,424.60**
558404	09/29/2022	DENISON WERNER LLP	2020038359	LBI	Attorney Fees	Kern Community	**72.00**
558405	09/29/2022	PDA CORPORATE STORES	2023044173	APD	Adjusting	Santa Maria-Bonita	**212.32**
558406	09/29/2022	Eastern Sierra Unified School	2022041753	ACL	Collision Loss	Eastern Sierra	**4,562.73**
558407	09/29/2022	PDA CORPORATE STORES	2022041753	ACL	Adjusting	Eastern Sierra	**283.00**
558408	09/29/2022	SANDERSON FIRM PLLC	2022042808	LBI	Attorney Fees	Merced Union High	**75.00**
558409	09/29/2022	MYERS, GREG, LAW OFFICES	2022040775	ABI	Attorney Fees	Hanford Jt. Union	**3,662.76**
558410	09/29/2022	MCCORMICK, BARSTOW,	2023043817	ADM	Attorney Fees	Kern County Supt	**2,375.00**
558411	09/29/2022	MCCORMICK, BARSTOW,	2023043817	ADM	Attorney Fees	Kern County Supt	**995.00**
558412	09/29/2022	MCCORMICK, BARSTOW,	2022040812	ADM	Attorney Fees	Kern County Supt	**225.00**
		Total For 122000496 2740012854					2,402,918.63

Number of Check: 174
Number Of Payments: 175

First Check Number: 558116
Last Check Number: 558412
Check Sequence:

SISC II

INCOME STATEMENT

SEPTEMBER 2022

		BUDGET	YEAR-TO-DATE	CURRENT MONTH
REVENUES				
8660.00	Interest-County Treasurer	$659,092.00	$0.00	$0.00
8660.03	LAIF	$46.00	$0.00	$0.00
8660.04	Investments	$967,344.00	$0.00	$0.00
8660.05	Bank	$5,000.00	$450.72	$385.81
8674.02	Premiums-Prop & Liab	$47,287,193.00	$11,615,180.97	$3,726,861.74
8674.12	Student Ins	$1,226,093.00	$306,518.28	$102,175.00
8674.13	Tackle Football	$27,000.00	$14,410.00	$5,710.00
8674.14	Special Ed Defense	$443,924.00	$467,993.00	$29,880.00
8674.15	Supp Student Ins	$1,250.00	$350.00	$275.00
8699.06	Administrative Fees	$100.00	$0.00	$0.00
TOTAL REVENUES		$50,617,042.00	$12,404,902.97	$3,865,287.55
EXPENSES				
4300.00	Supplies	$500.00	$0.00	$0.00
5200.00	Travel/Conference	$5,000.00	$74.74	$27.06
5300.00	Dues and Memberships	$133,212.00	$77,970.99	$0.00
5450.01	Insurance-Property & Fire	$10,116,248.00	$2,170,122.00	$723,374.00
5450.02	Boiler & Machinery	$248,448.00	$65,318.00	$21,772.00
5450.04	Crime	$74,739.00	$17,714.00	$6,093.00
5450.06	Excess Liability	$8,998,588.00	$2,228,643.23	$756,583.00
5450.17	Data Compromise	$595,396.00	$59,700.40	$19,899.00
5450.18	Concussion Coverage	$27,000.00	$6,750.00	$2,250.00
5450.19	Terrorism	$35,627.00	$8,484.00	$2,828.00
5800.00	Miscellaneous	$500.00	$0.00	$0.00
5800.02	Audit	$13,395.00	$3,000.00	$0.00
5800.08	Safety Incentive Projects	$0.00	$0.00	$0.00
5800.10	Consulting	$225,600.00	$17,507.00	$12,019.00
5800.15	Property Appraisals	$51,953.00	$0.00	$0.00
5800.32	Bank Fees	$4,800.00	$0.00	$0.00
5800.50	Administration - KCSOS	$3,609,332.00	$844,184.70	$270,541.07
5800.55	Student Ins Claims	$715,300.00	$123,439.23	$63,276.75
5800.56	Tackle FB Claims	$22,000.00	$0.00	$0.00
5800.57	Supp Student Ins Claims	$1,250.00	$0.00	$0.00
5800.58	Spec Ed VCP	$443,924.00	$0.00	$0.00
5800.66	Property Claims	$2,203,443.00	$892,561.79	$73,345.94
5800.67	Liability Claims	$17,549,340.00	$3,079,384.04	$1,495,759.95
5800.69	Auto Claims	$1,387,349.00	$190,057.19	$81,762.20
5800.90	Bill Review	$7,000.00	$480.73	$480.73
5800.94	Other Distributions	$0.00	$0.00	$0.00
5800.95	Unpaid Claims Liab Adj	$2,000,000.00	$500,006.00	$166,666.00
TOTAL EXPENSES		$48,469,944.00	$10,285,398.04	$3,696,677.70
CHANGE IN NET ASSETS		$2,147,098.00	$2,119,504.93	$168,609.85
NET ASSETS - BEGINNING		$20,531,156.76	$20,531,156.76	$22,482,051.84
NET ASSETS - ENDING		$22,678,254.76	$22,650,661.69	$22,650,661.69

SISC II

BALANCE SHEET

September 30, 2022

		July 1, 2022 BALANCE	September 30, 2022 BALANCE
ASSETS			
9110.00	Cash in County Treasury	$26,531,035.33	$57,969,353.76
9120.02	Bank Account-Claims Fund	$1,801,918.91	$3,032,638.53
9130.00	Revolving Fund	$1,500.00	$1,500.00
9150.01	Local Agency Investment Fund	$6,082.91	$6,094.30
9150.03	Investments	$51,262,003.61	$51,262,003.61
9200.00	Accounts Receivable	$770,798.63	$305,830.65
9330.00	Prepaid Insurance	$4,359,462.00	$9,474,040.00
TOTAL ASSETS		$84,732,801.39	$122,051,460.85
LIABILITIES			
9500.00	Current Liabilities	$793,524.63	$269,520.93
9650.00	Deferred Income	$0.00	$35,223,152.23
9668.00	Unpd Clms Liab (90% Conf Lvl	$63,408,120.00	$63,908,126.00
TOTAL LIABILITIES		$64,201,644.63	$99,400,799.16
NET ASSETS - Funding Stabilization Rese		$20,531,156.76	$22,650,661.69
TOTAL LIABILITIES AND NET ASSETS		$84,732,801.39	$122,051,460.85

AUTHORIZED SIGNATURE

PREPARED BY: Nancy Russo

SISC II
Investments
September 30, 2022

24-HOUR LIQUID FUNDS

SISC II maintains much of its cash in the Kern County Treasury and Local Agency Investment Fund. Both agencies pool these funds with those of other entities in the state. These pooled funds are carried at cost which approximates market value.

AGENCY	BALANCE	RETURN	PERIOD	DATES
COUNTY OF KERN	$57,969,353.76	1.00%	LAST QUARTER	APR-JUN 2022
		1.42%	5 YEAR AVERAGE	JUL 2017-JUN 2022
LOCAL AGENCY				
INVESTMENT FUND	$6,094.30	1.51%	CURRENT MONTH	September, 2022
		0.75%	LAST QUARTER	APR-JUN 2022
		1.32%	5 YEAR AVERAGE	JUL 2017-JUN 2022

INVESTMENT MANAGEMENT ACCOUNTS

The investment securities portfolio is comprised of securities carried at fair market value.

The fair market value of the investment securities available for sale at June 30, 2022 was:

INVESTMENT FIRM	MARKET VALUE	QUARTERLY RETURN	ANNUALIZED RETURN	PERIOD	DATES
REINHART PARTNERS	$24,529,741.00	-0.55%	-2.22%	LAST QUARTER	APR-JUN 2022
(SISC INVESTMENT POOL)			1.34%	5 YEAR AVERAGE	JUL 2017-JUN 2022
			2.90%	YIELD TO MATURITY	AS OF JUN 30, 2022
WELLS FARGO ADVISORS	$26,732,262.61	-0.72%	-2.88%	LAST QUARTER	APR-JUN 2022
(RICH EDWARDS)			1.25%	5 YEAR AVERAGE	JUL 2017-JUN 2022
			2.58%	YIELD TO MATURITY	AS OF JUN 30, 2022
	$51,262,003.61				

5-YEAR HISTORY OF RETURNS - ANNUALIZED

Quarter Ending:	Co of Kern	LAIF	INVESTMENT POOL	RICH WELLS FARGO	COMBINED WEIGHTED AVERAGE RETURN
6/30/2022	1.00%	0.75%	-2.22%	-2.88%	-1.35%
3/31/2022	0.95%	0.32%	-9.06%	-9.18%	-5.11%
12/31/2021	0.84%	0.23%	-2.39%	-2.02%	-0.55%
9/30/2021	1.24%	0.24%	-0.20%	0.26%	0.69%
6/30/2021	1.00%	0.33%	0.80%	0.00%	0.65%
3/31/2021	1.07%	0.44%	-1.86%	-0.90%	-0.47%
12/31/2020	1.16%	0.63%	0.18%	0.55%	0.72%
9/30/2020	1.30%	0.84%	0.43%	0.40%	0.83%
6/30/2020	1.70%	1.47%	2.89%	4.28%	3.23%
3/31/2020	2.10%	2.03%	8.05%	3.01%	5.13%
12/31/2019	2.13%	2.29%	1.12%	2.22%	1.80%
9/30/2019	2.03%	2.45%	2.85%	2.84%	2.49%
6/30/2019	2.03%	2.57%	4.84%	4.81%	4.48%
3/31/2019	2.12%	2.55%	4.25%	4.19%	3.81%
12/31/2018	1.92%	2.40%	4.30%	3.41%	3.24%
9/30/2018	1.77%	2.16%	1.09%	1.95%	1.59%
6/30/2018	1.69%	1.90%	1.00%	0.86%	0.98%
3/31/2018	1.51%	1.51%	-1.16%	-1.32%	-0.95%
12/31/2017	1.38%	1.20%	-0.38%	-1.19%	-0.21%
9/30/2017	1.32%	1.07%	1.01%	1.62%	1.29%
5-Yr Average	1.42%	1.32%	1.34%	1.25%	1.44%

Active Shooters

By Steve Wilmes, RSSP, ARM-P, CPSI, SHRM-CP, PHR

&

Matt Kieta

Trigger Warning

- This presentation contains sensitive information
- Take your time
- Step out if you need to

Fault vs. Responsibility

Why are we here?

Active shooters by the numbers

Incident Statistics

Active Shooter Incidents 2017–2021

FBI

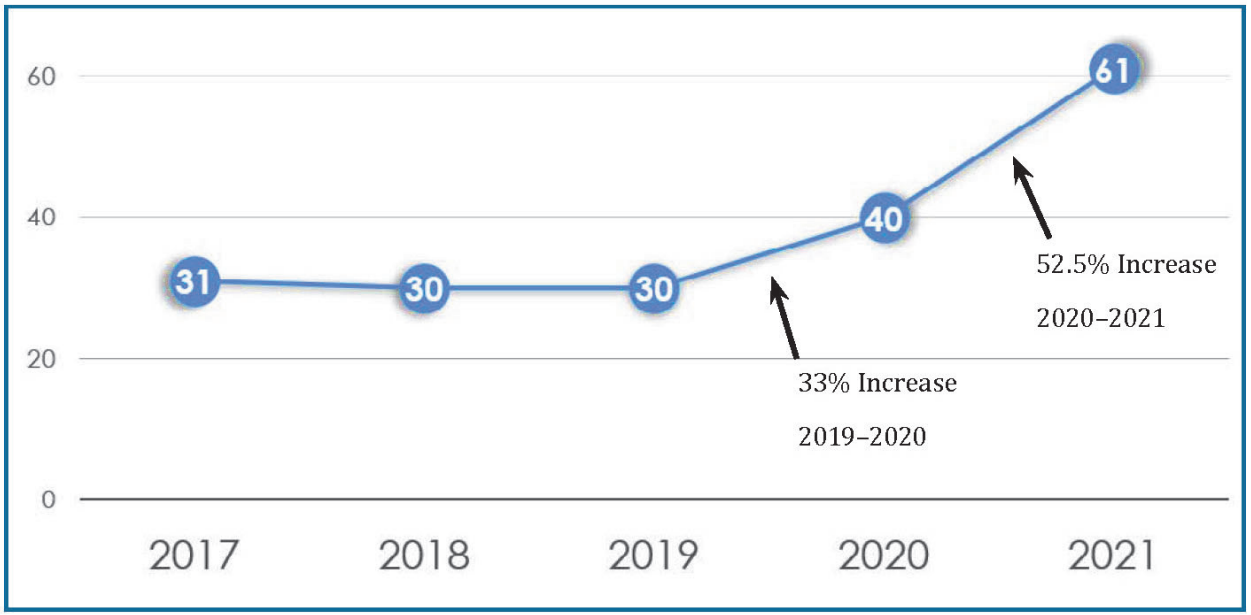


Figure 1

Summary

For the period 2017–2021, active shooter incident data reveals an upward trend: the number of active shooter incidents identified in 2021 represents a 52.5% increase from 2020 and a 96.8% increase from 2017.

A breakdown of the number of incidents within the five-year period 2017–2021[6] is as follows:

- 2017: 31
- 2018: 30
- 2019: 30
- 2020: 40
- 2021: 61

By the Numbers, a Comparison of 2020 vs. 2021 Statistics

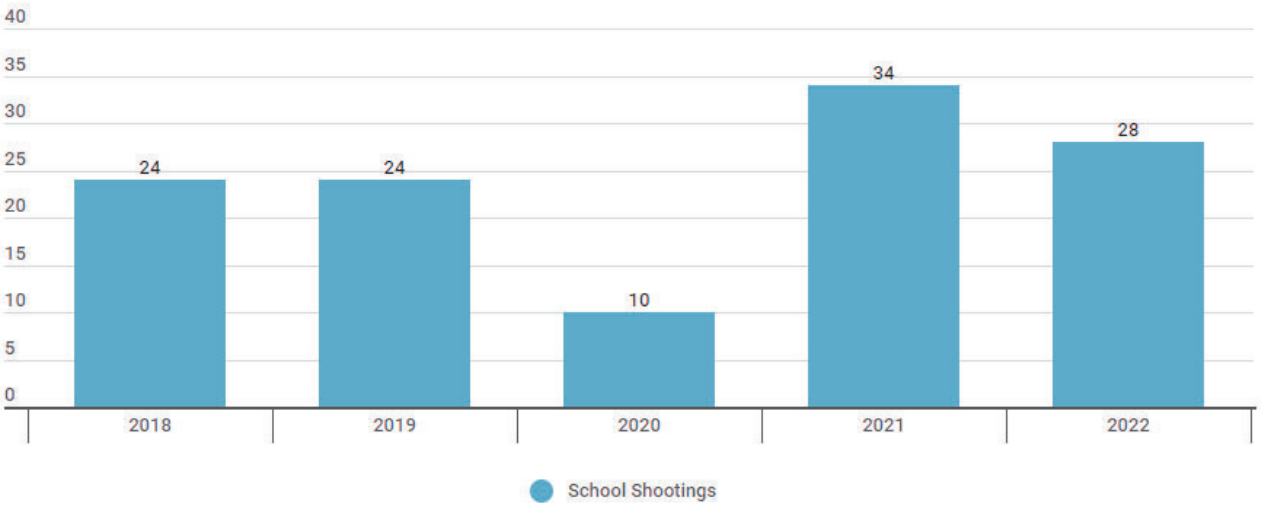
2020		2021
40 in 19 states	Total Incidents	61 in 30 states*
164 38 killed 126 wounded	Casualties (Excluding Shooters)	243 103 killed 140 wounded
1	Law Enforcement Officers Killed	2
11	Law Enforcement Officers Wounded	5
5	Met "Mass Killing" Definition	12
8	Incidents Where Law Enforcement Engaged Shooters	17
42 35 male 3 female 4 unspecified	Shooters / Gender	61 60 male 1 female
1	Shooters Wore Body Armor	2
7	Shooters Committed Suicide	11
4	Shooters Killed by Law Enforcement	14
2	Shooters Killed by Citizen	4
24 5 at large	Shooters Apprehended by Law Enforcement	30** 1 at large

** Two incidents occurred in two states*

EducationWeek

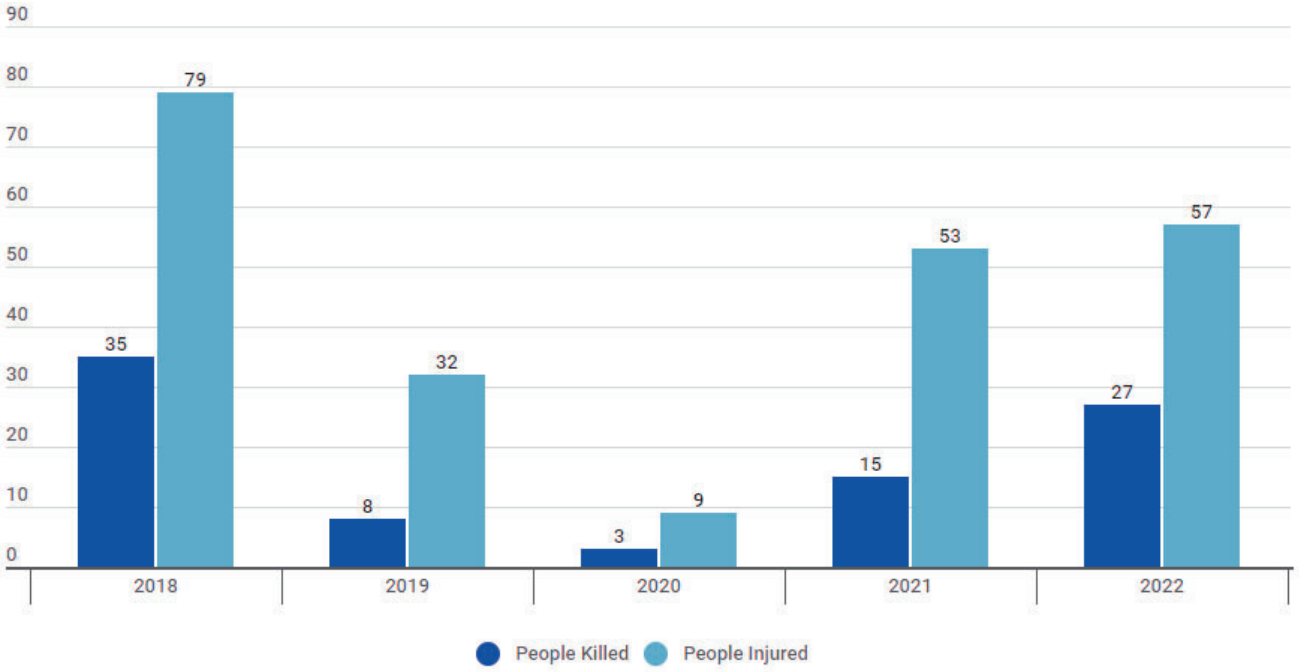
Below, you can find big-picture data on school shootings since 2018, as well as links to the detailed trackers of incidents by year.

There have been 120 school shootings in which at least one person was killed or injured since 2018.



EducationWeek

There have been 88 people killed and 230 people injured from school shootings since 2018.



The reality

- Low probability
- High risk overall
- Highly destructive
- Live with it forever
- Always on people's mind

You Plan

- Difference from other plans
- Threat assessment
- What's around your school site
- What triggers violence
- Situational awareness and spotting shooters
- Where can you go
- What do you avoid
- What is open and locked on your campus
- How long before law enforcement arrives
- Normal and average event times (how long this actually takes)

Different from other plans

- Goes against other plans – locking doors, escaping, etc.
- Highly Fluid
- Highly Dynamic
- Moment by Moment
- Improvise / Overcome / Adapt
- One word plan - SURVIVE

Threat Assessment

- 400 students in your school are 400 threat assessments
- Who are your partners
- CPTED Analysis
- Mental Health
- Interpersonal Interactions
- Leakage of violence
- Quality of communication or thinking
- Social Isolation
- Work performance
- School Performance

What's around your school

- Bars
- Banks
- Abortion Clinics
- Right to Life Clinics
- Court Buildings
- Mental Health
- Rehab Centers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Seafood · $$
El Centro Elementary School
Lincoln Elementary School
Broadway
Imperial Irrigation District
Imperial County Public Health Department
Walgreens Photo
Mechanics Bank - El Centro Branch
Bank of America (with Drive-thru ATM)
Wells Fargo Bank
El Centro Police Department
Imperial County Clerk-Recorder
Stewart Title of California, Inc
Main St
D Poly Taco Grill & Beer
Mexican · $$
ARCO
Rocket Copy
Imperial County Superior Court
Imperial County Development Services
The Vibe Event Center
Rite Aid Pharmacy
Donut Palace
Donuts · $
El Centro City Hall
Winslow Financial
Scott B Tepper Law Offices
Different Views Tattoo Parlor
Tattoo shop
Valley Plaza Shopping Center
Del Valle Insurance Solutions
Imperial County Retirement
W State St
Starbucks
PeopleReady
Steve Seibert - State Farm Insurance Agent
Hope Cafe El Centro
Imperial County Veterans Service Office
AT&T
Cell phone store
Aaron's
Furniture store
Yasue Maeda Allstate Insurance
CASA of Imperial County
Little Caesars Pizza
Pizza · $
W Olive Ave
First United Methodist Church
My Favorite Things Preschool
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Imperial County Superior Court
Imperial County Public Health Department
El Centro City Hall
El Centro Police Department
Bank of America (with Drive-thru ATM)
Wells Fargo Bank
Mechanics Bank - El Centro Branch
Imperial Irrigation District
Imperial County Veterans Service Office
El Centro DMV
Lincoln Elementary School
El Centro Elementary School
Little Roadrunner's State
Los Cabos Seafood & Grill
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Smog Check
Real Estate
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Different Views Tattoo Parlor
Tattoo shop
AT&T
Cell phone store
CASA of Imperial County
First United Methodist Church
My Favorite Things Preschool
Prince & Associates Realtors
Yasue Maeda Allstate Insurance
Steve Seibert - State Farm Insurance Agent
Del Valle Insurance Solutions
Imperial County Retirement
PeopleReady
Donut Palace
ARCO
Rite Aid Pharmacy
DIPoly Taco Grill & Beer
Valley Plaza Shopping Center
Starbucks
Aaron's
Little Caesars Pizza
Mike ComputerGuy
Hope Cafe El C
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What triggers violence

- The most frequently occurring concerning behaviors were related to the active shooter's mental health, problematic interpersonal interactions, and leakage of violent intent.

- The most common grievances were related to an adverse interpersonal or employment action against the shooter

- Mental health
- Financial Strain
- Job related
- Conflict with friends and peers
- Marital problems
- Abuse of drugs and alcohol
- Conflict at school
- Physical injury
- Conflict with parents or other family members
- Sexual stress or frustration
- Criminal problems
- Death of a friend

Situational Awareness

- Spotting shooters
- It will happen rapidly
- Hear it or see it

Suspicious Events

- Unusual items or situations: A vehicle is parked in an odd location, luggage or a package is left unattended, a window/door that is usually closed is open, or some other out-of-the-ordinary situation occurs.
- Eliciting Information: A person questions individuals at a level beyond idle curiosity about a building's purpose, operations, security procedures and/or personnel, shift changes, etc.
- Observation/Surveillance: Someone pays unusual attention to facilities or buildings, beyond a casual or professional interest. This includes extended loitering without explanation (particularly in concealed locations); unusual, repeated, and/or prolonged observation of a building (e.g., with binoculars or video camera); taking notes or measurements; counting paces; sketching floor plans, etc.

Know your plan

- Where can you go
- What do you avoid
- What is open and locked on your campus

- Difference between cover and concealment

Know your plan

- How much time do you have?
- How long before law enforcement arrives
- Normal and average event times (how long this actually takes)

Time Frames - Averages

- 5 Minutes to make call to 9-1-1
- 1-2 Minutes to dispatch
- 3 Minutes to arrive on site

Biggest Advantage You Have

- Time
- And reaction time

- You know your school site
- You know who is supposed to be on the site

- You know who you are missing

Reaction Time Matters

- Can you do it under stress
- Can you do it in the dark
- Can you do it while running
- While hiding from gun fire

Exercise – Reaction Times

Outcomes – Run, Hide Fight

- The triggers for outcomes
- The two-trigger method (what two triggers result in an outcome)
- The single trigger method

Exercise – Easy II

Outcomes – Run, Hide Fight

- The two-trigger method (what two triggers result in an outcome?)
  - Aggressive behavior
  - Trench coat
  - Banging fists
  - Saying going to kill you
  - Breaking security protocols
  - Verbal violence

Outcomes – Run, Hide Fight

- The single-trigger method?
  - Breaking security protocol
  - Presenting weapon
  - Physical violence
  - Sound of gun shot

Exercise – Difficult II

Exercise – Hard II

Locking down

Cover vs. Concealment

How to build up cover

How students should sit in classroom

Exercise – Cover and Concealment

Locking down

How teachers should sit to be able to respond

Where teachers should line up

Exercise - Sitting

- How to line up on the wall
- One leg up ?

Locking Down

- When to open doors
- Can you do it safely?
- Can you risk others?
- Can you fight if need be?

Caring for Students

01

Dealing with students in the moment

02

Dealing with stranded students or students who are alone

03

Treating injuries

Caring for Students

Here and Now	Dealing with students in the moment • On the spectrum • You must control for survival
Stranded	Dealing with stranded students or students who are alone • Do you go out to get them?
Treating	Treating injuries • What is available • Stop the bleed

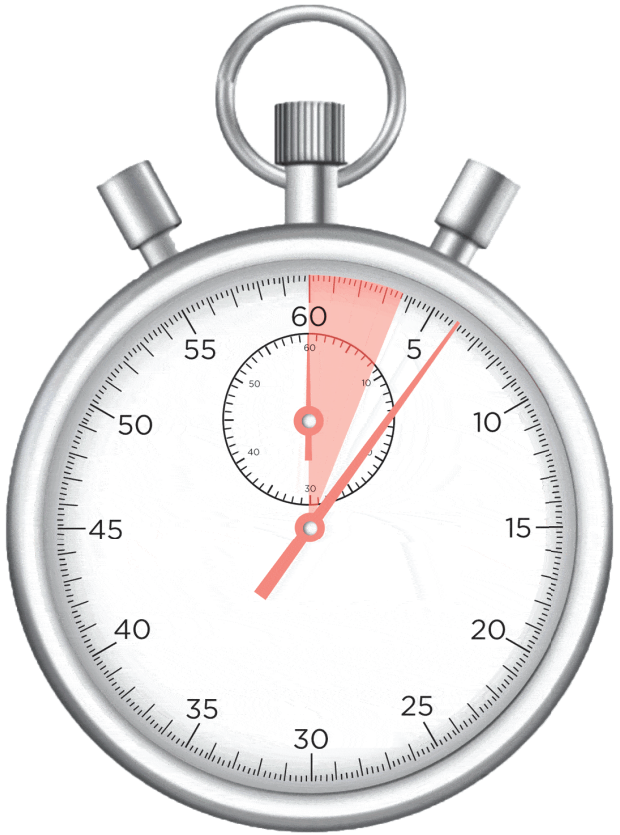
Exercise - Hard

Communicating with the Incident Commander

When is it safe to use phone, text, etc.

When Law Enforcement arrives

- How to respond?
- Assisting law enforcement with maps, plans, information
- Reporting injuries
- Evacuating the site



Exercise – Easy I

Exercise – Difficult I

After the event

COUNSELING

SCHOOL CLOSURES

COMMUNITY RESPONSE

After the event

- Counseling
  - For students
  - For parents
  - For teachers and staff

After the event

SCHOOL CLOSURES

WHAT IS APPROPRIATE

HOW LONG

Question and answer

Exercise

- Teacher student in classroom
- Knock on door to be let in
- Ask teacher to calm students on spectrum
- Ask teacher to fight at door
- Present knife
- First aid scenario

SISC DEFENSE COUNSEL SUMMIT AGENDA

Location: Lucia Mar Unified School District
Georgie O'Connor Board Room, 602-G Orchard Street
Arroyo Grande, CA 93420

Date: October 19, 2022

Time: 10:30 a.m. to 3:30 p.m.

Facilitator: Robert J. Kretzmer
Director

Agenda Items

10:30 a.m. – 10:45 a.m.	Opening remarks	Nick Kouklis, CEO SISC
10:45 a.m. – 12:15 p.m.	Current California Liability Trends	Julie Theirl Senior Vice President Aon Risk Services Craig Bowlus Managing Director, Risk Pooling-National Practice Leader Aon Risk Services
12:15 p.m. – 1:00 p.m.	Lunch – provided by SISC	
1:00 p.m. – 1:45 p.m.	STOP iT: Anonymous Incident Reporting mitigation measure	Richelle Stanz Director of Partner Relations STOP iT
1:45 p.m. – 2:45 p.m.	The CAJPA Legal Affairs Committee: Amicus Briefs and the year in review	Michael Pott Attorney at Law, PRISM Chief Legal Counsel
2:45 p.m. – 3:00 p.m.	Break	
3:00 p.m. – 3:30 p.m.	Roundtable	Ty Taylor, Coordinator, SISC Pat Tumbarello, Adjuster, SISC

Additional information

Lodging arrangements are available at Vespera Hotel in Pismo through Kristy Comstock at 661-636-4682.

California Association of Joint Powers Authorities (CAJPA)

General Liability Data Analysis Project – Final Report

February 25, 2022

AON

Table of Contents

Cover Letter

February 24, 2022

Ms. Catherine Smith
Executive Director
California Association of Joint Powers Authorities
700 R Street, Suite 200
Sacramento, CA 95811

Re: General Liability Data Analysis Project

Dear Catherine,

Thank you for selecting Aon as the consultant to perform this unprecedented study for CAJPA. What follows is a detailed analysis based on the data provided by the participants. We hope this report will serve as a beginning point of driving change for California public entities.

It has been our sincere pleasure to serve as your consultant.

Sincerely,

Julie Theirl
Senior Vice President
Public Sector | Pooling

Craig Bowlus
Managing Director
National Pooling Practice Leader

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San Francisco, CA 94105
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m: +1.909.967.9091

Executive Summary

The California public sector is facing an escalating crisis. Evidence obtained from multiple sources indicates that California public sector tort liability costs are on the rise and accelerating. Some insurance and reinsurance carriers are abandoning the California public sector altogether, or at minimum, increasing retentions or carving out certain coverage lines while delivering sharp premium increases.

We are currently deep into a hard insurance market cycle. The speed in which the market deteriorated over the last several years, along with the magnitude of premium increases, is something we have not experienced in recent history. The impact to the California public sector has been particularly devastating. Due to the lack of tort caps, specialist plaintiff attorneys and a change in jury profiles, awards and settlement values are increasing at alarming rates. The values of claims, coupled with the contracting insurance marketplace, is leading to an unstainable financial state for California public entities.

In response to this crisis, CAJPA held many discussions with its Board of Directors and membership to discuss what CAJPA might do to help. The result was to conduct a data analysis project aimed at identifying the specific loss drivers, quantify the impact, and seek opportunities to create change.

Findings – Claims Analysis

For this project, general liability claims from cities, counties, schools, transit agencies and special districts, occurring between 1/1/2010 through 12/31/2019 were collected and analyzed, the results of which are described throughout this report. In addition to relying on the date of loss, much of the analysis was based on files that were closed during the ten-year study period as those values were more reliable than developing open claims.

The total study amassed $8.4B in general liability claims data representing 65% of the California public sector. The various analyses conducted show evidence that these costs are increasing dramatically. The data is segregated in a way that allows various stakeholder groups to focus on messaging and action.

Overall, the study documents 300% – 400% increases in the average value of a claim, closed during the ten-year study period, based on claims with an incurred value of $25,000 or greater. The following describes the trend by claim type:

- Auto Liability - from $110,000 to $370,000
- Employment Practices Liability - from $110,000 to $480,000
- General Liability - from $90,000 to $600,000
- Law Enforcement - from $100,000 to $800,000

This pattern is also seen across all entity types:

- The average Municipal claim has increased from $120,000 to $400,000
- The average County claim has increased from $100,000 to $290,000
- The average K-12 claim has increased from $240,000 to $510,000
- Not enough claims data was available for Special District and Transit (“Other”) claims to develop reliable cost increase comparisons

In addition to analyzing claims based on the loss and entity type, the consultants evaluated the compensation being received by plaintiff attorneys from representing cases against public entities. Also

analyzed is the impact from Joint and Several Liability, and several other key areas. All of the results are described in the detailed narrative of this report.

Findings - Insurance Analysis

To augment the claims analyses (Phases 1 and 2), Aon suggested that collecting data to show the impact that claims were having on insurance and self-insurance costs would be an important element to round out the study. While it was out of scope, Aon conducted a detailed insurance and self-insurance analysis (Phase 3) by collecting additional information from the participants. The following summarizes those results:

The overall cost of self-insurance and excess insurance increased dramatically over the survey period (FY 10/11 through FY 21/22) –

- Cumulative average cost increases of JPA SIR, excess insurance, and assessments combined:
  - All reporting JPAs – 159%
  - Cities – 134%
  - Counties – 250%
  - Schools 150%
  - Others – 158%

- Cumulative average cost increases of self-insurance (JPA SIR):
  - All reporting JPAs – 114%
  - Cities – 91%
  - Counties – 149%
  - Schools – 119%
  - Others – 137%

- Cumulative average cost increase of JPA excess insurance:
  - All reporting JPAs – 270%
  - Cities – 250%
  - Counties – 1,348%
  - Schools – 202%
  - Others 195%

Detailed graphs and summaries are included in the section entitled “Phase 3”.

Recommendations

- Create a campaign to educate the legislature on the results of this study
- Contemplate what the data says about expenses on large losses
- Consider periodically updating the study to keep it fresh
- Develop a version of the report that is suitable for public distribution

Project History

To determine the likely outcome of conducting a statewide study of tort liability losses, CAJPA retained the services of Greg Trout. The following is an excerpt from the Trout Consulting Report, dated August 27, 2018:

"Because of the concerns expressed by its memberships, CAJPA authorized a study of the feasibility of collecting historical data on the cost of liability claims and related expenses. the feasibility of collecting historical data on the cost of liability claims and related expenses. Although JPA administrators, defense attorneys, actuaries, and claims administrators have recognized growing costs, there are no centralized data sources that can measure and confirm the extent and severity of the problem. Without the ability to measure the growth of tort liability costs over time and to identify the cost drivers, efforts to improve risk management practices and advocate for changes in existing tort law are seriously hampered."

In his report, Trout commented about the potential cost of the project, study parameters, who should participate, and the likely outcome. Ultimately, Trout recommended that CAJPA move forward with the study.

Before embarking on a full-scaled project, the CAJPA board decided that an implementation plan should be commissioned. The scope of work should include identifying funding sources; developing an RFP for claims data collection, data analysis and project management along with a list of potential firms to conduct the work; develop the scope of work; potential participants; develop a decision-making timeline; and create a comprehensive budget. Based on their work conducting similar studies, Aon was hired to create an implementation plan, which was completed on May 10, 2019.

In June 2019, CAJPA released an RFP to hire a consultant to complete the project. Several firms responded, and Aon was selected at the successful firm. Julie Theirl of Aon served as the project manager, who was further supported by Craig Bowlus (data and analytics) and Mujtaba Datoo (actuarial services). An agreement between CAJPA and Aon was executed on November 21, 2019. Aon also partnered with Bickmore Actuarial (Mark Priven, Nina Gau and Mark Harrington) who provided invaluable assistance with completing the actuarial activities associated with Phase 1 of the project.

Funding

The first step of the project was to secure funding support to help offset the $395,000 project fee. The project team was tasked with raising $200,000 by soliciting financial contributions from CAJPA members. Initial efforts secured $220,000 in funding. Additional outreach brought the total to $261,000. The balance of the project costs would be funded from CAJPA reserves. The following members have generously provided a financial contribution:

- Alameda County Schools Insurance Group (ACSIG)
- Alliance of Schools for Cooperative Insurance Programs (ASCIP)
- Association of California Water Agencies JPIA (ACWA JPIA)
- Authority for California Cities Excess Liability (ACCEL)
- Bay Cities Joint Powers Insurance Authority (BCJPIA)
- Butte Schools Self-Funded Programs (BSSFP)
- California Association for Park & Recreation Indemnity (CAPRI)
- California Joint Powers Insurance Authority (CJPIA)
- California Joint Powers Risk Management Authority (CJPRMA)
- California Sanitation Risk Management Authority (CSRMA)

- California Schools Risk Management JPA (CSRM)
- California Transit Indemnity Pool (CalTIP)
- Central Region School Insurance Group (CRSIG)
- Central San Joaquin Valley Risk Management Authority (CSJVRMA)
- Fire Agencies Insurance Risk Authority (FAIRA)
- Golden State Risk Management Authority (GSRMA)
- Independent Cities Risk Management Authority (ICRMA)
- Monterey Bay Area Self-Insurance Authority (MBASIA)
- Municipal Pooling Authority (MPA)
- North Bay Schools Insurance Authority (NBSIA)
- Northern California Cities Self-Insurance Fund (NCCSIF)
- Northern California Schools Insurance Group (NCSIG)
- PRISM, formerly CSAC-EIA
- Public Agency Risk Sharing Authority of California (PARSAC)
- Public Entity Risk Management Authority (PERMA)
- Public Risk Innovation, Solutions, and Management (PRISM)
- Redwood Empire Schools Insurance Group (RESIG)
- San Diego & Imperial County Schools Risk Management
- San Mateo County Schools Insurance Group (SMCSIG)
- Schools Excess Liability Fund (SELF)
- Schools Insurance Authority (SIA)
- Schools Insurance Group (SIG)
- Self-Insured Schools of California (SISC)
- Shasta-Trinity Schools Insurance Group (STSIG)
- Small Cities Organized Risk Effort (SCORE)
- South Bay Area Schools Insurance Authority (SBSIA)
- Special District Risk Management Authority (SDRMA)
- Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA)

Oversight Committee

The next step in the process was to assemble an Oversight Committee. Facilitated by the project consultants Julie Theirl and Craig Bowlus of Aon, the following CAJPA members graciously agreed to serve on the committee:

- Andy Sells – Chair, ACWA JPIA
- Stephan Birgel, ASCIP
- Martin Brady, SIA
- Tony Giles, CJPRMA
- Laura Gill, SDRMA
- Lam Le, CJPIA
- Norm Lefmann, CJPIA
- Chrissy Mack, CalTIP
- Mike Pott, PRISM
- Doug Ross, SAFER
- Craig Schweikhard, SMCSIG
- Janet Selby, NBSIA
- Erike Young, PARSAC

The role of the committee was to provide guidance on the various components of the project which included selecting participants, approving the data call parameters, reviewing various stages of the project, and providing general input and feedback.

Participants

It was recommended by the consultants, and approved by the Oversight Committee and Board, that the following guidelines would be used to develop the list of participants:

- Include at least 50% of the California public sector in the study, using payroll as a qualifier
- Equal representation of cities, counties, and K-12 schools

Using the parameters stated above, the following entities were identified as possible data contributors:

- Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA)
- Authority for California Cities Excess Liability (ACCEL)
- Bay Cities Joint Powers Insurance Authority (BCJPIA)
- California Transit Indemnity Pool (CalTIP)
- City of Fresno
- California Joint Powers Insurance Authority (CJPIA)
- California Joint Powers Risk Management Authority (CJPRMA)
- County of Los Angeles
- Independent Cities Risk Management Authority (ICRMA)
- North Bay Schools Insurance Authority (NBSIA)
- Public Risk, Innovation, Solutions and Management (PRISM), formerly CSAC-EIA
- Redwood Empire Schools Insurance Group (RESIG)
- San Diego Transit Authority
- Schools Association for Excess Risk (SAFER)
- Schools Excess Liability Fund (SELF)
- Schools Insurance Authority (SIA)
- Self-Insured Schools of California (SISC)
- Special Districts Risk Management Authority (SDRMA)

Many of these organizations, including PRISM, SAFER and SELF, represent underlying CAJPA member JPAs whose data was included in the study. The full listing is in the Appendices.

To validate if the threshold of including at least 50% of the California public sector in the study was met, the consultants used payroll to determine the size of the proposed participant group. When comparing the total California payroll for the public sector, with the payroll reported for the proposed participant group, it was concluded that 65% of the California public sector would be captured in the study; therefore, the proposed participant group would suffice.

		Project Payroll	State Payroll		
2011-12		$71,935,054,176	$96,010,518,975		75%
2012-13		$71,088,906,500	$96,686,540,961		74%
2013-14		$71,729,617,742	$101,696,420,784		71%
2014-15		$72,944,772,724	$117,701,300,431		62%
2015-16		$75,386,694,066	$124,128,366,837		61%
2016-17		$76,857,798,095	$121,159,084,911		63%
2017-18		$77,478,675,236	$124,438,314,900		62%
2018-19		$78,778,295,073	$131,172,209,036		60%
		$596,199,813,612	$912,992,756,835	65%	66%

Once the data had been collected and evaluated, the consultants would be able to confirm if the collective entities would be fairly represented in the study.

Phase 1

Phase 1 of the study was intended to collect and aggregate participant data to validate the study group characteristics, and to develop the basis for Phase 2, which would be focused on analyzing claim trends. The Phase 1 data call asked participants to provide ten years of ground up, uncapped losses occurring between 1/1/2010 and 12/31/2019, valued as of 12/31/2019. It was estimated that approximately 100,000 claims would be included in this phase of the project.

Ultimately 183,244 “non-zero dollar” claims were collected, equaling $8.4B in total incurred values.

	$0+		$500K+		$750K+		$1M+		$5M+	
Couties	40,944	22%	948	33%	613	33%	448	33%	59	31%
Cities	73,587	40%	974	34%	627	34%	436	32%	55	29%
K-12	61,492	34%	821	29%	559	30%	434	32%	71	38%
All Others	7,221	4%	87	3%	50	3%	35	3%	4	2%
	183,244	100%	2,830	100%	1,849	100%	1,353	100%	189	100%

Total Incurred by Entity Type and Value

($000s)	$0+		$500K+		$750+K		$1M+		$5M+	
Counties	$2,529,019	29%	$1,659,566	33%	$1,456,475	32%	$1,315,520	32%	$559,464	31%
Cities	$2,844,235	34%	$1,629,150	32%	$1,420,924	31%	$1,257,096	31%	$524,672	29%
K-12	$2,812,517	34%	$1,680,436	33%	$1,522,549	34%	$1,413,854	35%	$693,336	38%
All Others	$274,272	3%	$ 136,123	3%	$114,141	3%	$101,830	2%	$49,501	3%
	$8,460,043	100%	$5,105,275	100%	$4,514,089	100%	$4,088,300	100%	$1,826,973	100%
				60%		53%		48%		22%

It was validated through a combination of claim counts and total incurred values that cities, counties and schools were equally represented in the study if relying on the proposed participant group. The next task was to determine the claims threshold to use for Phase 2. Given that claims with a total incurred value of

$1M or greater represented nearly half of the $8.4B in values, the consultants recommended focusing on $1M+ claims in Phase 2. The Oversight Committee and Board agreed.

Next steps included closing out Phase 1, identifying claims with a value of $1M+, finalizing and issuing the Phase 2 data call.

Phase 2

From the Phase 1 data, files with a total incurred value greater than $1M were identified and subjected to in an in-depth analysis. The consultants created a data collection form to help participants report the requested details, which was pre-populated with claims information obtained from the original loss runs. After conferring with the Oversight Committee about which types of claims might provide tort reform opportunities, it was agreed that the study should focus on claims with one or more of these characteristics: Joint & Several Liability, Inverse Condemnation, or Life Care plans. Also, to be analyzed was plaintiff attorney expenses. The data collected would be used to further define the analysis as follows:

- Evaluate the effects of Joint & Several (J&S) Liability -
  - Limit the study to $1M and over incurred value claims
  - How many and what kind of claims generate J&S exposure?
  - What is the overall economic impact to the public sector?
  - Does this impact support a future effort at legislative relief?
  - Does this impact support an effort to change jury instructions?
- Determine if there is enough activity around Inverse Condemnation to support any legislative initiatives
- Look for trends associated with Life Care Plans to support any legislative initiatives
- Evaluate plaintiff attorney costs
- Create benchmarking data

Joint & Several Liability

In California, Joint & Several Liability (J&S) is an adopted version of an old common law version which says that more than one party can be jointly responsible for the full amount of a claimant's economic damages, but only separately (severally) liable for their non-economic damages in proportion to their percentage of fault. It was the consensus of the project team and Oversight Committee that J&S issues associated with large losses paid by California government entities should be analyzed. Since nearly half of the total incurred in the study came from the 1,353 occurrences with values of $1M or more, this was used as the definition of a "large loss".

The 1,353 large losses were used as the source for the J&S analyses. Only closed files can generate a true indication if J&S liability was involved in a claims resolution. Removing open claims from the sample reduced the count to 451 closed occurrences with approximately $1.53B in losses. Certain claim types, such as law enforcement liability and employment practices, do not generate J&S exposure which were removed from this phase of the analysis. Once those claim types were removed, 125 closed occurrence candidates with a total of $537M in incurred value remained. This included $501M in loss and $36M in expense.

To determine how much of the $501M in loss values was associated with J&S, the following claims detail was collected -

- What was the loss payment?
- How much of this payment was associated with economic damages?
- What was the true liability associated with the entity's alleged negligence?
- An estimate the portion of the settlement or award that was paid by the entity, regardless of their actual percentage of true liability (ex: the entity had 1% negligence but paid 90% of the total award/settlement due to J&S)?

In most cases, completing this process required claims handlers to make some estimates. Economic damages are subject to negotiation as they are uniformly inflated by plaintiff attorneys when large claims are being resolved. Similarly, a claims committee's exposure assessment on a claim will usually be less than that of a plaintiff attorney or jury. Claims handlers were asked to provide "reasonable estimates based on what you think the true liability really was versus what was actually paid by the entity", typically resulting in a delta (ex: true liability of 1% = $100,000 of a $10M settlement or award, versus the entity paying $9M of a $10M settlement or award due to J&S, representing a delta of $8,900,000).

The following table represents the outcome of the study that attempted to capture the effects of J&S:

	Loss	%	Expense	%	Incurred	Economic Damages	% Paid	Delta	% of Loss
Auto Liability									
19	$90,368,000	92.9	$6,373,000	7.1	$95,024,000	$60,511,000	67.0	$41,889,000	46.4
Average	$4,756,000		$335,000		$5,001,000	$3,184,000		$2,204,000	
Dangerous Conditions									
41	$136,342,000	91.3	$13,009,000	8.7	$149,066,000	$75,720,000	55.6	$52,518,000	38.5
Average	$3,325,000		$317,000		$3,636,000	$1,847,000		$1,281,000	
Other									
9	$62,402,000	94.4	$3,742,000	5.6	$66,970,000	$16,444,000	26.4	$4,470,000	7.2%
Average	$6,933,000		$416,000		$7,441,000	$1,827,000		$497,000	
SAM									
56	$211,988,000	94.0	$13,356,000	6.0	$224,216,000	$9,512,000	4.5%	$4,571,000	2.2%
Average	$3,786,000		$239,000		$4,004,000	$170,000		$82,000	
J&S									
125	$501,099,000	93.2	$36,484,000	6.8	$537,276,000	$162,188,000	30.3	$103,718,000	20.7
Average	$4,009,000		$292,000		$4,282,000	$1,298,000		$830,000	

To summarize:

- There were 19 Auto Liability occurrences identified with J&S exposure. These claims resulted in paid losses of $90.4M and generated a $41.9M in economic delta. As such, 46.4% of payments made towards loss on these occurrences were J&S influenced.
- Dangerous conditions cases commonly created settlements where J&S was influential. A total of $136M was paid on 41 occurrences with J&S exposure, with a $53M delta (38.5%). A high percentage of dangerous conditions cases involved crosswalks.

- Sexual abuse and molestation (SAM) cases, typically presented by K-12 respondents, have a viable co-defendant (the perpetrator), but rarely does a perpetrator have enough money to contribute towards a case resolution. It is not uncommon to see that the perpetrator is at least 50% at fault in a SAM cases. Historically, SAM claims have involved minors, and the alleged economic damages have usually been limited to some form of psychological treatment. As such, offsets for J&S influenced economic damages were minimal. In the study sample, economics only amounted to 4.5% of the total of $212M in losses and only generated a 2.2% delta. *This is not going to be the case with AB 218 claims*, where the plaintiffs are usually adults who will argue significant economic damages associated with life changes caused by molestation. One can anticipate that alleged economic damages for AB 218 claims will increase to at least 25% of the settlement value creating a delta of something in the 13% range. This is an important factor as the value of SAM cases is rapidly escalating.
- There were 9 "other" occurrences where J&S was a factor, generating a delta of $4.47M against $62.4M in losses (26.4%).

In total, the 125 large cases examined generated $501M in loss and an economic delta of $104M. This $104M represents 4.6% of the 1,353 $1M+ file sample. If we apply 4.6% to the total sample of $8.46B, the result is $389M. To view the state's public sector as a whole (100%), we can gross up the data which estimates $600M over ten years, or $60M per year as the probable net effect of joint and several liability on California public entities.

Inverse Condemnation

Inverse condemnation claims are filed by a private property owner when they believe the government's actions have resulted in a taking of the property without full compensation. This theory has been used to support a wide variety of claims, principally against municipalities and special districts. There were only 13 files with total incurred values in excess of $1M where inverse condemnation was shown on a loss run. The total incurred of these claims was $27M, or about $1.35M per occurrence. The relatively low number of inverse claims, along with recent positive changes in California case law, do not make inverse condemnation a high value target for any legislative change effort. One additional finding with respect to inverse claims is that expense ratios on these files were very high, with expenses running around 30% of total incurred which is about 3 times higher than almost all other loss types in the $1M+ range.

Life Care Plans

A life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs. We attempted to collect data on life care plans to determine if there was some way to use the data, but it proved to be too difficult for many adjusters to extract from files. Part of that difficulty stems from the fact that the plaintiff attorney has their plan, the defense team has their own, and they typically meet in the middle on a settlement. Pulling both sets of numbers, and their documented value on the final compromise value, was not something that we were able to accomplish on enough files to be statistically meaningful.

Year-Over-Year Loss Trends

Over the past few years, there has been widespread discussions within the public sector about how claims costs are rapidly increasing. After reviewing the loss runs submitted by the study participants, we concluded that a deeper analysis would allow us to clearly address several related issues that many

executives in the public sector, and their lobbyists, have asked for in the past. Some of the most frequent questions include:

- What have the cost trends been over the past ten years?
- Are those trends the same for municipalities, counties, K-12 and other public entities?
- Which entities are the most adversely affected?
- Are those costs truly accelerating?
- Just how much money is involved?
- How much of that money is going to plaintiff attorneys?

To ensure we made the most out of the data, for these analyses, we selected a minimum total incurred value of $25,000, on closed claim as the baseline. Only files which had been closed were included, and the data was then sorted by the calendar year based on the year the claim was closed. It is important to note that while the study encompassed claims with a date of loss between 1/1/2010 through 12/31/2019, during the Phase 2 data call, some participants provided information regarding claims that closed in 2020 which we included in the following analyses, even though it was out of range of the underlying study. Per the direction of the actuaries, we removed a few “outliers” from the study as their values significantly skewed the averages.

As noted above, in order to meet the parameters of the study, we needed a “date closed” associated with a loss which was not provided for all closed claims. The resulting database was still significant and highly reliable. It includes 13,444 files with a total closed incurred of $3.753B for an average paid incurred of $271,000 per occurrence. Dramatic increases in both the number of $25,000+ occurrences and their total closed incurred values are seen over time, across the entire public sector. The most stunning increases were found in law enforcement and K-12 claims. The following exhibit tracks the number of occurrences of closed claims, $25,000+ in value, in a given calendar year.

For the following exhibits, the collection methodology to only include closed files over $25,000 resulted in fewer entries in 2019 and 2020. The values in those years will eventually increase as remaining claims mature and close. And as claims mature, it is highly probable that the upward trends seen in previous years will continue, if not accelerate.

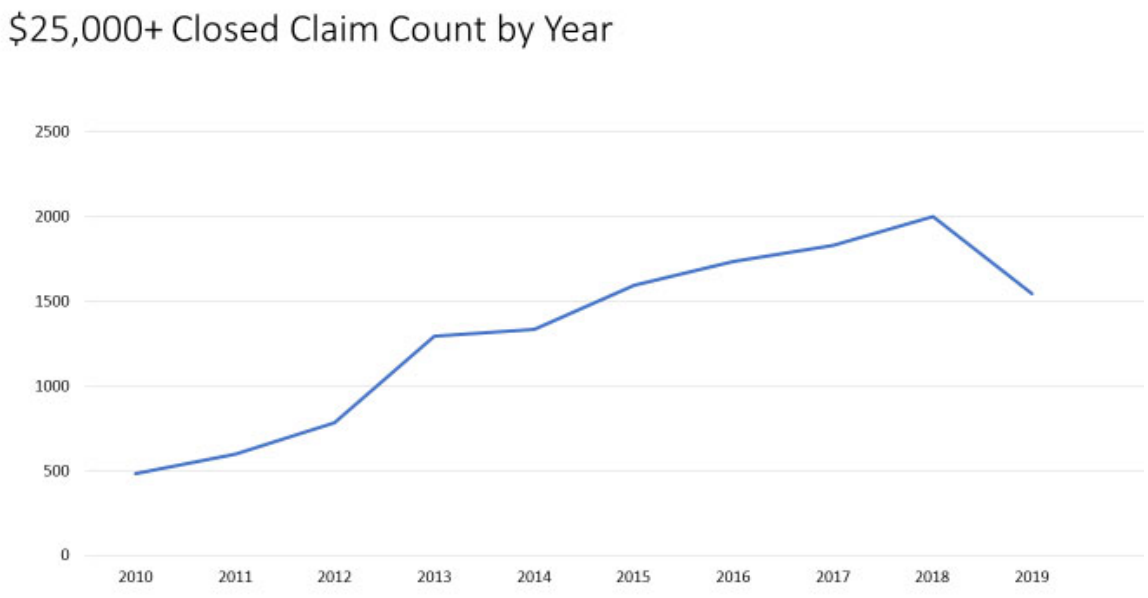
Using a $25,000 floor results in averages that are significantly higher than those we would see with a floor of $1.00. We can supplement this study with a similar one using a $1.00 baseline, but the focus here is on those files most likely to have a significant economic impact, and those files associated with litigation.

Number of Claims Closed, by Calendar Year, by Entity Type

Year	City	County	K-12	SD&O	Transit	Total
2010	162	10	290	12	9	483
2011	177	59	310	30	23	599
2012	291	208	269	63	16	847
2013	500	360	335	89	11	1295
2014	502	429	292	96	15	1334
2015	572	566	352	93	13	1602
2016	603	673	352	99	11	1738
2017	665	667	367	117	18	1834
2018	732	806	361	92	13	2004
2019	625	599	221	96	4	1545
2020	48	110	0	5	1	164
Total	**4877**	**4487**	**3149**	**792**	**134**	**13445**

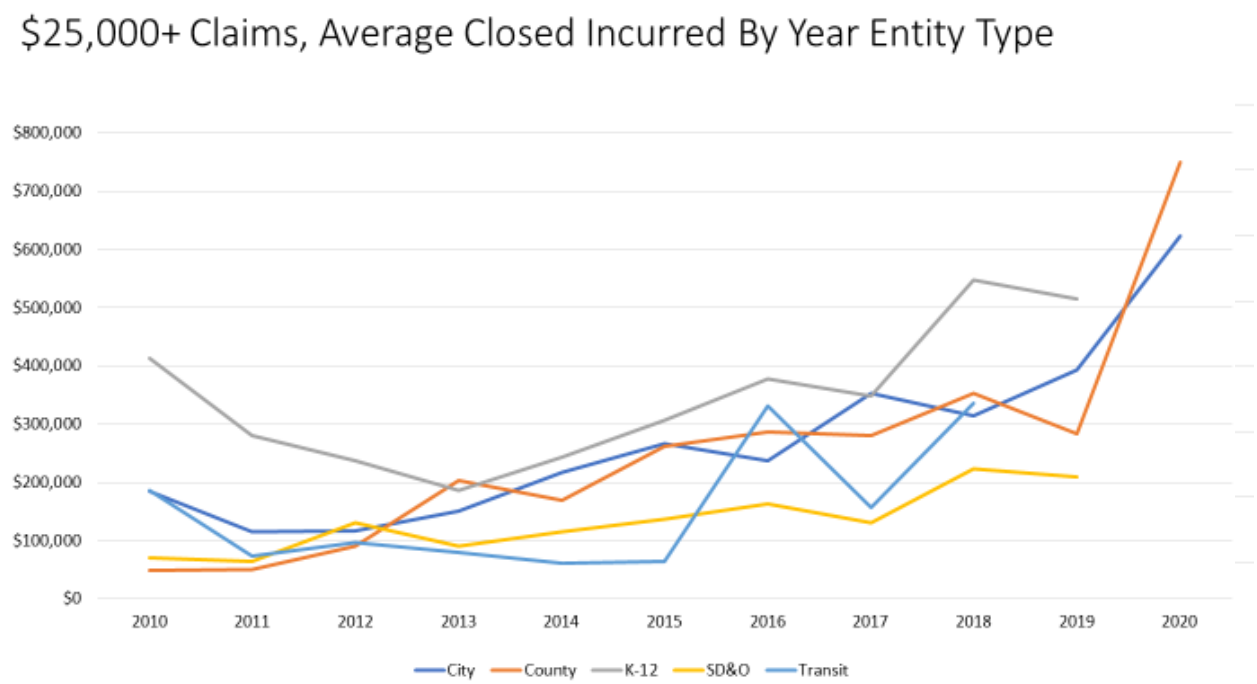
“SD&O” is Special Districts and Other

The following is a graph depicting the number of $25,000 closed files by calendar year.



The next exhibit depicts the average total incurred value of these claims by year. As with the prior exhibit, only closed files with a total incurred value of $25,000+ were analyzed.

Average Incurred Value of Closed Claims, by Calendar Year, by Entity

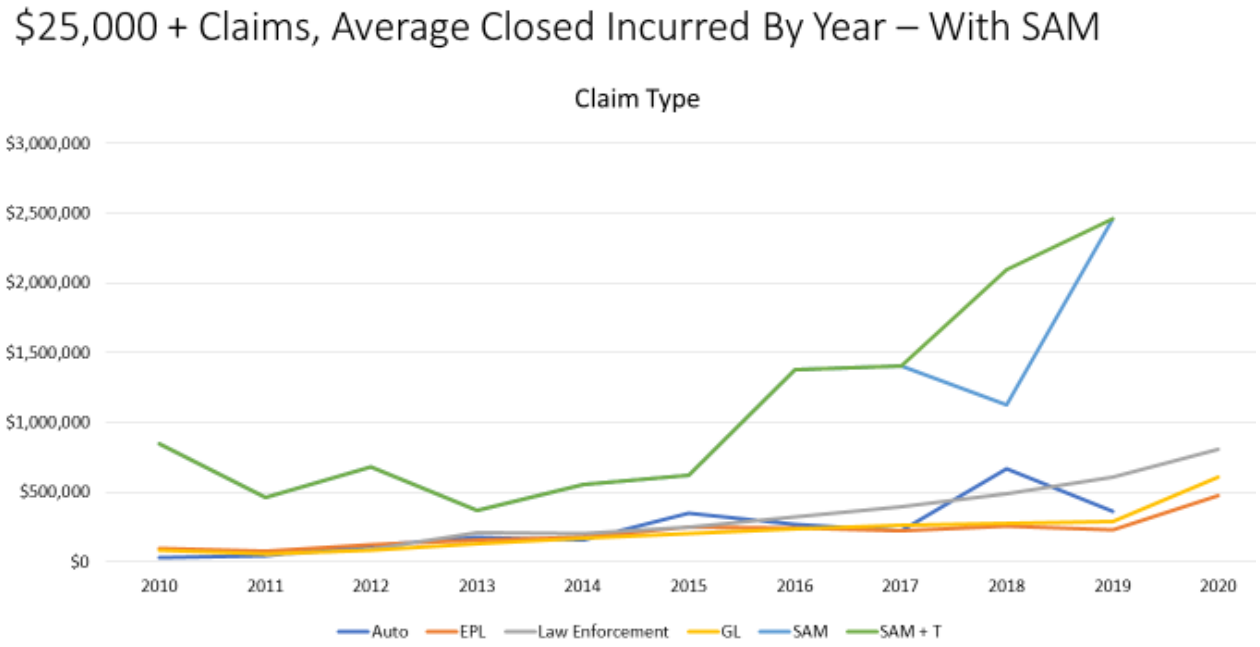


Total paid and average paid closed incurred are both increasing rapidly.

Other trends found in the study are noteworthy. There is an increase in the average value of closed files, over time, in all entity and claim types. The data is most robust from 2013 – 2018. Closed file counts drop off in 2019 and 2020 based purely on the selection parameters, not through any true reduction in probable ultimate claims counts. This data shows an average increase from $162,000 per occurrence in 2013 to an average of $359,000 in 2018. Trending for 2020 is even higher, but it's too early to validate. One must assume that 2019 and 2020 will continue to rise, which is especially true for Sexual Abuse and Molestation (SAM) claims.

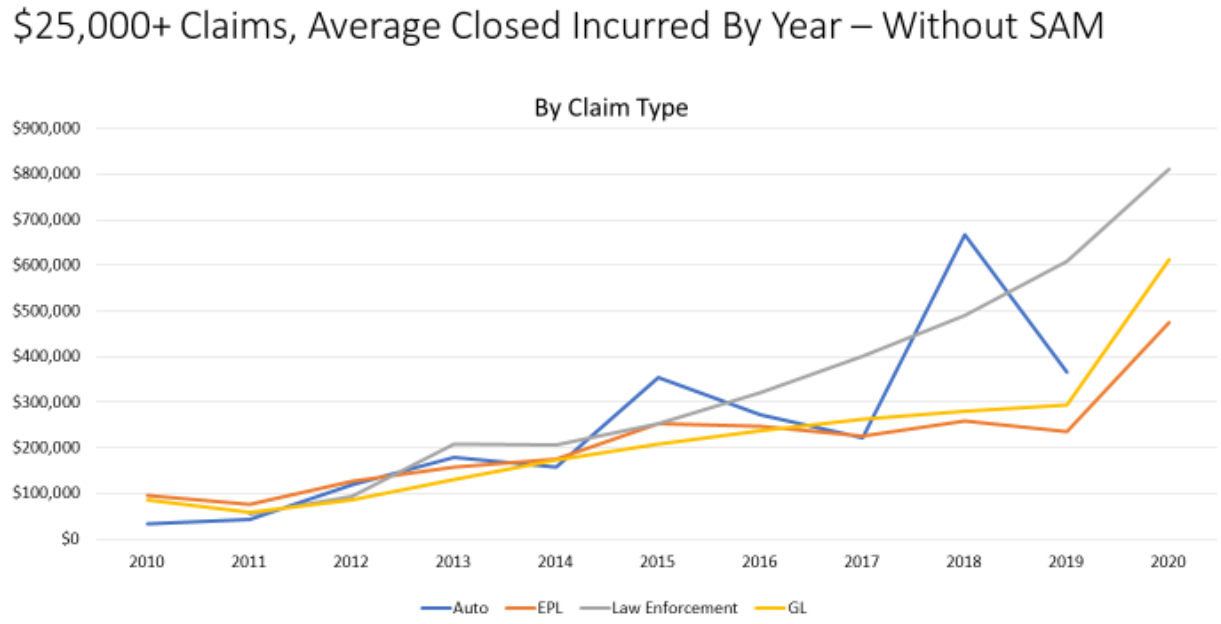
Average values of closed $25,000+ claims are increasing across all entity types. Significant increases are seen with cities, counties and K-12. Much of the K-12 increase is associated with SAM.

A detailed analysis of SAM history associated with K-12 in California, including all ground-up data, has already been supplied to participants in an earlier Aon study. This study has been updated and is in the process of being finalized.



The blue section on the SAM graph shows the results without a large outlier. Solid green includes that occurrence.

When we carve out SAM as a separate exposure and include it on a "claim type" graph, the values are so large that they significantly flatten the curves for the balance of claim types.



Plaintiff Attorney Fee Projections

While it is difficult to report precisely what plaintiff firms in California are collecting as income from public sector claims, we can draw general conclusions using reasonable assumptions. $25,000+ closed files in the sample, including those where we do not have closure dates, total $4.5B. The vast majority of these claims would have been litigated. To estimate plaintiff attorney fees, we must first carve defense attorney fees. The study results show that defense costs average 14% of the total incurred. After eliminating defense costs, the balance is $3.9B in losses over ten years. Conservatively, plaintiff attorneys are earning 35% in fees. If we multiple $3.9B by 35%, the result is $1.4B in plaintiff attorney fees from the public sector over the past ten years, or an average of $140M per year. Given that our sample only represents 65% of the state, to gross this number to 100%, the total is $2.15B or $215M per year.

The ten-year average of $215M has become a distant memory. In the 2018 calendar year, where the data is most robust, we have $737M in total incurred values where we have closed dates. This total is increased by 20% to account for closed files where a closed date was not provided. When added together, there would be approximately $921M in total incurred values. When grossing up to represent 100% of the state, the total incurred is $1.4B. Using the same methodology as described in the prior paragraph, plaintiff attorney fees rose to an estimated $421M. Based on these trends, it is probable that plaintiff firms will receive well over $500M from the public sector in 2022.

Other Coverage Related Data Trends

As with the prior analysis, only files where we could identify the date close were used; therefore, in the earlier years, such as 2010, 2011, 2012, claim counts were low because the date of loss predated the losses that were collected as part of the underlying study. Same for the later years, 2019 and 2020 as not all claims had yet been reported or closed.

Increasing costs are seen across all claim types, in all bands of incurred value. While it was not always possible to delineate what specific type of coverage was involved from some of the loss runs, we were able to capture data on 8,710 files by class of losses like Auto, GL, EPL, etc. These claim types include claims from all entity types (i.e. cities, schools, counties, etc.). This sample does not encompass the entire $25,000+ loss set because some files could simply not be classified based on the information provided. The results which follow mirror developments seen in the larger sample:

Employment Practices

EPL	Count	Total	Average	$25K - $99,999	$100K - $499,999	$500K - $999,999	$1M - $4,999,999	$5M - $9,999,999	$10M +	Largest
2010	6	$574,000	$96,000	4	2	0	0	0	0	$261K
2011	23	$1,743,000	$76,000	18	5	0	0	0	0	$166K
2012	81	$10,268,000	$127,000	51	27	3	0	0	0	$870K
2013	175	$27,495,000	$157,000	92	74	7	3	0	0	$1.242M
2014	198	$34,904,000	$176,000	118	67	6	3	0	0	$1.244M
2015	201	$51,153,000	$254,000	137	96	24	7	0	0	$3.051M
2016	260	$64,246,000	$247,000	118	118	15	9	0	0	$4.260M
2017	272	$61,344,000	$226,000	138	114	12	7	1	0	$6.464M
2018	250	$64,657,000	$259,000	105	122	15	8	1	0	$7.080M
2019	225	$52,876,000	$235,000	87	107	26	5	0	0	$1.140M
2020	38	$18,057,000	$475,000	12	18	5	5	0	0	$4.852M
	1729	**$387,317,000**	**$224,000**	**880**	**750**	**113**	**47**	**2**	**0**	

Law Enforcement

Law Enforcement	Count	Total	Average	$25K - $99,999	$100K - $499,999	$500K - $999,999	$1M - $4,999,999	$5M - $9,999,999	$10M +	Largest
2010	0	$0	$0	0	0	0	0	0	0	0
2011	6	$324,000	$54,000	6	0	0	0	0	0	$75K
2012	32	$3,001,000	$94,000	23	9	0	0	0	0	$435K
2013	78	$16,296,000	$209,000	46	23	6	3	0	0	$2.056M
2014	123	$25,414,000	$206,000	69	41	9	4	0	0	$2.303M
2015	148	$37,659,000	$254,000	81	54	9	3	1	0	$6.682M
2016	169	$54,443,000	$322,000	81	59	17	11	1	0	$5.635M
2017	174	$69,817,000	$401,000	78	67	10	17	1	1	$10.643M
2018	162	$79,581,000	$491,000	79	53	12	17	0	1	$16.414M
2019	111	$67,635,000	$609,000	52	30	8	20	1	0	$6.841M
2020	49	$39,730,000	$811,000	25	11	4	6	3	0	$7.615M
	1052	**$393,900,000**	**$374,000**	**540**	**347**	**75**	**81**	**7**	**2**	

Note the significant increase in the average value of a law enforcement claims between 2013 and 2019. Values have nearly tripled. Also note the increase in the number of $1M+ claims.

Errors and Omissions

E&O	Count	Total	Average	$25K - $99,999	$100K - $499,999	$500K - $999,999	$1M - $4,999,999	$5M - $9,999,999	$10M +	Largest
2010	2	$104,000	$57,000	2	0	0	0	0	0	$75K
2011	0	0	0	0	0	0	0	0	0	0
2012	4	$369,000	$92,000	3	1	0	0	0	0	$135K
2013	10	$1,580,000	$158,000	6	3	1	0	0	0	$809K
2014	7	$391,000	$56,000	6	1	0	0	0	0	$118K
2015	10	$1,070,000	$107,000	9	0	1	0	0	0	$622K
2016	13	$4,020,000	$309,000	5	5	2	1	0	0	$1.187M
2017	7	$856,000	$122,000	4	3	0	0	0	0	$334K
2018	14	$1,073,000	$77,000	12	2	0	0	0	0	$208K
2019	10	$3,860,000	$386,000	5	4	0	1	0	0	$2.871M
2020	0	$0	$0	0	0	0	0	0	0	$0.00
	77	**$13,323,000**	**$173,000**	**52**	**19**	**4**	**2**	**0**	**0**	

In the exhibit above, only Errors and Omissions claims are analyzed. There are not enough claims coded to this cause to draw reliable conclusions.

General Liability

GL	Count	Total	Average	$25K - $99,999	$100K - $499,999	$500K - $999,999	$1M - $4,999,999	$5M - $9,999,999	$10M +	Largest
2010	23	$1,971,000	$86,000	18	4	1	0	0	0	$556K
2011	112	$6,497,000	$58,000	97	15	0	0	0	0	$277K
2012	332	$28,275,000	$85,000	277	49	3	2	0	0	$2.628M
2013	593	$77,672,000	$131,000	447	133	7	4	2	0	$9.005M
2014	600	$103,366,000	$173,000	408	157	17	15	3	0	$8.013M
2015	727	$151,406,000	$208,000	479	209	24	11	3	1	$18.690M
2016	817	$194,708,000	$238,000	516	239	26	31	3	2	$15.534M
2017	805	$212,450,000	$263,000	468	255	36	42	5	0	$9.667M
2018	922	$259,078,000	$281,000	543	282	43	55	2	1	$23.078M
2019	703	$205,913,000	$293,000	416	209	34	42	3	1	$10.1M
2020	58	$35,574,000	$613,000	32	16	8	2	1	1	$12.224M
	5692	**$1,276,910,000**	**$224,000**	**3701**	**1568**	**199**	**204**	**22**	**6**	

Member Benchmarking Study Metrics

We captured metrics for expense ratios on large ($1M+) files. Some of the original loss runs supplied by participants included both loss and expense totals. Just over 600 closed occurrences in the $1M and over portion of the study included this information. The total incurred on 612 files in this portion of the study was $1.842B. The average expense on such an occurrence was $361,000, or 13.6%. Again, using only closed files, we analyzed expense as a percentage of total incurred, across various claims types (law enforcement, GL, Auto, dangerous conditions, etc.).

- Average incurred loss and expense as a percentage of the total incurred and on all closed $1M+ files were measured for various claims types -
  - Auto Liability
  - Dangerous Conditions
  - Employment Practices Liability
  - Law Enforcement
  - Sexual Abuse & Molestation
  - Other
- Specific trends seen in these loss categories were identified

A summary of expense factors on these large occurrences follows:

	#	Expense	Average	%	Loss	Average	Incurred
Auto	98	$26,854,000	$274,000	7.6	$324,252,000	$3,309,000	$351,083,000
Dangerous Condition	98	$27,694,000	$283,000	9.2	$272,820,000	$2,784,000	$300,495,000
EPL	69	$39,530,000	$573,000	30.2	$90,292,000	$1,309,000	$130,821,000
Law Enforcement	164	$51,705,000	$414,000	13.9	$328,121,000	$2,625,000	$468,510,000
GL/Other	125	$51,705,000	$414,000	13.6	$328,121,000	$2,625,000	$379,823,000
SAM	58	$17,738,000	$306,000	8.4	$193,259,000	$3,332,000	$210,949,000
Total	**612**	**$220,808,000**	**$361,000**	**13.6**	**$1,619,953,000**	**$2,647,000**	**$1,841,730,000**

Phase 3

After presenting the initial project findings to the CAJPA Board, the consultants suggested that the one thing missing from the analysis was the impact to insurance and self-insurance from tort liability claims trends. A 3rd and final phase of the project included the collection and analysis of insurance data from the participants.

Data collected covered program years FY 10/11 through FY 21/22 and was obtained from all of the JPA participants except for one that declined to participate. The following was collected:

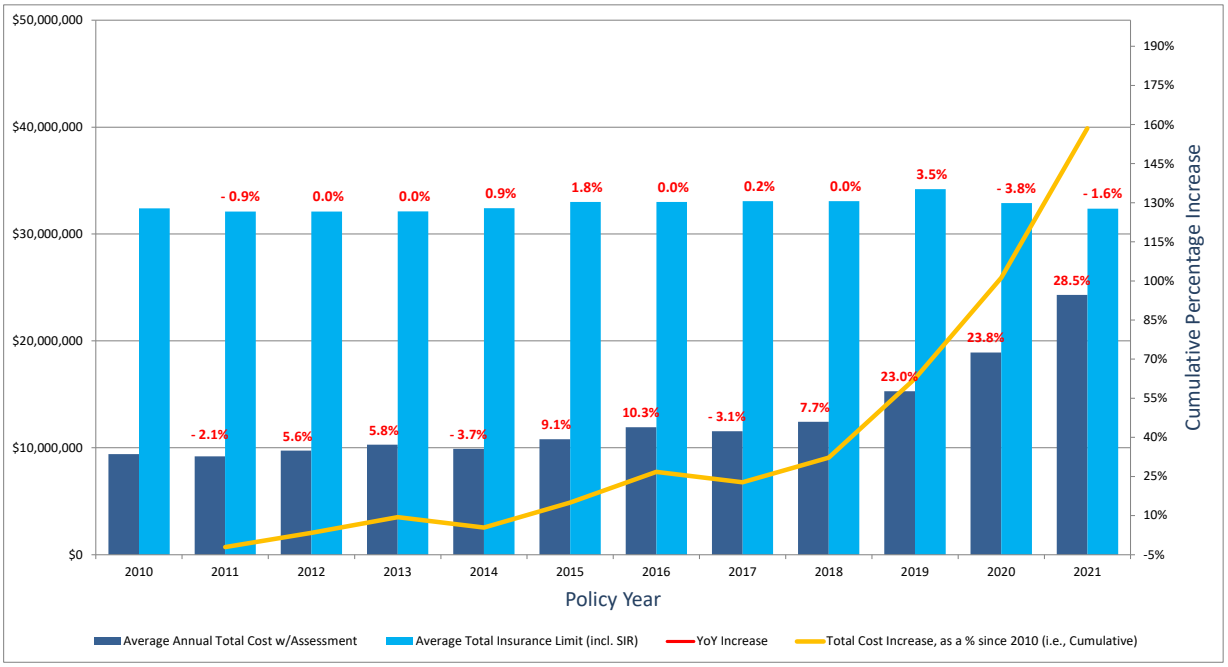
- Pool self-insured retention and cost
- Excess insurance limits and cost
- Assessments and cost
- Total program cost to include all of the above

In total, $2.6B, representing the cost of self-insurance, excess insurance and assessments was amassed. Several caveats should be noted:

- The data does not include the cost of self-insurance retained by the underlying member agencies
- While we did collect information pertaining to increases in SIRs, reductions in limits and other coverage changes, it would require another more in-depth study to actuarially determine the impact and ultimate cost
- The data does not account for changes in membership (i.e. new members added or removed)

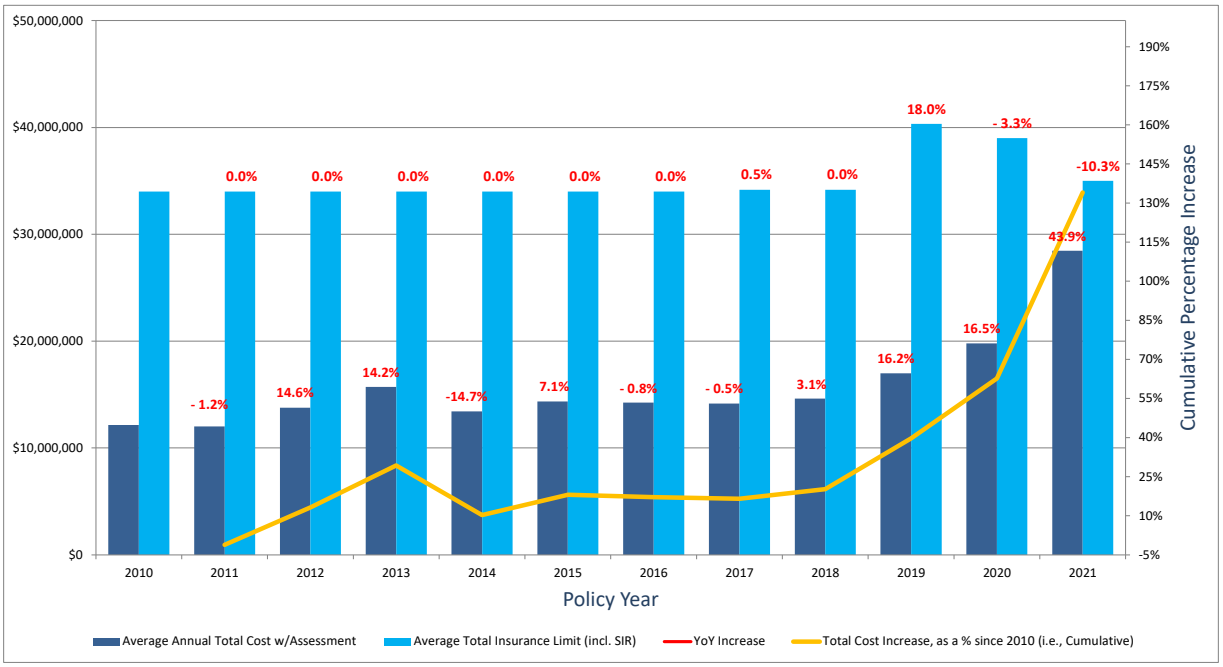
Disclaimer: The analysis reported in the following charts, graphs and summaries is informational only and not to be relied upon for rate setting, funding or for other financial purposes.

Total Program Cost (JPA SIR + Insurance + Assessments) – Cities, Counties, Schools & All Others



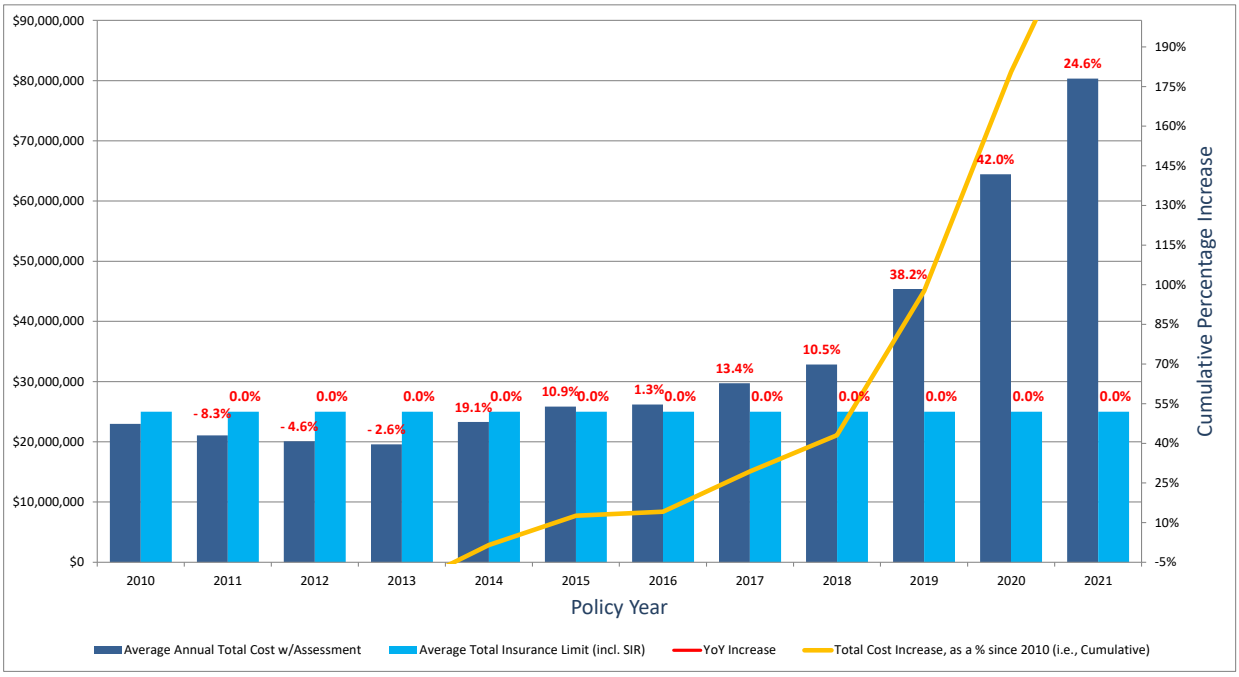
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 159%. In FY 10/11, the average total cost was $9.4M, while in 21/22, the average cost increased to $24.3M. Average program limits stayed relative flat during the analysis period ranging from $32M to $33M.

Total Program Cost (JPA SIR + Insurance + Assessments) - Cities



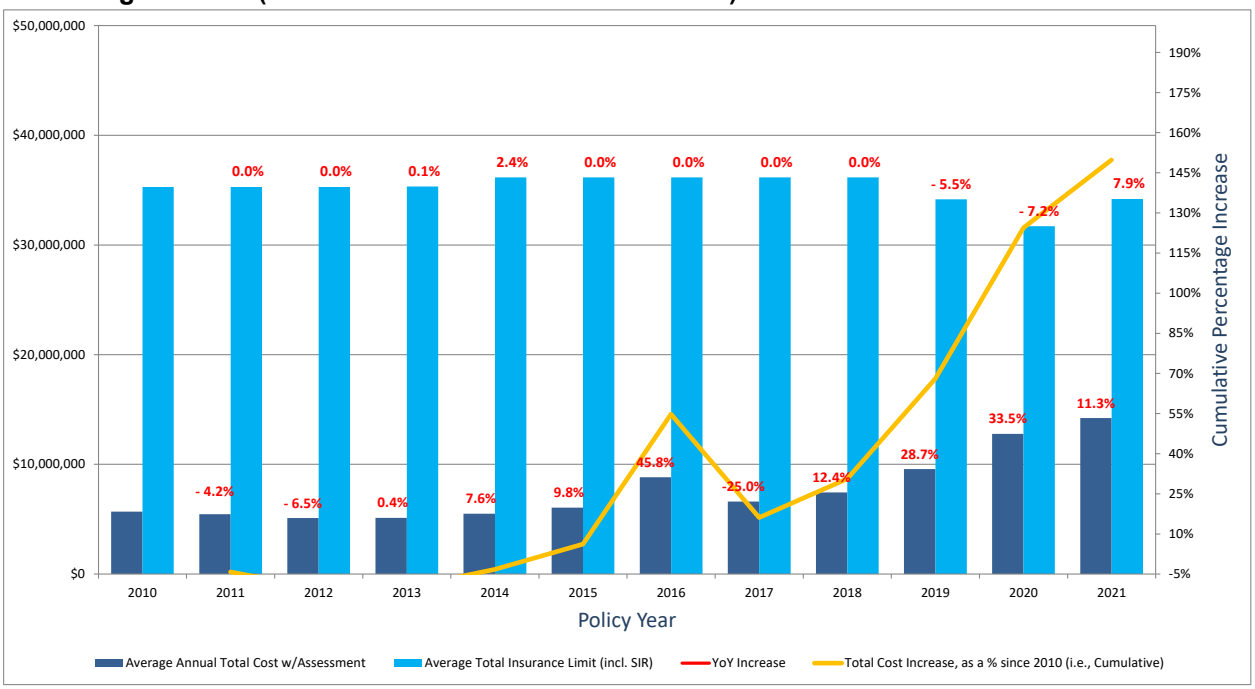
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 134%. In FY 10/11, the average total cost was $12M, while in 21/22, the average cost increased to $28.5M. Average program limits fluctuated between $34M and $40M.

Total Program Cost (JPA SIR + Insurance + Assessments) – Counties



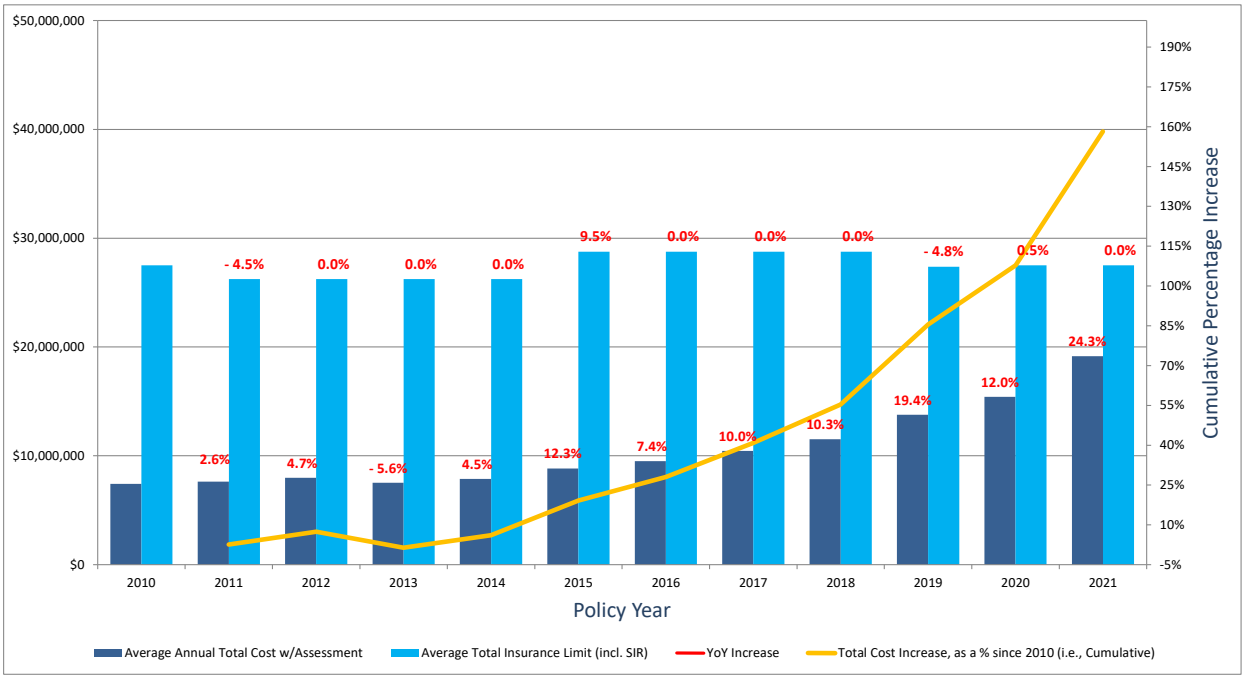
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 250%. In FY 10/11, the average total cost was $23M, while in 21/22, the average cost increased to $80.3M. Average program limits stayed flat throughout the study period at $25M.

Total Program Cost (JPA SIR + Insurance + Assessments) - Schools



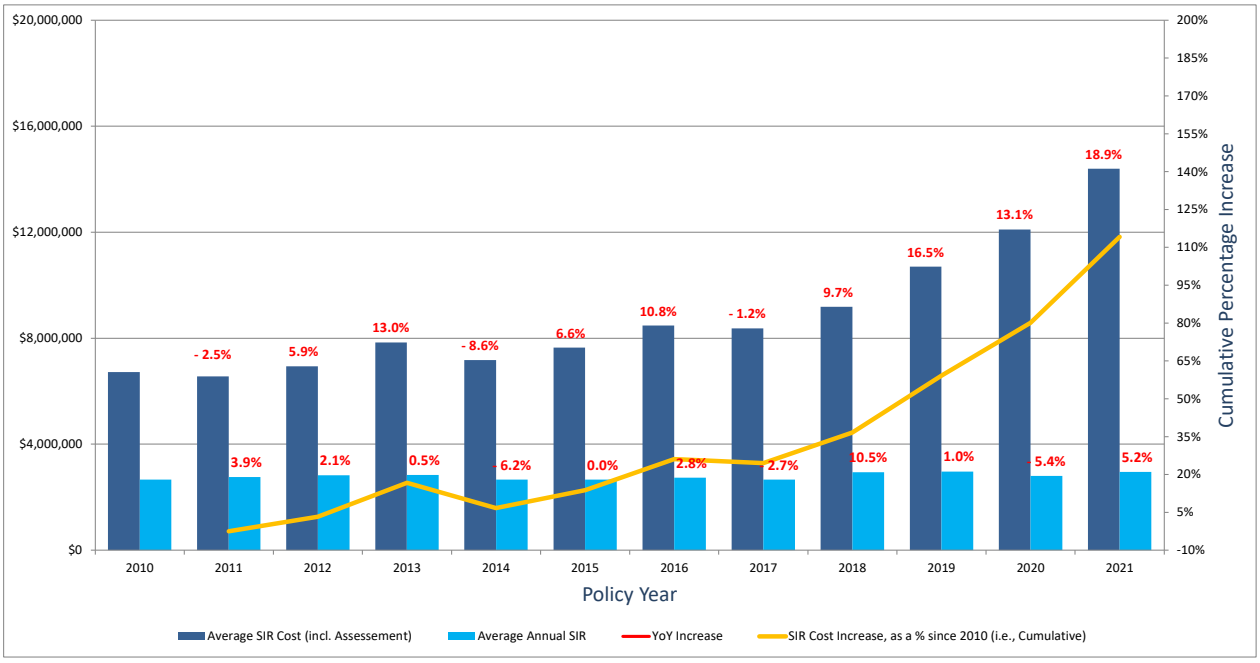
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 150%. In FY 10/11, the average total cost was $5.7M, while in 21/22, the average cost increased to $14.2M. Average program limits fluctuated between $31M and $36M.

Total Program Cost (JPA SIR + Insurance + Assessments) - All Others



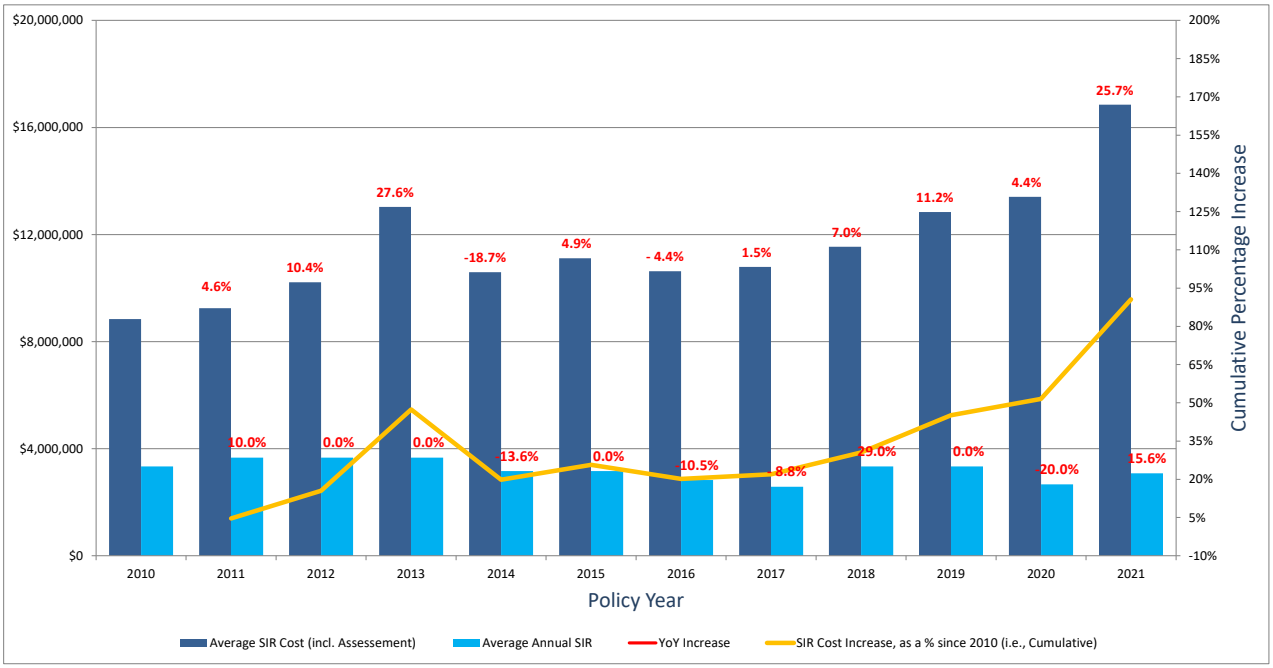
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 158%. In FY 10/11, the average total cost was $7.4M, while in 21/22, the average cost increased to $19.1M. Average program limits fluctuated between $26.2M and $28.7M.

JPA Self-Insured Retention – Cities, Counties, Schools & All Others



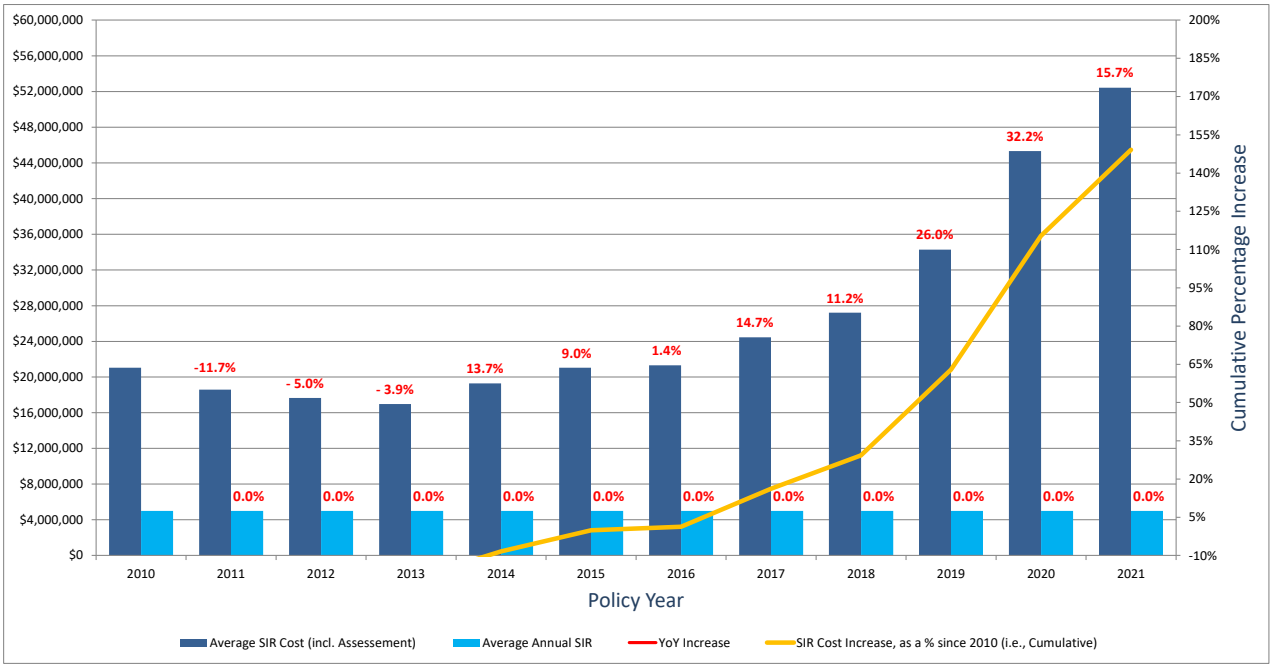
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 was 114%. The average cost in FY 10/11 was $6.7M, while in FY 21/22 was $14.4M. The average SIR stayed relative flat, ranging between $2.6M and $3M.

JPA Self-Insured Retention - Cities



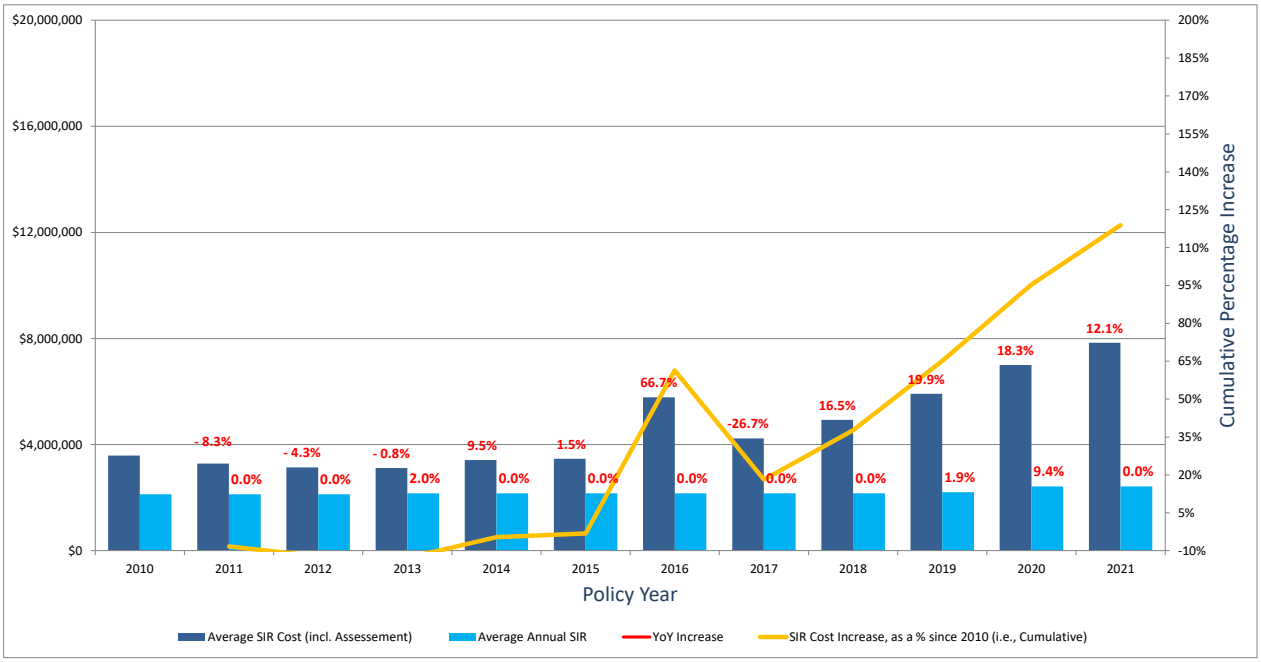
Summary: The cumulative SIR cost increase from FY 10/11 to FY 21/22 was 91%. The average cost in FY 10/11 was $8.8M, while in FY 21/22 was $16.8M. The average SIR varied between $2.5M and $3.6M.

JPA Self-Insured Retention - Counties



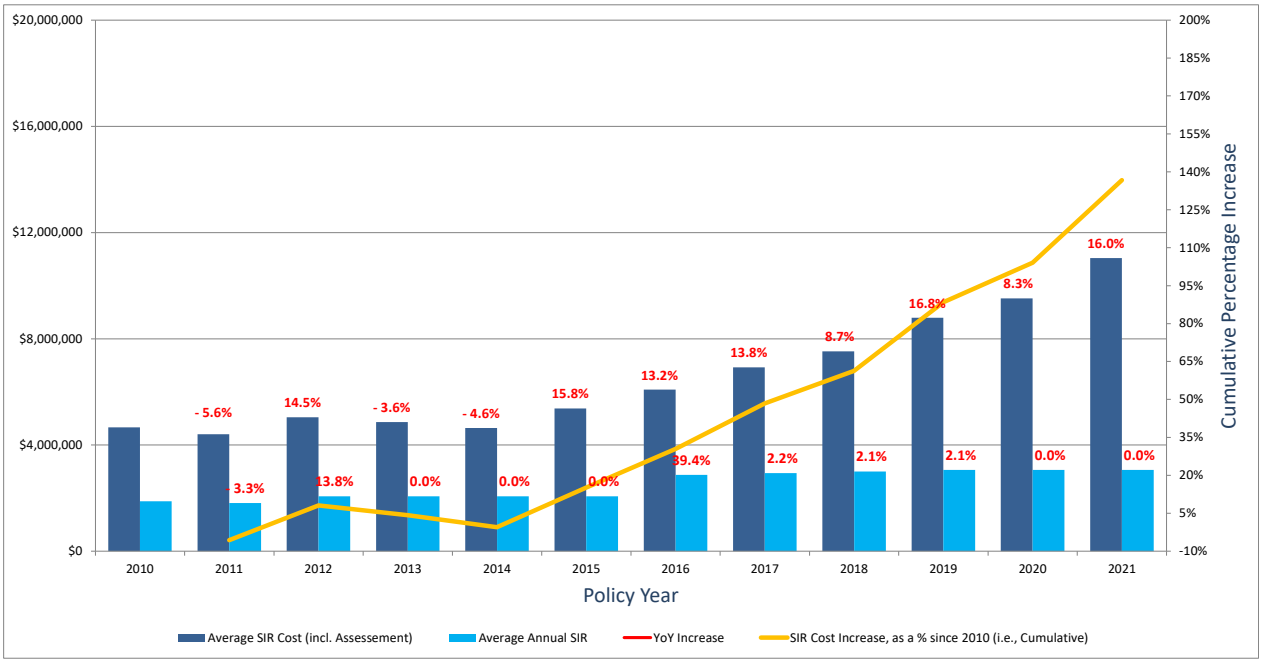
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 149%. In FY 10/11, the average SIR cost was $21M, while in 21/22, the average cost increased to $52.4M. Average SIR stayed flat throughout the study period at $5M.

JPA Self-Insured Retention - Schools



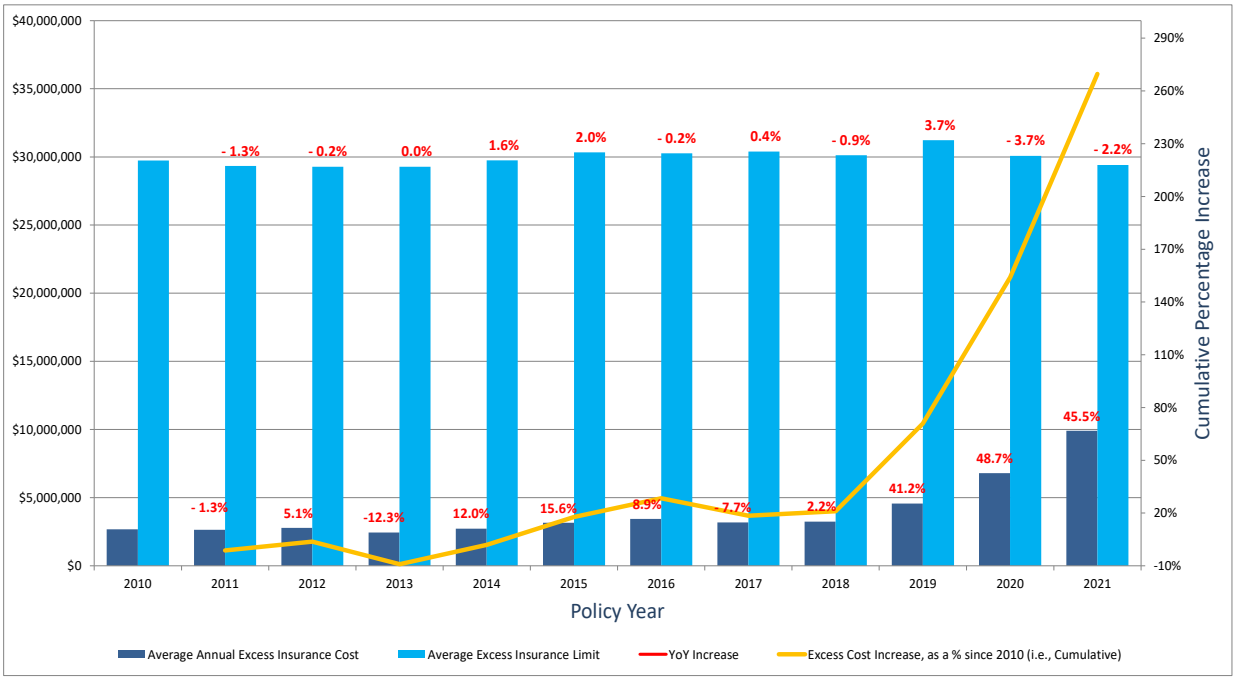
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 119%. In FY 10/11, the average SIR cost was $3.6M, while in 21/22, the average cost increased to $7.8M. Average SIR ranged between $2.1M and $2.4M.

JPA Self-Insured Retention – All Others



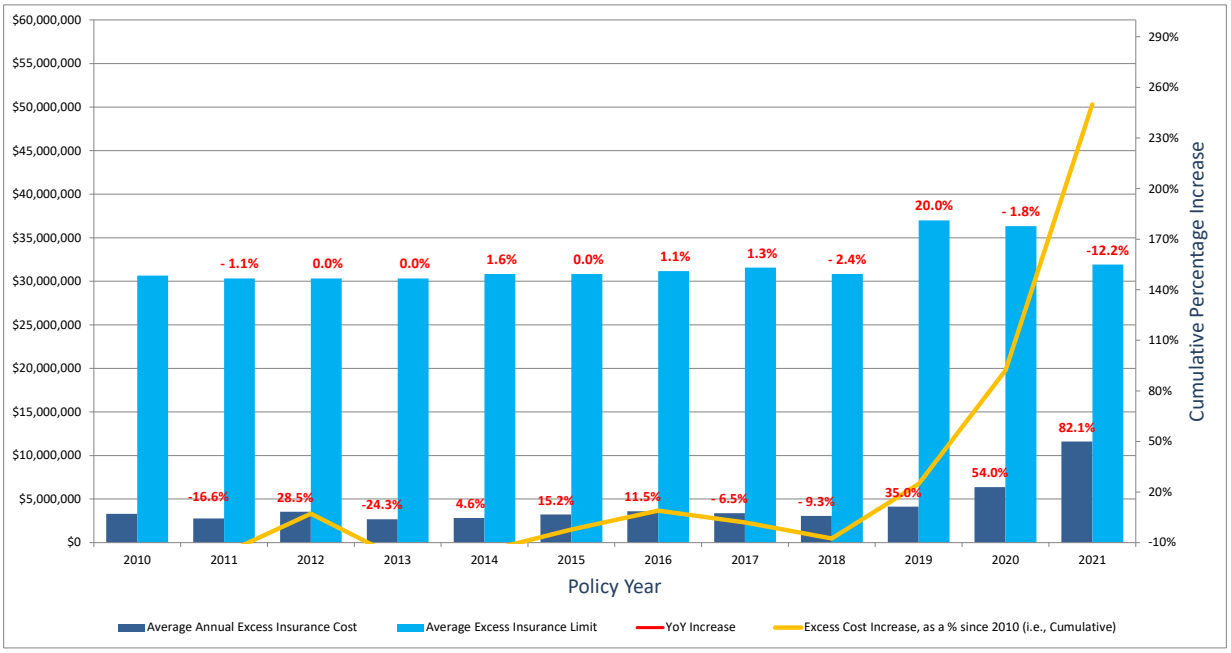
Summary: The cumulative cost increase from FY 10/11 to FY 21/22 is 137%. In FY 10/11, the average SIR cost was $4.6M, while in 21/22, the average cost increased to $11M. Average SIR ranged between $1.8M and $3M.

Excess Insurance – Cities, Counties, Schools, & All Others



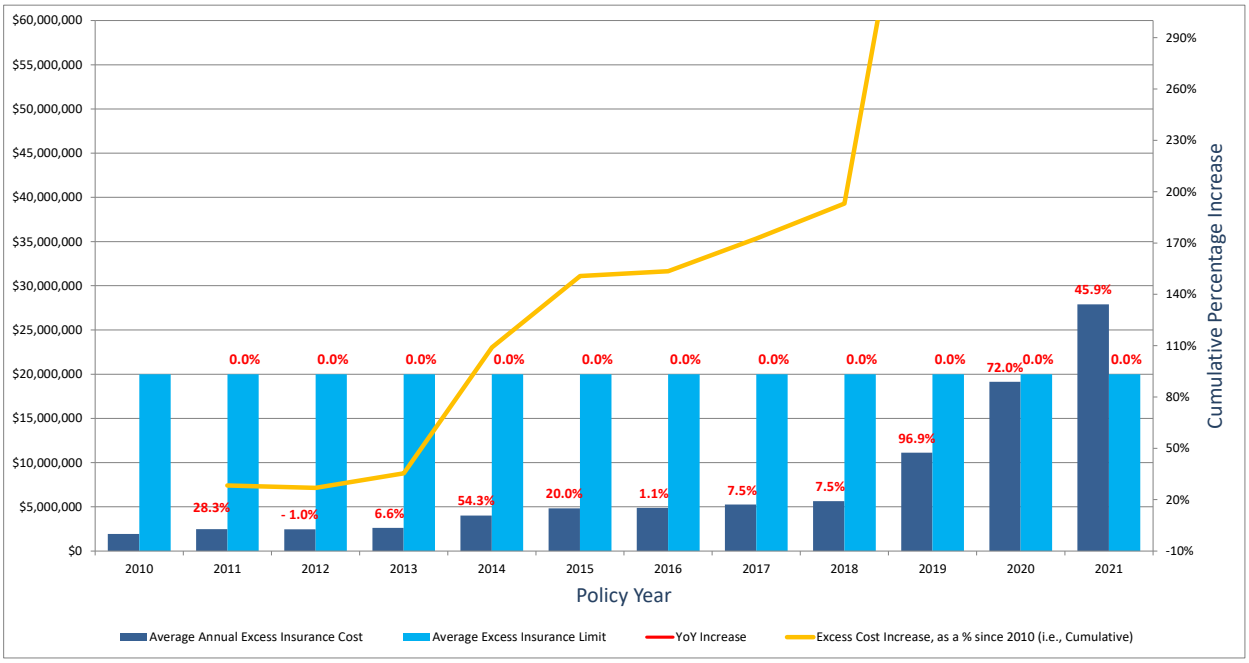
Summary: The cumulative cost increase of excess insurance from FY 10/11 through FY 21/22 is 270%. In FY 10/11, the average cost of excess insurance was $2.7M; while in FY 21/22, the average cost was $9.9M. Insurance limits hovered around $30M.

Excess Insurance – Cities



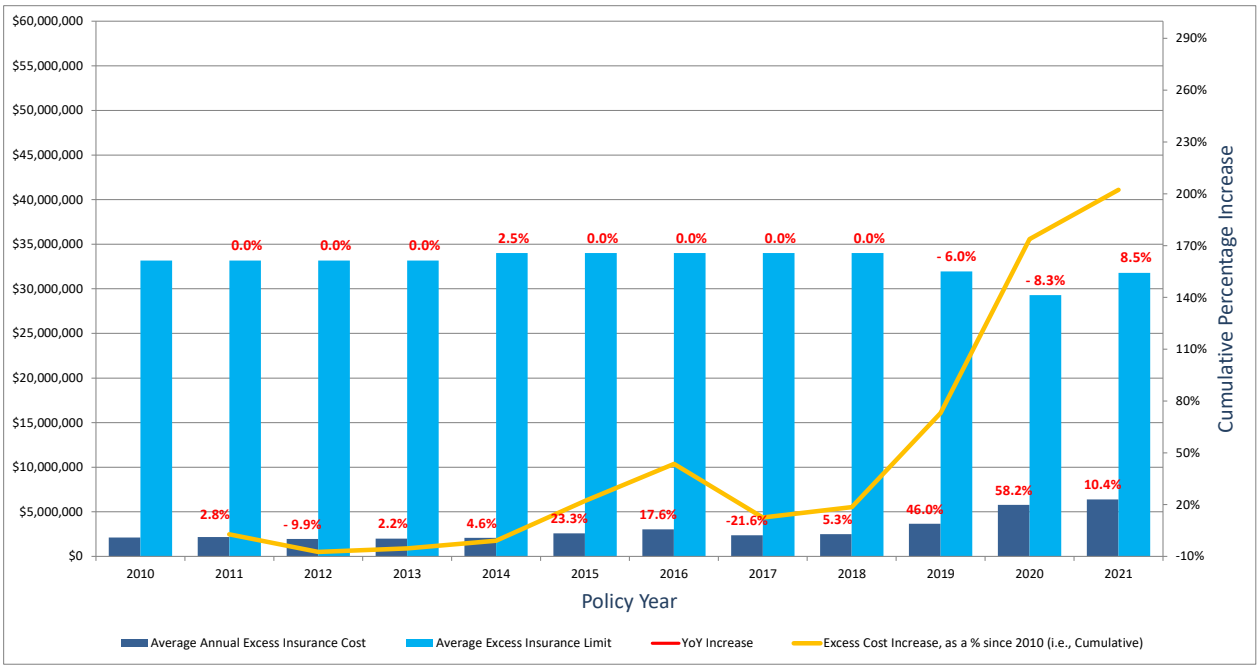
Summary: The cumulative cost increase of excess insurance from FY 10/11 through FY 21/22 is 250%. In FY 10/11, the average cost of excess insurance was $3.3M; while in FY 21/22, the average cost was $11.6M. Average excess insurance limits varied from $30M to $36.5M.

Excess Insurance – Counties



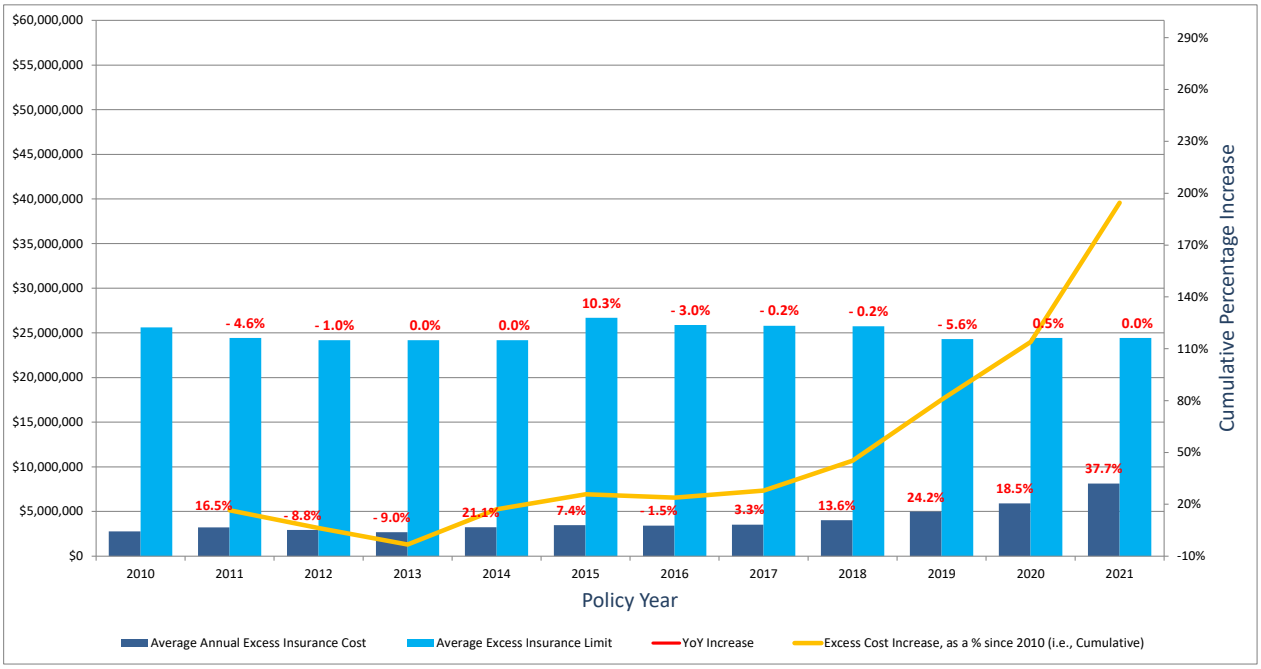
Summary: The cumulative cost increase of excess insurance from FY 10/11 through FY 21/22 is 1,348%. In FY 10/11, the average cost of excess insurance was $1.9M; while in FY 21/22, the average cost was $27M. Average excess insurance limits remained flat at $25M.

Excess Insurance – Schools



Summary: The cumulative cost increase of excess insurance from FY 10/11 through FY 21/22 is 202%. Average excess insurance limits fluctuated between $29M and $34M.

Excess Insurance – All Others



Summary: The cumulative cost increase of excess insurance from FY 10/11 through FY 21/22 is 195%. In FY 10/11, the average cost of excess insurance was $2.7M; while in FY 21/22, the average cost was $8.1M. Average excess insurance limits fluctuated between $24M and $26M.

Appendices

Complete Listing of Participating JPAs

- Alameda County Schools Insurance Group
- Alliance of Schools for Cooperative Insurance Programs
- Association of California Water Agencies JPIA
- Authority for California Cities Liability
- Bay Cities Joint Powers Insurance Authority
- Butte Schools Self-Funded Programs
- California Association for Parks and Recreation Indemnity
- California Fair Services Authority
- California Joint Powers Insurance Authority
- California Joint Powers Risk Management Authority
- California Mental Health Services Authority
- California Sanitation Risk Management Authority
- California Schools Risk Management
- California Transit Indemnity Pool
- Central Region Schools Insurance Group
- Central San Joaquin Valley Risk Management Authority
- Central Valley Schools Joint Powers Authority
- Contra Costa Solano Schools Insurance Authority
- East Bay Schools Insurance Group
- Employment Risk Management Authority
- Exclusive Risk Management Authority of California
- Fire Agencies Insurance Risk Authority
- Golden State Risk Management Authority
- Independent Cities Risk Management Authority
- Kings Schools Transportation Authority JPA
- Marin Schools Insurance Authority
- Monterey & San Benito Counties P&L JPA
- Monterey Bay Area Self Insurance Authority
- Municipal Pooling Authority
- North Bay Schools Insurance Authority
- North Coast Schools Insurance Group
- Northern California Cities Self Insurance Fund
- Northern California Regional Liability Excess Fund
- Northern California Schools Insurance Group
- Northern Orange County Liability & Property SIA
- Organization of Self-Insured Schools
- PRISM (formerly CSAC-EIA)
- Public Agency Risk Sharing Authority of California
- Public Entity Risk Management Authority
- Redwood Empire Schools Insurance Group
- Redwood Empire Municipal Insurance Fund
- Riverside Schools Insurance Authority
- San Diego/Imperial County Schools Risk & Insurance Management JPA
- San Joaquin County Schools P&L Insurance Group
- San Mateo County Schools Insurance Group
- Santa Clara County Schools Insurance Group
- Schools Association For Excess Risk
- Schools Excess Liability Fund
- Schools Insurance Authority
- Schools Insurance Group Placer/Nevada
- Self-Insured Schools of California

- Shasta-Trinity Schools Insurance Group
- Schools Insurance Group Northern Alliance II
- Self-Insured Risk Management Authority II
- Small Cities Organized Risk Effort
- So Peninsula Region Insurance Group
- South Bay Area Schools Insurance Authority
- Southern California Regional Liability Excess Fund
- Special District Risk Management Authority
- Tri-County Schools Insurance Group
- Trindel Insurance Fund
- Tulare County Schools Insurance Authority
- Valley Insurance Program
- Vector Control JPA
- Ventura County Schools Self-Funding Authority
- West San Gabriel JPA
- Whittier Area L&P Schools Insurance Authority
- Yolo County Public Agency Risk Management Insurance Authority

About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement, and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

SISC
Self-Insured Schools of California
Schools Helping Schools

Self-Insured Schools of California - SISC

ACTIVITY REPORT: SY 2021-2022

The following data represents all reports received through STOPit for clients between 7/01/21 to 6/30/22

Total Incident Volume

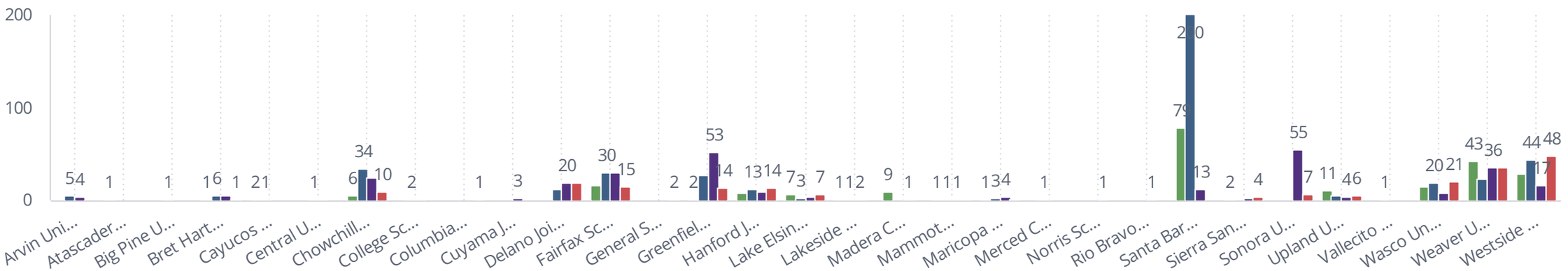
Total
1,180

IMS Reviewed Incidents
728

Incident Breakdown

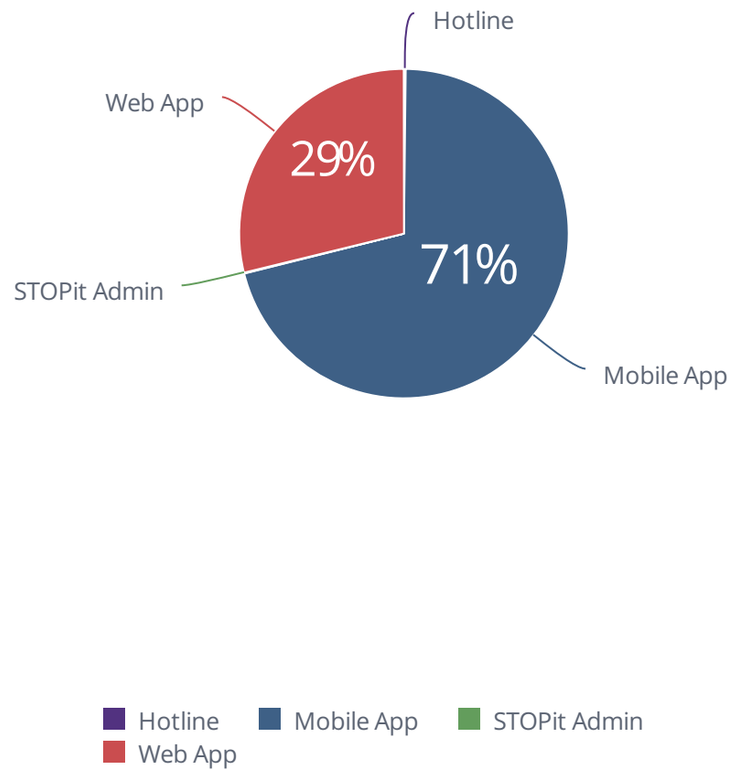
Pool	Total Incidents	IMS Incidents	Flagged	Escalated
SISC	1,180	728	169	61

Incident Volume

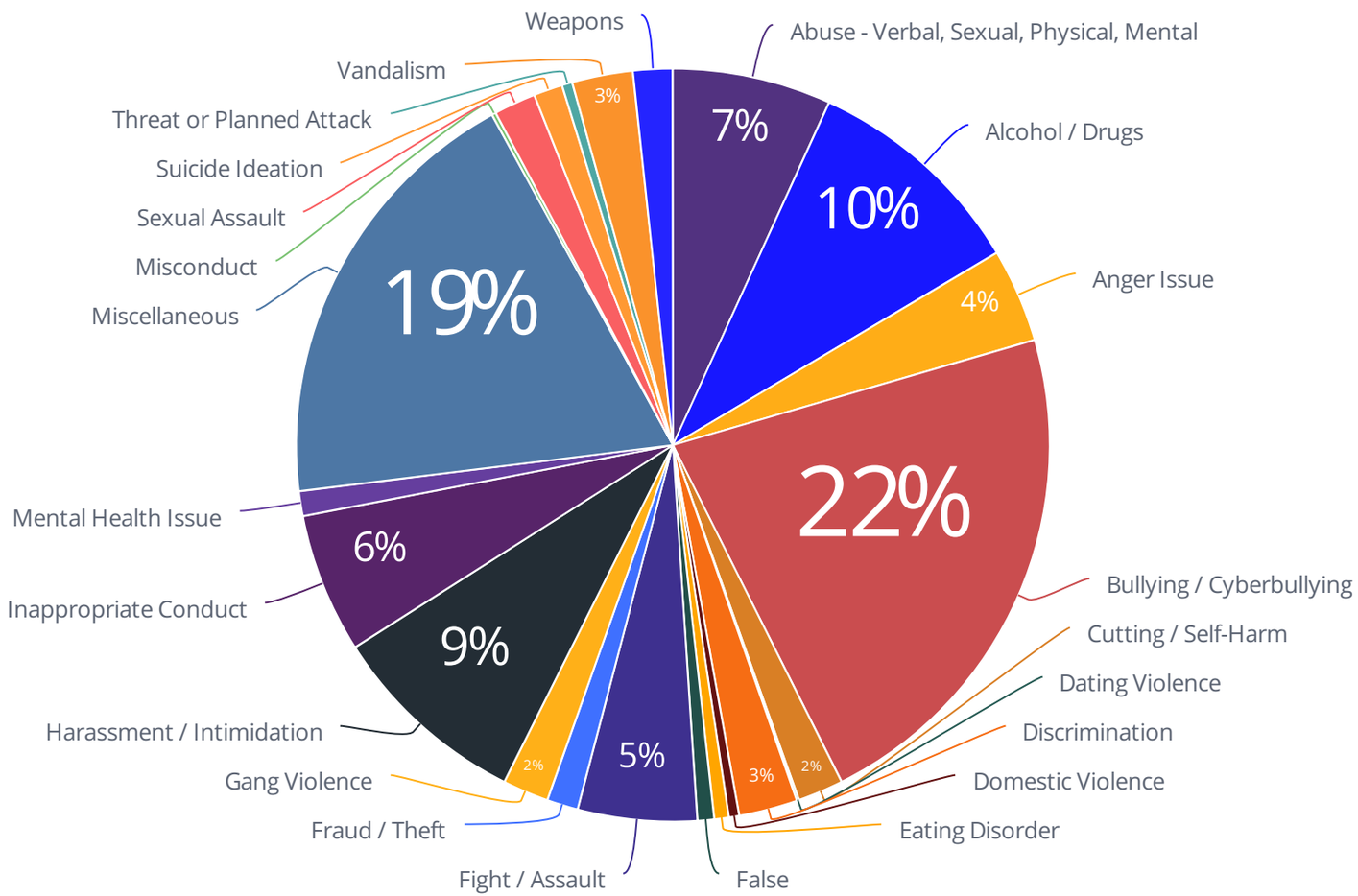


* Incident Volume displays the total number of incidents reported for the time frame shown.

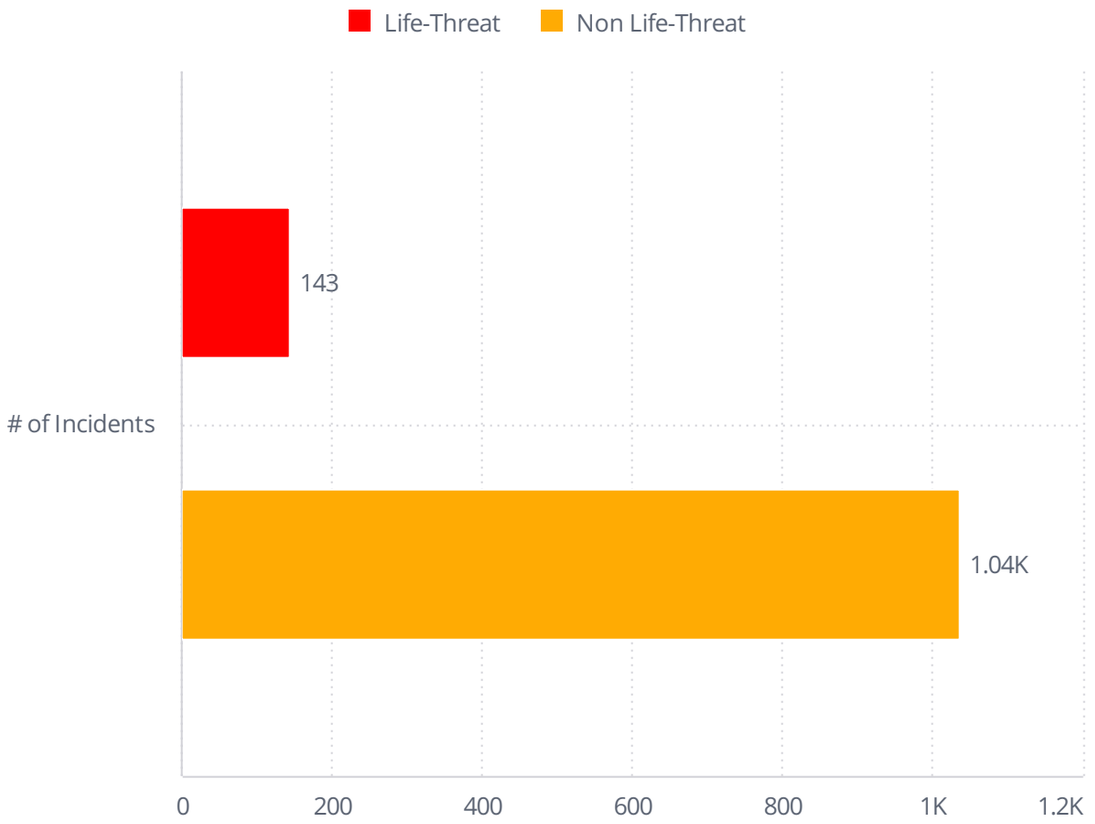
Incident Source



Incident Families



Life Threat vs Non-Life Threat Actionable Incident Families



Top Actionable Incident Families

Life Threat Category	Incident Family	# of Incidents
Life-Threat	Fight / Assault	57
	Cutting / Self-Harm	22
	Sexual Assault	20
	Weapons	19
	Suicide Ideation	14
Non Life-Threat	Bullying / Cyberbullying	247
	Miscellaneous	212
	Alcohol / Drugs	108
	Harassment / Intimidation	96
	Abuse - Verbal, Sexual, Physical, Mental	76

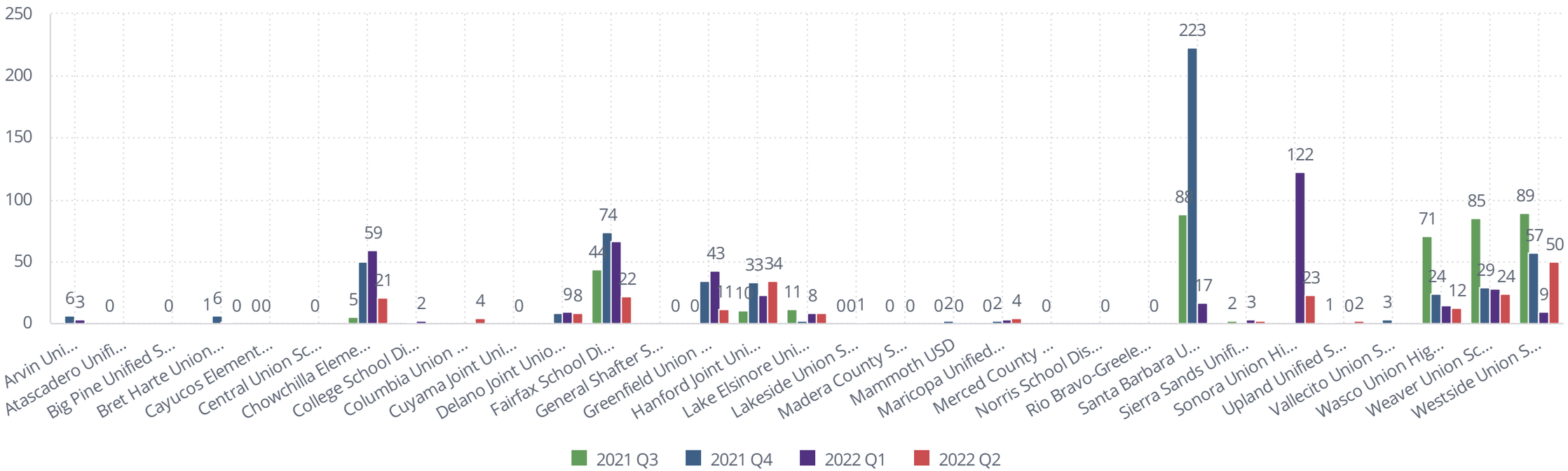
* Data shown for Incident Family only applies to those reports where an Administrator has reviewed the report and assigned an Incident type. Incident Type is not a required field until the incident is marked as closed. Incidents marked as N/A are not included.
* Actionable Incident Family is all Incident Families without including Unsubstantiated, Test, and False incidents.

Total # of Messages Sent

Total
1,598

IMS Reviewed Incidents
1,091

Messenger Volume

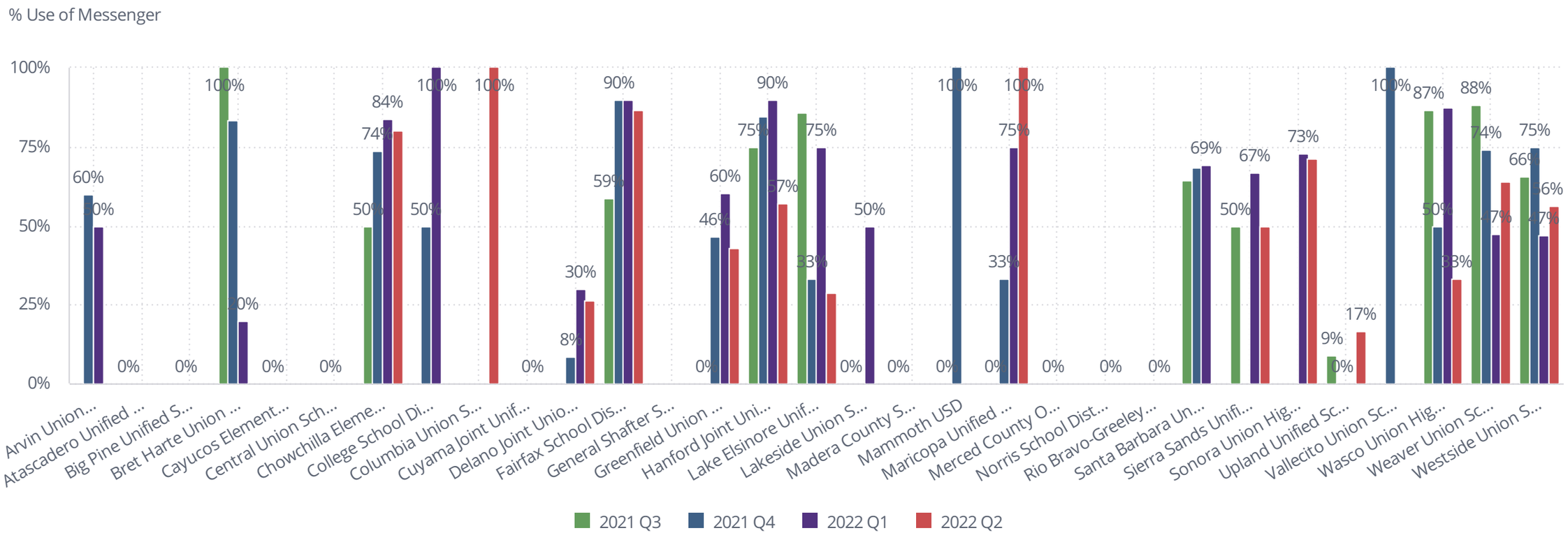


* Messenger Volume indicates the number of messages sent between the Administrator & tipster after an incident is submitted.

Total % of Incidents w/ Messenger

Total
62%

IMS Reviewed Incidents
60%



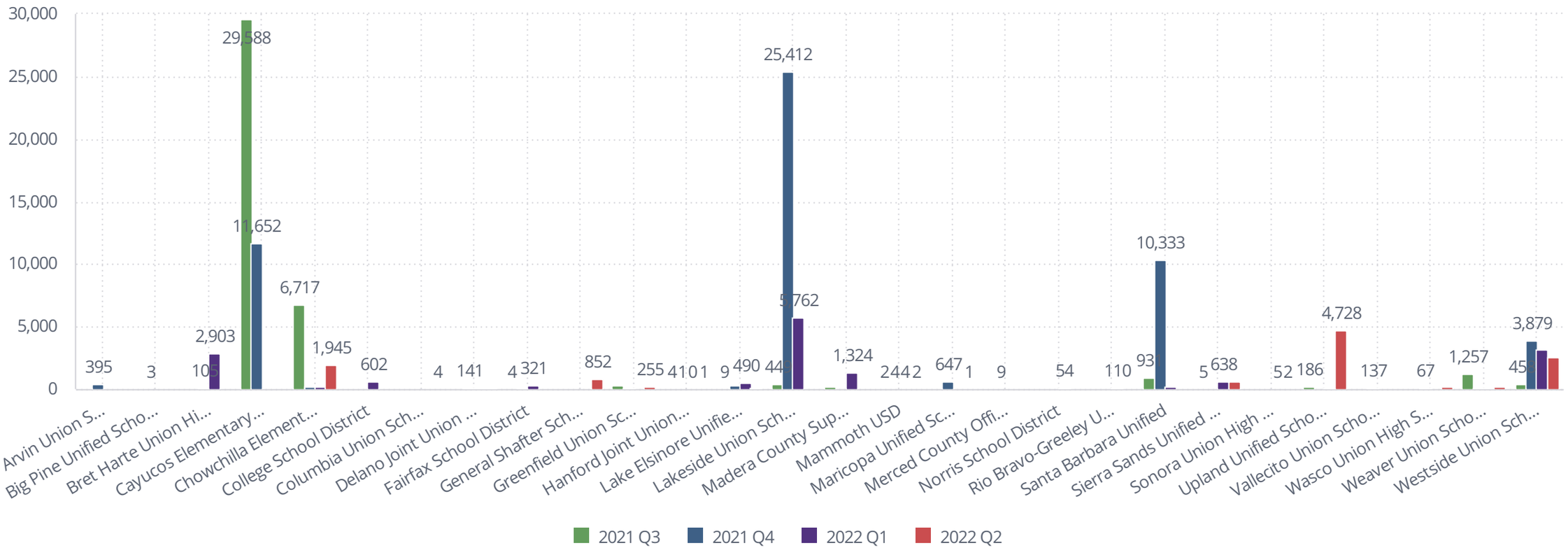
* % of Messenger measures the percent of incidents where messenger was used by the Administration to engage with the tipster. This measures the initiative of the Administrator to gain more information about an incident.

Average Minutes to Open

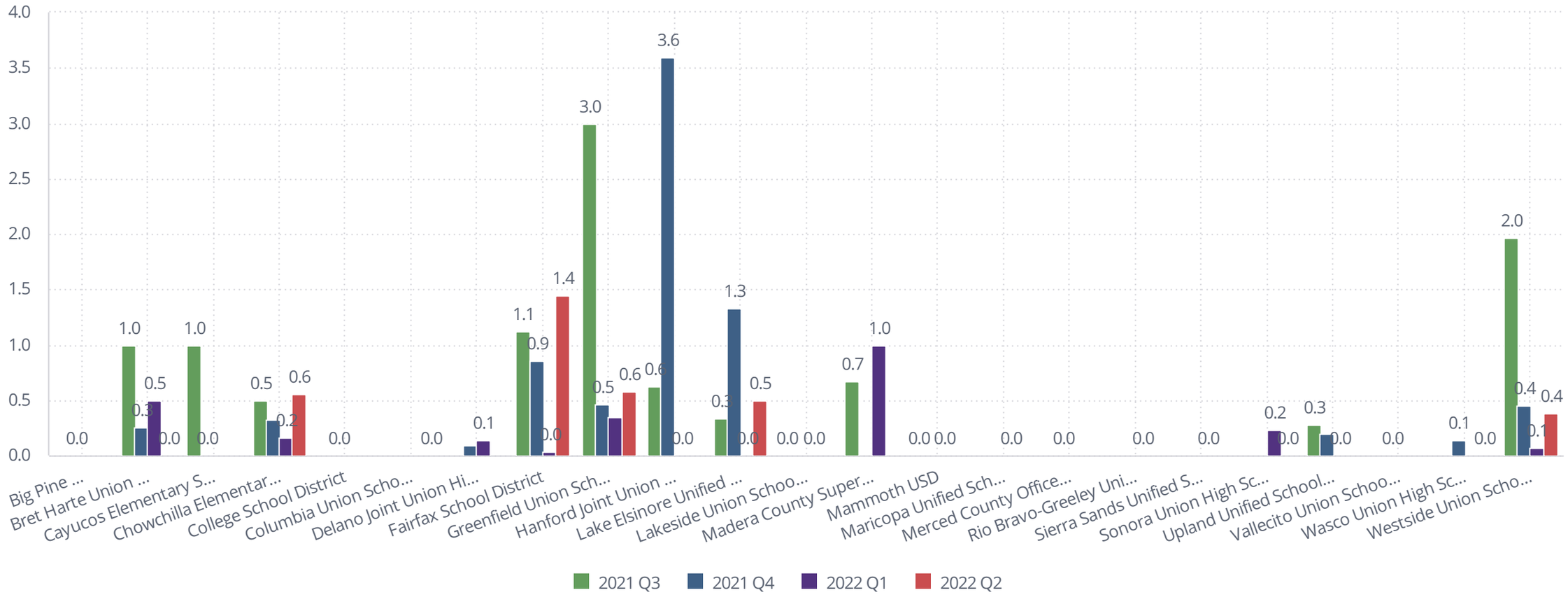
By Admins
2,422

By IMS Agents
0.4

Average Minutes to Open - By Admins



Average Minutes to Open - By IMS Agents

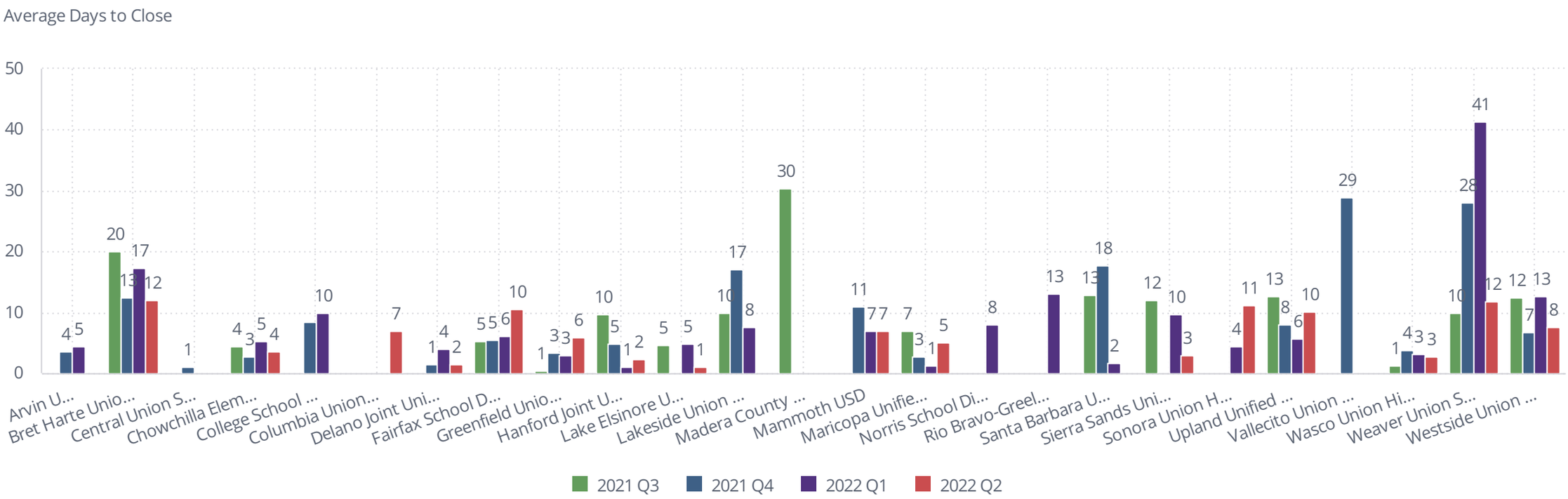


* Average minutes to open measures the time from the incident was submitted to when the Administrator opens or views the incident in STOPit Admin.
* All incidents that went unopened for more than 1 week, has been excluded from the pool wide averages shown above.
* For IMS Average Minutes to Open, incidents that were opened in under 1/10 of 1 second, or less than 0.1 seconds, the data will show as "0" seconds.

Average Days to Close

Total
10

IMS Reviewed Incidents
6



* Average days to close measures the time from which the incident was submitted by the tipster to the time that the administrator Closed the Incident in STOPit Admin (Closing an incident is not a requirement).
* Where Avg=0.00, the Member has either not marked an incident as closed or closed the incident the same day it was submitted.

CTL Activity

Total Activations

0

Unique Users 0

2022 CAJPA ANNUAL MEETING

CASELAW UPDATE

CAJPA
California Association of Joint Powers Authorities

Trusted Leadership for California's Public Risk Sharing Pools

JPA ADMINISTRATION AND COVERAGE CASES

Summaries provided by Douglas Alliston, Alliston Law Office

The Inns-by-the-Sea v. California Mutual Ins. Co. (2021) 71 Cal.App.5th 688

Summary: Business income coverage requires loss to result from direct physical loss of or damage to property, coverage is not triggered by business loss due to government COVID-19 shutdown orders.

Discussion: Like many other businesses, the Inns-by-the-Sea suffered extensive business income losses due to the pandemic shutdown of its premises. It sought business interruption coverage from its property insurer, alleging that its loss of income was caused by the presence of the virus which led to government orders that effectively shut down its business. After its insurer denied coverage, the Inns-by-the-Sea sued, alleging that that its business interruption or civil authority coverages applied. Its business interruption coverage applied to lost business income due to suspension of operations during the period of restoration if the suspension was due to direct physical loss of or damage to the insured premises due to a covered cause of loss. The civil authority coverage applied when access to the insured premise was prohibited by a civil authority due to direct physical loss of or damage to property other than the insured premise due to a covered cause of loss.

The insurer filed a demurrer arguing that its policy did not provide coverage for the Inns' lost business income resulting from the pandemic, under either the business income or civil authority coverages, because the pandemic did not give rise to direct physical loss of or damage to property. Opposing the demurrer, the Inns argued that the presence of the virus constituted damage because its physical presence transformed the premises, specifically indoor air and surfaces, unsafe and unfit for its intended purpose. The demurrer was granted without leave to amend, and the Inns appealed.

The Court of Appeal held that the Inns could not reasonably allege that the presence of the virus on its premises was what caused the premises to be uninhabitable or unsuitable for their intended purpose. The relevant government orders stated that they were issued because the virus was present throughout region, not because of any particular condition at the Inns' premises. Further, it noted, the Inns alleged that it ceased operations "as a direct and proximate result of the Closure Orders," and did not make a proximate cause allegation based on the presence of the virus on its premises. Further, observed the court, because the closure orders were based on the presence of the virus generally, complete removal of the virus from premises would have changed nothing.

The Inns argued that there was a "loss" of the premises, but the Court of Appeal held there must be a direct and physical loss for the policy to apply, noting that the "period of restoration" definition referred to the period until the property could be restored to use by repair, rebuild, or replacement, or by a move to a new location.

The Inns also argued that the absence of a virus exclusion, contained in many other similar policies, indicated an intent by the insurer to cover virus losses. The Court of Appeal pointed out that coverage is defined by the insuring clause, so that an occurrence not within the scope of coverage need not be excluded.

Marina Pacific Hotel & Suites v. Fireman's Fund Ins. Co. (2022) ___ Cal. App. 5th ___ [2022 Cal. App. LEXIS 608]

Summary: Plausibility of allegation that virus caused physical loss of or damage to premises cannot be considered in ruling on demurrer in state court.

Discussion: Plaintiff Marina Pacific Hotel and Suites sued its insurer for denying business interruption coverage, alleging that the COVID-19 virus not only lived on surfaces but bonded to surfaces through physicochemical reactions, causing direct physical damage to its property. Its insurer successfully demurred, like many insurers in similar cases. Marina Pacific appealed, arguing that it had adequately alleged direct physical loss or damage to the covered property, and the Court of Appeal agreed. The California Court of Appeal explained that while federal pleading standards require a complaint to state a claim that is "plausible on its face," California pleading standards require a court considering a demurrer "to deem as true, 'however improbable,' facts alleged in a pleading." This distinguished the case from the scores of federal court decisions finding no coverage for similar claims under California law.

The Court of Appeal also found the plaintiffs had adequately alleged that the physical loss or damage caused a slowdown in, or cessation of, the operation of their business while the covered property was restored or remediated, thereby triggering their business interruption coverage. There was no real explanation of how the business interruption was caused by the alleged damage to surfaces, as opposed to the shutdown orders.

Besides the difference in pleading standards, a significant difference between this case and most others is that the Fireman's Fund policy expressly included a communicable disease coverage applicable to "direct physical loss or damage" to insured property "caused by or resulting from a covered communicable disease event," including costs necessary to repair or rebuild insured property damaged or destroyed by the communicable disease and to mitigate, remediate, clean, detoxify, disinfect, neutralize, cleanup, remove, dispose of, test for, monitor and assess the effects of the communicable disease. Also, there was coverage for business interruption due to a "communicable disease event," defined as "an event in which a public health authority has ordered that a location be evacuated, decontaminated, or disinfected due to the outbreak of a communicable disease at such location."

Roberts v. County of Riverside (C.D.Cal. 2021) 2021 U.S.Dist.LEXIS 25628

Summary: A JPA is not an insurance company for purposes of Probate Code claim against estate of decedent.

Discussion: After spending 20 years in prison for a crime he did not commit, plaintiff sued the defendant County and various individuals, three of whom had died while he was imprisoned. The court instructed plaintiff to remove the deceased defendants and add in their place their personal representatives, successors-in-interest, or estates. Plaintiff did so and attempted to serve Public Risk Innovations, Solutions and Management (PRISM), a JPA, to effectuate service on their estates pursuant to Probate Code sections 550 and 552(a), which provide for service on the insurers of decedents.

JPA ADMINISTRATION AND COVERAGE CASES - CONTINUED

Summaries provided by Douglas Alliston, Alliston Law Office

PRISM moved to quash the service on the basis that it is not an insurer. The plaintiff argued that PRISM could be considered an insurer for the purposes of the Probate Code sections because it would be obligated to indemnify any judgment rendered against the estates of the deceased defendants. Citing earlier cases holding that county employers of deceased law enforcement personnel could not be served under these Probate Code sections, even if the county might have an indemnification obligation, the court held that the mere fact that PRISM might have an indemnity obligation did not make it an insurer within the meaning of Probate Code sections 550 and 552(a). Service was therefore quashed.

Public Risk Innovation, Solutions, and Management v. Amtrust Fin. Servs. (9th Cir. 2022) 2022 U.S. App. LEXIS 12104

Summary: JPA experience qualifies a party arbitrator where a reinsurance certificate describes the JPA as an insurance company, even though the term does not apply in-fact.

Discussion: PRISM, a risk pool JPA, was reinsured by an AmTrust company. The reinsurance certificate required disputes to be brought before a three arbitrator panel composed of former disinterested officials of property or casualty insurance or reinsurance companies. The contract described PRISM as a "company" that provides a "type of insurance" under a "policy" to its "insureds," even though none of those terms applied to JPA operations. PRISM appointed a JPA-experienced individual as its party-arbitrator and AmTrust objected that the person did not qualify. AmTrust further claims it had the sole right to appoint PRISM's party arbitrator under the "time is of the essence clause." The Ninth Circuit Court of Appeals agreed with PRISM that, although JPA coverage is not insurance, the court must apply the terms used in the contract, which described it as such for purposes of determining whether a JPA-experienced individual qualified as an "official" of a property or casualty insurance or reinsurance company. Moreover, allowing one party to pick a party arbitrator from its segment of the coverage industry was consistent with the general purpose of waiving litigation in favor of arbitration. The Court of Appeal also reasoned that, even though, PRISM's party arbitrator ultimately was not disinterested and could not serve, the time is of the essence clause does not apply when a party acts in good faith within the time specified.

Special Dist. Risk Mgmt. Auth. v. Munich Reinsurance Am., Inc. (E.D.Cal. 2021) 2021 U.S.Dist.LEXIS 186059

Summary: No tort remedies or punitive damages are available to a JPA damaged by breach of reinsurance agreement.

Discussion: Transbay Joint Powers Authority built a new Transbay Terminal next to the Millennium Tower in San Francisco. After the Millennium Tower sank and began to lean, Transbay was named as a defendant in actions alleging it had contributed to the defects.

Transbay had liability coverage from Special District Risk Management Authority (SDRMA), a JPA that was reinsured by Munich Reinsurance America and General Reinsurance Corporation. SDRMA requested Munich Re and Gen Re to commit to indemnifying settlements that were being negotiated. The reinsurers declined to commit, but promised to evaluate any settlements in good faith. SDRMA settled out for $10 million and incurred another $1 million in expenses. The reinsurers then denied SDRMA's claim, and SDRMA sued them in superior court. The reinsurers removed the action to the federal district court, and Munich Re filed a motion for judgment on the pleadings in which Gen Re joined, seeking a judgment that SDRMA had no tort cause of action for breach of the implied covenant of good faith and fair dealing and therefore no right to punitive damages.

The California Supreme Court had never decided the issue, so the federal court had to predict what the Supreme Court would do if faced with the question. The California Supreme Court has only allowed a tort recovery for breach of the implied covenant in the context of insurance, and has justified allowing it in that context because insurance contracts are "characterized by elements of adhesion and unequal bargaining power, public interest and fiduciary responsibility." The Supreme Court has declined to extend tort liability to other contracts including performance bonds, employment contracts, or construction contracts. Considering the same types of factors, the federal court concluded that they weighed against imposing tort liability on a reinsurer and granted the reinsurers' motion.

County of Sacramento v. Everest National Ins. Co. (E.D.Cal. Jan. 19, 2022, No. 2:19-cv-00263-MCE-DB) 2022 U.S.Dist. LEXIS 10213

Summary: Insurance Code section 533 precludes coverage of liability for retaliation by an employer, and the employer cannot claim that section 533 does not apply because it was only vicariously liable for the retaliation.

Discussion: In an underlying matter, the County of Sacramento was sued for retaliation in violation of the Fair Employment and Housing Act (FEHA, Gov. Code § 12940(h)), and a jury found the County liable to four plaintiffs for approximately $3.5 million, plus more than $5 million in attorney fees and costs. The County appealed and the plaintiffs in that action cross-appealed, and while the appeals were pending the parties settled. In addition to the settlement (filed under seal), the County incurred more than $1.2 million in defense fees and costs.

At the time of the events alleged, the County was insured for employment practices liability by Everest National Insurance Company under a policy which also covered employees of the County but only for acts within the scope of their employment by the County or while performing duties related to the conduct of the County. Coverage applied above a self-insured retention of $2 million. Everest denied coverage for the judgment and defense fees and costs.

The County sued Everest alleging (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing, and (3) Declaratory Relief. Everest moved for summary judgment based on the contention that Insurance Code section 533 barred coverage. Section 533 provides: "An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured's agents or others." Section 533 has been held to be an exclusion in every California liability insurance policy and prohibits coverage for deliberate acts intended to cause harm or which the insured knows are highly likely or substantially certain to result in harm. Everest cited case law holding that retaliation is a willful act within the meaning of section 533.

JPA ADMINISTRATION AND COVERAGE CASES - CONTINUED

Summaries provided by Douglas Alliston, Alliston Law Office

The County argued that section 533 should not apply to it, since it was only vicariously liable for the acts of employees in its Sheriff's Department. The court disagreed, pointing out that the jury was not instructed as to vicarious liability and the verdict did not suggest the County was held only vicariously liable. More importantly, it pointed out that the California Supreme Court has held that the employer must take some action to be liable and that it is specifically the employer that is liable for retaliation under the FEHA, not non-employer individuals. Accordingly, the court granted summary judgment to Everest.

Pinto v. Farmers Ins. Exchange (2021) 61 Cal.App.5th 676

Summary: An insurer can have no liability for bad faith failure to accept a reasonable settlement offer unless the failure was unreasonable.

Discussion: A passenger rendered quadriplegic in a single-vehicle traffic accident offered to settle his claim against the insured vehicle's owner within 15 days, provided "the insured" provided a release, a declaration that the insured had not been acting within the course and scope of her employment at the time of the accident, and a copy of any applicable insurance policy.

The demand was mailed, which took five days to arrive. The person believed to be the driver was located and said she had no other insurance and was not in the scope of employment, but she did not cooperate in providing the insurer a declaration to that effect. The insurer investigated and asked for additional time to respond, which was not given, and asked for clarification about possible spousal claims and other defendants that might cross-complain, but nonetheless on the last day hand delivered a check for the per-person limits in exchange for a release of all insureds—driver and owner. The passenger rejected the tender on the ground that the insurer had failed to unconditionally and fully accept the passenger's offer to settle.

The passenger sued the owner and driver and then settled for payment of the policy limits, a stipulated judgment of $10 million, and an assignment of rights by the insureds. The passenger then sued the insurer for bath faith failure to settle. In the bad faith action, the jury rendered a verdict that the passenger made a reasonable settlement demand, that the insurer had failed to accept the reasonable settlement demand, and that a monetary judgment had been entered against the insured. The jury also found the driver had not cooperated with the insurer despite the insurer's reasonable efforts to obtain such cooperation, and that the lack of cooperation prejudiced the insurer.

The trial court declined to instruct the jury that the plaintiff must prove the insurer acted unreasonably, and the verdict form included no questions about the reasonableness of the insurer's conduct. The insurer argued that the jury's findings regarding the driver's prejudicial lack of cooperation established it had acted reasonably, but the trial court rejected these arguments and imposed judgment for the difference between $10 million and the policy limits.

On appeal, the insurer argued that it could not be liable for bad faith refusal to settle absent a finding of unreasonableness on its part. The plaintiff argued that the insurer's failure to accept a reasonable settlement offer was per se bad faith. The Court of Appeal, citing cases going back decades that held that bad faith liability required unreasonableness, held that the verdict could not as a matter of law support liability for bad faith due to the absence of any finding that the insurer acted in bad faith. Consequently, the judgment against the insurer was reversed.

Comment: The plaintiff almost certainly realized no jury would find the insurer's conduct unreasonable, so it was essential to argue that reasonableness was irrelevant. The facts of this case have been cited in support of pending Senate Bill 1155, which proposes standards for time-limited settlement demand claims against insurers, for example requiring at least 30 days' notice and certain material terms such as an unequivocal offer to settle all claims including liens and a full release of all insureds. While these rules may not apply to JPAs, claimants often try the same tactics with JPAs, which would prefer not to be the test case as to whether JPAs are immune to these types of claims.

WORKERS' COMPENSATION CASES

Summaries provided by Brenna Hampton, Hanna Brophy

Akbar Matani v. IHSS, California Department of Social Services, administered by York (2021) 86 Cal. Comp. Cases 507

Summary: The applicant is barred by the statute of limitations per Labor Code § 5405(a), when there is no credible evidence that the defendant had actual or constructive notice that a motor vehicle accident was work-related.

Discussion: Applicant was employed as a caregiver for Defendant. Applicant alleged injury to his brain, thigh, jaw, and other body systems that he claims arose out of and in the course of his employment as a caregiver for defendant during a motor vehicle accident on 09/12/2014, when he was driving his father.

Applicant filed the Application for Adjudication on 10/20/2017, more than 3 years after Applicant's date of injury. Applicant contended the statute of limitations was tolled under Reynolds v. Workmen's Comp. Appeals Bd. (1974) 39 Cal. Comp. Cases 768, because defendant should have known the MVA was industrial and failed to notify Applicant of his potential right to benefits as required by Labor Code section 5401(a).

The Supreme Court found in Reynolds that "when an employer fails to perform its statutory duty to notify an injured employee of his workers' compensation rights, and the injured employee is unaware of those rights from the date of injury through the date of the employer's breach, then the statute of limitations will be tolled until the employee receives actual knowledge that he may be entitled to benefits under the workers' compensation system." (Reynolds, supra, 12 Cal.3 d 762.) Thus, "... the remedy for breach of an employer's duty to notify is a tolling of the statute of limitation if the employee, without that tolling, is prejudiced by that breach." (Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin) (1985) 39 Cal. 3d 57, 64.) "An employee would be prejudiced without the tolling if he has no knowledge that his injury might be covered by workers' compensation before he receives notice from the employer." (Ibid.)

The WCJ found applicant's claim for injury allegedly sustained in a 09/12/2014 MVA is barred by the statute of limitations. Applicant filed a Petition for Reconsideration. The WCAB found that the standard to trigger the employer's duty of notification is not "should have known." Instead, section 5401 and Honeywell v. Workers' Comp. Appeals Bd. (Wagner) (2005) 35 Cal. 4th 24 require that defendant receive actual or constructive notice of a work-related injury requiring medical treatment, or causing time off work.

Applicant testified that he sent a fax about the accident, but could not recall what it said and the fax was not located within Defendant's records. Applicant also testified that he put a case worker on notice about the accident. This testimony was impeached when the case worker, who was familiar with applicant's family, indicated that she was not aware the applicant was in a car accident with his father until trial. Thus, The WCAB concurred with the WCJ that there was no credible evidence that defendant was put on actual or constructive notice that the MVA was a work-related incident that caused lost work time or required medical treatment, so as to trigger defendant's duty to provide applicant with DWC-1 claim form and notice of his potential workers' compensation claim. The WCAB further found that even assuming defendant's duty to provide notice was somehow triggered before applicant filed the Application for Adjudication of Claim, applicant's testimony demonstrated that he had actual knowledge he sustained potential industrial injury as result of motor vehicle accident more than one year prior to that filing.

Amarjeet Gill v. County of Fresno (Panel Decision)

Summary: A letter was an appropriate way to request a QME panel. Accordingly, the original QME panel was appropriate and that the panel obtained by Defendant was barred and therefore invalid.

Discussion: Applicant filed two separate cumulative trauma injuries, one to his neck, low back, shoulders, wrists, hands, and in forms of diabetes, alopecia and hiatal hernia through December 18, 2019, and to his wrists and hands through January 23, 2020. On January 22, 2020, Applicant filed the DWC-1 claim form with the employer and the parties stipulated that the employer received the claim form on that date. On January 23, 2020, the Applicant sent Defendant a letter requesting a medical-legal evaluation to determine compensability and offered various options for an AME. On January 30, 2020, Defendant issued a denial of the 2019 cumulative trauma injury.

The Applicant requested a QME panel in pain medicine for the 2019 cumulative trauma injury on February 7, 2020 and a panel issued on February 10, 2020. The January 23, 2020 letter was used as the document triggering the panel process. After the strike process, a replacement QME panel was issued due to one physician no longer evaluating at the address listed on the Panel. Defendant made a conditional strike and wrote to the Medical Unit asking it to invalidate the panel list, arguing that the letter dated January 23, 2020 does not constitute a valid basis for a panel QME request.

On April 15, 2020, Defendant submitted a request for a QME panel on the 2020 cumulative trauma injury in orthopedic surgery. Applicant filed a Petition for Order Revoking that panel, arguing that the denial letter was not a request for a medical evaluation, or in the alternative that the request was invalid because the physician from Applicant's pain medicine panel in the 2019 claim should address the contested issues from all injuries reported prior to the initial evaluation.

The Medical Unit responded that the issues raised were outside the Medical Unit's jurisdiction and the issues must be resolved by a Workers' Compensation Judge.

The matter proceeded to trial on October 6, 2020, when Applicant's three claims were ordered consolidated (there was an additional left shoulder injury on December 2, 2019). The Findings & Order found that Applicant's letter to defendant was not legally sufficient to trigger the ten-day period to request a QME panel, and that there was insufficient evidence to determine which panel was the appropriate panel in which to set the QME evaluation. Applicant sought removal with regard to the finding that the January 23, 2020 letter was not legally sufficient to trigger the time to request a QME panel.

The Panel relied upon the strict language of Labor Code section 4060, which permits a medical-legal evaluation "at any time after the filing of the claim form. Labor Code section 4062.2(b) requires the party requesting a medical-legal evaluation pursuant to Labor Code section 4060 wait until the first working day that is "at least 10 days after the date of mailing of a request for a medical evaluation." The Panel held that this is in direct conflict with the express language of the statute. The

WORKERS' COMPENSATION CASES - CONTINUED

Summaries provided by Randal C. McClendon of Cuneo, Black, Ward & Missler

Panel further held that to force a party to wait until a delay or denial issues could cause an unnecessary delay.

Banerjee v. Superior Court (2021) 69 Cal. App. 5th 1093

Summary: The Labor Code § 139.3 prohibition against self-referral does not apply to the same office facilities.

Discussion: Dr. Sanjoy Banerjee is a licensed pain management physician who provided medical treatment for workers' compensation patients. He was also a Qualified Medical Examiner, providing medical-legal evaluations in workers' compensation cases.

In 2005, he formed a Professional Corporation (PC) and in 2010 began operating the PC under the fictitious name "PPCC". In 2014, he formed two Limited Liability Corporations – Kensington Dianostics, LLC and Rochester Imperial Surgical Center, LLC. PPCC provided "physician-related services"; Kensington provided "diagnostic services"; and Rochester provided "surgical services (epidural injections)". All three businesses operated out of a single medical office located in Wildomar, California.

Between 2014 and 2016, Banerjee, through his business entities, billed Berkshire Hathaway Homestate Companies (BHHC) $157,797.01 for medical treatment provided to applicants. Each medical report submitted by Banerjee included the following attestation: "I have not violated LC § 139.3 and the contents of this report and bill are ... true and correct to the best of my knowledge. This statement is made under penalty of perjury."

In 2017, BHHC's investigative unit looked into Banerjee's billings and discovered that Banerjee had been billing under the three entities, all of which he owned. BHHC's records also showed that Banerjee had never disclosed his financial interest in the three entities.

BHHC's investigation was turned over to the Riverside County District Attorney's office which brought charges of insurance fraud (overbilling) and perjury (alleging that the attestation regarding LC § was false). Banerjee moved to dismiss the charges. That motion was denied. Banerjee then filed a Petition for Writ of Prohibition to direct the Superior Court to vacate the Order denying the Motion to Dismiss.

The Fourth District Court of Appeal granted the Petition as to the perjury charges and denied the petition as to the Insurance Fraud Charges.

As related to the perjury charges, the court reviewed LC § 139.3 and its prohibition against self-referral. They noted that LC § 139.3(a) makes it unlawful for a physician to refer a patient for specified services "if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral." LC § 139.3(e) provides that the prohibition against self-referral "shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a physician's office, or the office of a group practice ...".

They noted that the statute does not specify whether the "physician's office exception" in subsection e applies only if the services are provided at the same physical office location, through a single legal entity, or are provided both at the same physical office location and through a single legal entity.

The Court interpreted the "physician's office exception" to apply where the self-referral is made to an entity located within the same office facility. The rationale is that there would be little chance of confusion regarding a physician's financial interest in an entity which is located within the same office facility. Because all of Banerjee's business entities operated out of the Wildomar office location, the "physician's office exception" applied. Therefore, his statements regarding self-referral were not false and the perjury charges could not be sustained.

Godinez v. City of Los Angeles (2021) 2021 Cal. Wrk. Comp. P.D. Lexis 10

Summary: WCAB found that applicant's post-retirement earning capacity is the most accurate measure for calculating temporary disability benefits.

Discussion: Applicant worked as a firefighter for the City of Los Angeles for approximately 30 years. While employed by the City, he also periodically worked as a firefighting consultant for various television productions. In 2015, he entered the Deferred Retirement Option Plan (DROP) which contains an agreement that the applicant would work for another five years, at which time he would separate from the City.

On 2-14-2019, applicant filed an Application for Adjudication of Claim alleging cumulative trauma for the period 11-11-1984 through 2-14-2019. The parties agreed that applicant became temporarily disabled as of 12-8-2019. Defendant commenced payment of Labor Code § 4850 benefits.

On 4-7-2020, the applicant retired pursuant to the DROP agreement. Defendant ceased 4850 payments and refused to pay Temporary Disability benefits, arguing that by retiring, the applicant had removed himself from the labor market.

Applicant filed a Declaration of Readiness for Expedited Hearing. The matter was tried on the issue of applicant's entitlement to Temporary Disability post-retirement. On 8-5-2020, the Workers' Compensation Judge issued a Findings & Award finding that the applicant was entitled to Temporary Disability benefits. He relied on applicant's testimony and evidence that after separating from his employment, he continued to consult and teach. Therefore, he retained some post-retirement earning capacity.

In awarding Temporary Disability, the Workers' Compensation Judge calculated the indemnity rate based on the applicant's post-retirement earnings, rather than his earnings when he became temporarily disabled. Applicant filed a Petition for Reconsideration arguing that the Workers' Compensation Judge used the wrong wage basis in determining the Temporary Disability rate.

The WCAB denied reconsideration and affirmed the Workers' Compensation Judge's decision adopting the Workers' Compensation Judge's report and recommendation which analyzed the methods for calculating Temporary Disability indemnity rates set forth in Labor Code § 4453. While subsection (c)(1) provides for Temporary Disability calculations based on regular, full-time employment, subsection (c)(4) states: "Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments."

WORKERS' COMPENSATION CASES - CONTINUED

Summaries provided by Randal C. McClendon of Cuneo, Black, Ward & Missler

Temporary Disability indemnity is intended to substitute for an injured worker's lost wages. Therefore, the Temporary Disability indemnity rate should reflect the wages actually lost or anticipated to be lost. Here, the applicant had voluntarily retired pursuant to the DROP agreement. Accordingly, this was the best measurement of temporary disability benefits.

Hoadley v. American Airlines (2021) 2021 Cal. Wrk. Comp. P.D. Lexis 92

Summary: An applicant's reimbursement for self-procured medical treatment is limited to the official medical fee schedule.

Discussion: Applicant sustained an injury to his left knee on 11/2/2011. Defendant accepted the claim. Applicant moved to Oregon; however, he continued to receive medical treatment in California for which defendant provided transportation expenses.

The applicant's treating physician requested authorization for knee surgery which defendant authorized and arranged transportation. The applicant appeared on the day scheduled for surgery and was told that he would have to pay $9,056.00. He did so. He also received later bills which he paid for with his credit card. He paid a total of $17,263.00.

The applicant requested reimbursement for the amount of his out-of-pocket payments. The defendant reimbursed the applicant $4,307.43 which it argued represented the amount due under the Official Medical Fee Schedule. Applicant objected to the reduced payment and requested a hearing. In addition.

The case went to trial on the issues of permanent disability and the applicant's request for reimbursement. The Workers' Compensation Judge issued an Award of 4% permanent disability and found that the defendant was required to reimburse applicant $20,049.35 which included the out-of-pocket payments for the knee surgery.

Defendant filed a Petition for Reconsideration, arguing that it was responsible for payments for medical treatment only as set forth in the Official Medical Fee Schedule. The Petition was granted. The commissioners reviewed the Labor Code sections and cases outlining defendant's obligation to provide medical treatment. They noted that a defendant is not required to pay in advance for medical treatment and that Labor Code § 4603.2(b)(2) states that "payment for medical treatment provided or prescribed by the treating physician ... shall be made at reasonable maximum amounts in the Official Medical Fee Schedule pursuant to Labor Code § 5307.1." Consequently, the defendant is not required to pay for the surgery at a rate in excess of the fee schedule, even if applicant had paid for the treatment out of his own pocket.

Applicant Allowed to Add Psychiatric and Cognitive Disabilities Due to Synergistic Effect of Impairments

Hodson v. Vacasq, LLC (2021) 2021 Cal. Wrk. Comp. P.D. Lexis 170

Summary: Applicant was allowed to add psychiatric and cognitive disabilities due to the synergistic effect of impairments.

Discussion: The applicant was employed as a property manager who sustained injury when he slipped and fell down a staircase while cleaning ice and snow. He fell from the top step and hit his head on the last step. He filed an application for Adjudication of Claim alleging injury to the back, neck, bilateral upper extremities, left knee, and head. His symptoms included recurring cognitivie and psychiatric issues.

The parties utilized a Panel QME in physical medicine and rehabilitation who found disability to the neck, back, elbow, knee and headaches. Using the combined values chart, this report rated 51% permanent disability.

The cognitive and psychiatric symptoms were treated by Dr. Steven McCormack. He admitted the applicant for a one-month in-patient rehabilitation stay on two separate occasions. He wrote a PR-4 in which he provided 14% Whole Person Impairment for the cognitive impairment and 8% Whole Person Impairment for the psychiatric impairment. After adjustment and using the Combined Values Chart, these impairments rated 44% permanent disability.

The case was tried and the judge awarded 95% permanent disability by adding the combined orthopedic disabilities and the combined cognitive and psychiatric disabilities. pplicant filed a Petition for Reconsideration, arguing that the orthopedic, psychiatric, and cognitive disabilities should be added. Pursuant to 8 CCR 10961(c), the judge rescinded his Award and issued a new Award of 100% permanent, total disability.

Defendant filed a Petition for Reconsideration, arguing that the disabilities should have been combined, resulting in an overall 86% permanent disability. The petition was denied with the commissioners agreeing with the workers' compensation judge's analysis which relied on Dr. McCormack's explanation of the applicant's psychiatric and cognitive impairments. His report stated that "the cognitive and psychological symptoms interact whereby the cognitive symptoms cause the emotional symptoms to become more intense and the emotional symptoms cause greater difficulty in accessing and using cognitive functional abilities. The two considered together in this way cause more disability that each by themselves."

Mike Mateus v. High Sierra Pack Station, State Compensation Insurance Fund (2021) Cal. Wrk. Comp. P.D. LEXIS 5

Summary: Applicant failed to meet his burden of proving that an employment relationship existed under Labor Code section 3351.

Discussion: Applicant claimed that, while employed by defendant as a packer on September 9, 2018, he sustained an industrial injury to his bilateral toes and feet. Applicant had a horseshoeing business and when defendant was short-staffed, Applicant would occasionally work as a packer at High Sierra Pack Station.

On the day of applicant's injury he accompanied a group of campers on a pack trip arranged by defendant. Applicant stayed with the ground and worked at the campsite cooking and tending to the camp. After the trip the owner of High Sierra, Mr. Cunningham, paid applicant's finder's fee of $300.00, but did not pay applicant for his time at the campsite. Applicant believed he would be paid for the time at the campsite, but at no time did he actually discuss payment with the defendant's owner. The defendant's owner never requested applicant to stay with the group nor did he hire him to do so.

WORKERS' COMPENSATION CASES - CONTINUED

Summaries provided by Randal C. McClendon of Cuneo, Black, Ward & Missler

Both applicant and Mr. Cunningham testified that they did not discuss employment for applicant as a packer for High Sierra before the trip. In applicant's previous packer trips, payment was always discussed beforehand. Applicant contended he told High Sierra that he planned to stay in camp with the party. However, he did not tell Mr. Cunningham that he expected to be paid for his time at the campsite. Most importantly, applicant did not ask to be paid for his time or discuss payment with Mr. Cunningham.

Based on that, the workers' compensation administrative law judge (WCJ) found that applicant failed to meet his burden of proof that he was employed by defendant, on September 17, 2018. Given the finding of no employment, the WCJ found that the issue of injury arising out of and in the course of the employment (AOE/COE) was moot and ordered that applicant take nothing on his claim.

Applicant sought reconsideration from the Findings of Fact and Order issued by the WCJ. The WCAB panel majority affirmed the WCJ decision. In holding for the defendant, the WCAB explained the traditional features of an employment contract are (1) consent of the parties, (2) consideration for the services rendered, and (3) control by the employer over the employee. While those common law contract requirements are not to be rigidly applied, these factors are absent in this case. The WCAB held that the record did not support existence of an employment relationship under Labor Code 3351 given the lack of offer and acceptance; lack of consideration; and absence of a meeting of minds.

Singerman v. Nike, Inc. (2021) 2021 Cal. Wrk. Comp. P.D. Lexis 81

Summary: Applicant was entitled to pursue a supplemental job displacement benefit voucher despite settling claim by compromise and release.

Discussion: Applicant was employed as an associate in a Nike retail store. On 3-4-2018, she sustained injury to her spine. One year later, on 3-21-2019, the parties entered into a Compromise & Release which settled the issues of Permanent Disability and future medical treatment. The settlement documents included language in Paragraph 9 stating "The parties are not done with discovery but wish to settle now. The applicant knows she has the right to a Panel QME but wishes to forgo that right and settle all issues at this point". The Compromise & Release was approved by a Workers' Compensation Judge.

Six months later, the applicant obtained a report from the physician who had been serving as her Primary Treating Physician for the workers' compensation claim. The report indicated that the applicant was permanently disabled. However, the report did not indicate that the doctor was "treating" the applicant. Rather, it stated that the doctor was seeing the applicant "in consultation". Further, the report did not contain the declaration required by LC §§ 139.3 and 5703.

Based on that report, the applicant filed a Petition seeking an order that she was entitled to the Supplemental Job Displacement Benefit Voucher. The issue was tried on 7-15-2020. The Workers' Compensation Judge issued a Findings & Order on 10-15-2020 in which he found the doctor's report was inadmissible and that the applicant had failed to meet her burden of proving entitlement to the voucher.

Applicant filed a timely Petition for Reconsideration, arguing that Dr. Sisto's report established her right to the voucher; that the Workers' Compensation Judge's finding that the applicant was not entitled to the voucher was premature because no Permanent and Stationary/MMI report had been issued in the case; and that the Workers' Compensation Judge should have ordered further development of the record to address any potential deficiencies in Dr. Sisto's report.

The defendant argued that because the Compromise & Release settled the issue of Permanent Disability, the WCAB lacked jurisdiction to adjudicate the voucher issue; that Dr. Sisto's report is inadmissible because it did not contain the Labor Code §§ 139.3 and 5703 declarations; and that the applicant failed to meet her burden of proof on entitlement to the voucher. The Board Panel rejected the defendant's arguments, granted reconsideration, and returned the matter to the trial judge with instructions to further develop the record.

Addressing the issue of jurisdiction, the panel noted that the Compromise & Release settled the issues of Permanent Disability, not entitlement to the voucher and that the WCAB retains jurisdiction to hear any disputes that may arise out of a settlement. Addressing the voucher issue, the commissioners noted that Labor Code § 4658.7 entitles an injured worker to a voucher if the injury causes Permanent Disability and the employer fails to make an offer of regular, modified, or alternative work within 60 days after receiving the Physician's Return to Work and Voucher Report.

Skelton v. Workers' Comp. Appeals Bd. (2019) 39 Cal. App.5th 1098

Summary: The applicant was not entitled to temporary disability indemnity for wage loss arising from time off from work to attend appointments for medical treatment because her injuries did not render her incapable of working during the time she took off from work.

Discussion: Applicant sustained an injury to her ankle in July 2012 and her shoulder in July 2014 while working for the Department of Motor Vehicles (DMV). Separate applications were filed. The parties disputed whether applicant was entitled to temporary disability for wage loss for time missed at work to attend medical appointments.

Defendant SCIF contended that under Department of Rehabilitation v. Workers' Comp. Appeals Bd. (2003) 30 Cal.4th 1281 [135 Cal. Rptr.2d 665, 70 P.3d 1076], applicant was not entitled to temporary disability indemnity to compensate her for taking time off from work for medical treatment, but it acknowledged that applicant was entitled to compensation for wage loss for attending medical-legal evaluations. The WCJ found for defendant under Department of Rehabilitation.

Applicant petitioned for reconsideration arguing entitlement to temporary disability indemnity for all medical appointments after she exhausted her sick and vacation credits and until she was declared MMI. Applicant contended that, after returning to work full time with restrictions, she had to attend appointments with her primary doctors and the QME. Applicant missed work to attend the appointments, and her paycheck was being reduced because she exhausted her sick and vacation leave.

Responding to the petition for reconsideration, defendant contended applicant was not entitled to temporary disability benefits under Department of Rehabilitation because she returned to work, and therefore the WCJ's findings and order should be sustained.

WORKERS' COMPENSATION CASES - CONTINUED

Summaries provided by Randal C. McClendon of Cuneo, Black, Ward & Missler

In his report and recommendation on the petition, the WCJ noted that section 4600 subdivision (e)(1) provides an applicant can receive temporary disability income for each day of wage loss in submitting to a med-legal evaluation. However, applicant failed to provide evidence of wage loss or information to that end.

The WCAB found for the defendant. The appellate court affirmed the WCAB's decision. The court concluded applicant was not entitled to temporary disability indemnity for wage loss arising from her time off from work to attend appointments for medical treatment. The employer's obligation to pay temporary disability benefits was tied to petitioner's actual incapacity to perform the tasks usually encountered in her employment and the wage loss resulting therefrom. Neither petitioner's time off from work nor her wage loss was due to an incapacity to work. Rather, these circumstances were due to scheduling issues and her employer's leave policy. Because petitioner's injuries did not render her incapable of working during the time she took off from work and suffered wage loss, petitioner was not entitled to temporary disability benefits for that time off or wage loss.

CIVIL RIGHTS CASES

Summaries provided by Noah G. Blechman, McNamara, Ambacher, Wheeler, Hirsig & Gray

Stewart v. Aranas (9th Cir. 2022) 32 F.4th 1192

Summary: Panel affirmed the district court's order denying qualified immunity to prison officials, who adopted a "wait and see" approach with the Plaintiff's prostate issues. While mere disagreement with a treatment plan is not deliberate indifference, continuation of the same treatment in the face of obvious failure is deliberate indifference.

Discussion: Plaintiff was an inmate at the Southern Desert Correctional Center. He began complaining of discomfort in his lower abdominal and back area. Between 2013 and 2015, the plaintiff continued to have pain, was unable to urinate, and then, he began to experience inflammation in the affected areas. Plaintiff continued to complain, but nothing changed about the plaintiff's treatment. In 2015, plaintiff was transferred to Warm Springs Correctional Center, where the medical staff drained 14 pounds of fluid from his bladder and urinary tract. He now suffers from long-term health issues that include stage three kidney disease and chronic pain. Plaintiff's lawsuit proceeded under two claims for deliberate indifference to serious medical needs. Defendants filed a motion for summary judgment, which the district court denied.

The only issue on appeal was if the defendants were entitled to qualified immunity and, the only remaining issue in the qualified immunity analysis was if the constitutional right was clearly established. The defendants' argued no clearly established law barred their "wait and see" treatment plan for Plaintiff Stewart's prostate. The Ninth Circuit disagreed, noting, prison officials know they violate the constitution when they persist in treatment known to be ineffective. There was evidence in the record that the plaintiff suffered from intractable pain for three years that interfered with his daily activities. The Ninth Circuit ruled the officials were not entitled to qualified immunity and upheld the trial court's denial of the motion for summary judgment.

Andrews v. City of Henderson (9th Cir. 2022) 35 F.4th 710

Summary: Panel affirmed the district court's denial, on summary judgment, of qualified immunity to two police officers. Plaintiff alleged the officers used excessive force when, without warning, they tackled the plaintiff and fractured his hip. Defendants believed they had probable cause to arrest the plaintiff for a series of armed robberies. The panel further held that Blankenhorn v. City of Orange, clearly established that an officer violates the Fourth Amendment by tackling and piling on top of a relatively calm, non-resisting suspect who posed little threat of safety without prior warning and without attempting less violent means of arrest.

Discussion: On January 3, 2017, detectives attempted to arrest the plaintiff as he emerged from the Henderson Municipal Courthouse. The detectives were in plain clothes. The municipal courthouse had a metal detector required for entry. The detective approached the plaintiff without identifying themselves. Apparently without warning, one detective tackled the plaintiff. Other detectives jumped on the plaintiff as he was on the ground. The takedown fractured the plaintiff's hip. The detectives filed a motion for summary judgment, relying on qualified immunity. The trial court found a dispute of material fact as to the reasonableness of the force. The trial court found that there was no clear need to use force. The Ninth Circuit evaluated the force under the well-known Graham factors. The Court indicated that a physical tackle that results in severe injury can constitute a significant use of force. The Ninth Circuit held that the government's interest in using force under these facts was minimal. While armed robbery is a serious crime, the plaintiff was not engaged in any criminal conduct (violent or non-violent) at the time of his arrest. The detectives, in the light most favorable to the plaintiff, knew he was unarmed (he had just come from the courthouse). There was no evidence that the plaintiff posed a threat to officers or the members of the public, as he was not exhibiting any aggressive behavior and there were no close bystanders. The plaintiff could not have been attempting to flee because he did not know the identities of the officers. There was no warning before the officers used force. Finally, the Ninth Circuit indicated that the serious nature of the crime does not necessarily give rise to a strong governmental interest to use force. Precedent requires the focus to be on the immediate threat of harm.

The Ninth Circuit then held that the right was clearly established at the time the officers used the force. The Court recognized that the Supreme Court has increasingly reiterated that meeting the clearly established standard requires specificity and cannot be defined at a high level of generality and such specificity is particularly important in the Fourth Amendment context. The Court then analogizes Andrews to Blankenhorn. Blankenhorn evaluated the use of a "gang tackle" on a plaintiff suspected of misdemeanor trespass at a shopping mall. This, according to the Court, clearly established that the force used on the plaintiff, who was suspected of a serious felony, but was "relatively calm" and not resistive, without warning, could be unreasonable. The only relevant distinction between Andrews and Blankenhorn, was the nature of the suspected crimes and that many of the differences were more favorable to Andrews than the facts in Blankenhorn. The Court held that it was "beyond debate" that the officers' actions were objectively unreasonable under the circumstances. Further, the Court rejected that the reliance on Blankenhorn was defining the right "at a high level of generality." The Ninth Circuit upheld the trial court's denial of summary judgment.

Senn v. Smith et al. (9th Cir. 2022)2022 U.S. App. LEXIS 7129

Summary: Prior to this opinion, the Ninth Circuit, in an unpublished opinion, affirmed the trial court's denial of qualified immunity. The panel denied fees because plaintiff was not a "prevailing party" within the meaning of section 1988(b).

Discussion: Plaintiff alleged that the defendants violated her Fourth Amendment rights after she was allegedly pepper sprayed her without adequate justification. The district court denied the officers' motion for qualified immunity. After the Ninth Circuit upheld the denial of qualified immunity, Plaintiff sought attorney's fees pursuant to section 1988(b). The Ninth Circuit denied plaintiff attorneys fees. Relying on the en banc decision in Cooper v. Dupnik, 963 F.2d 1220 (9th Cir 1992), the Court explained that even though the plaintiff defeated a motion for qualified immunity, the plaintiff has not yet prevailed on any claim. "Section 1988 does not provide for attorney's fees where a party merely establishes a right to a trial". While a portion of Cooper was later overruled by the Supreme Court, the attorney's fees provision remains good law. A party is not a prevailing party until they have prevailed on the merits of at least one claim.

CIVIL RIGHTS CASES - CONTINUED

Summaries provided by Noah G. Blechman, McNamara, Ambacher, Wheeler, Hirsig & Gray

Seidner v. De Vries (9th Cir. 2022) 39 F.4th 591

Summary: The district court denied the defendant's motion for summary judgment, holding that there was a material dispute of fact as to the reasonableness of the force used and that the right was clearly established at the time the force was used. The Ninth Circuit reversed, agreeing that there was a material dispute of fact as to the reasonableness of the force used, but that there was no case law on point that established the officer's actions were unlawful, beyond all debate.

Discussion: Plaintiff Seidner was riding his bicycle without a front light, in violation of Arizona law. Instead of yielding to the officer when he attempted to stop him, plaintiff fled. The officer pulled his car in front of plaintiff, forming a roadblock. Plaintiff ran into the car and suffered injuries, including a dislocated wrist. The Court had to accept the facts in the light most favorable to plaintiff, specifically that the officer did not stop with enough space or time for plaintiff to avoid the collision. However, the court was not bound by plaintiff's contention that he did not intend to flee because "construing the facts most favorable to Seidner does not require us to turn a blind eye to facts that clearly contradict [the plaintiff's] telling of events." The unchallenged video recording showed the plaintiff riding right past the officer and pedaling away "hard." The unchallenged video recording recorded plaintiff telling the officer, after he stopped, that he did not stop because he was scared. Ultimately, the Court held that there was a material dispute of fact as to the reasonableness of the officer's roadblock. While the officer employed intermediate force, the government had some interest in detaining plaintiff, because even though he only committed a minor traffic violation, "an attempt to flee gives law enforcement a greater interest in affecting a stop." Additionally, in response to the concurrence, the Court indicated that while there was a material dispute of fact as to the reasonableness of the force, it was not unreasonable as a matter of law.

The Court then evaluated the "clearly established" prong of the qualified immunity analysis. Clearly established law should not be defined at a high level of generality. The district court relied on Brower v. County of Inyo in concluding the right was clearly established. The Ninth Circuit found that Brower, a case where officers set up a roadblock using an 18 wheeler across the highway, concealing it so the suspect could not avoid it, and evaluated if that action was a seizure, did not clearly establish the right at issue in this case, an excessive force case. The Court indicated no clearly established law regarding if the use of roadblocks placed where a bicycle, or other non-motorized vehicle, could not avoid them constitutes excessive force. Bicycles are smaller and lighter and slower than motorized vehicles, though the riders are more vulnerable, all distinctions that make this case factually different from the ones relied on by plaintiff. Therefore, the officer was entitled to qualified immunity and the Court reversed the trial court's denial of summary judgment.

Kubiak v. County of Ravalli (9th Cir. 2022) 32 F.4th 1182

Summary: County filed a motion for summary judgment on all claims. While the motion was still pending, the County served a Rule 68 offer of $50,000 plus costs. Before the close of the rule 68 acceptance window, the district court granted the motion for summary judgment, but did not enter judgment, instead indicating the court would enter judgment "in due course." The plaintiff accepted the Rule 68 offer an hour after the court issued the opinion granting the motion for summary judgment. The district court held that it was bound by the offer of judgment and entered judgment in favor of the plaintiff. PRACTICE POINTER: Be very aware of these nuances as a rule 68 offer cannot be withdrawn after it is made and a significant case change, like order on a dispositive motion, can occur within the two-week window and can allow Plaintiff to accept a still pending offer despite a defense win on the motion.

Discussion: The features of a Rule 68 offer are well-known, plaintiff may accept the offer any time within fourteen days, and if the plaintiff accepts, the court must enter judgment accordingly. Plaintiff in this case sued the defendants claiming his arrest and detention violated his First, Fourth, and Fourteenth Amendment rights. The County filed a motion for summary judgment on April 20, 2021. The County served a Rule 68 offer of judgment for $50,000 plus costs, including reasonable attorney's fees. Less than a week after the offer, on June 9, 2021, at 4:09 p.m., the district court entered an order granting the defendants motion for summary judgment, but indicating the judgment would be entered at a later time. Six minutes after the order, defense counsel emailed plaintiff's counsel indicating the Rule 68 offer was withdrawn. Within an hour, plaintiff's counsel filed with the trial court acceptance of the Rule 68 offer. The county objected to the entry of judgment and requested the district court to deem the offer a nullity as of the issuance of its order granting summary judgment.

The Ninth Circuit agreed with the reasoning of the trial court. "We employ the 'traditional tools of statutory construction' to interpret the Federal Rules of Civil Procedure." A Rule 68 offer is non-negotiable once made. A Rule 68 offer allows no discretion on the part of the district court. If the Plaintiff accepts the offer, the clerk of court automatically enters it. Rule 68 is a command that the clerk must enter judgment. Under the Rule, the district court is designed to function in a mechanical manner.

Furthermore, according to the Rule's text, the offer must remain open for fourteen days. No other outcome is contemplated. The Ninth Circuit agreed with other circuits that an offer of judgment must remain open for the full period provided by Rule 68 noting that Eighth Circuit has precedent that indicates a plaintiff may accept a Rule 68 offer after the entry of final judgment. It is not clear if the County could have included a term regarding the pending summary judgment motion in its Rule 68 offer. The Ninth Circuit indicated that they were expressing no view on whether the entry of a final judgment would nullify an outstanding Rule 68 offer. The Court affirmed the district court's entry of judgment in favor of the Plaintiff, pursuant to the Rule 68 offer.

Hughes v. Rodriguez (9th Cir. 2022) 31 F.4th 1211

Summary: The Ninth Circuit affirmed in part and reversed in part summary judgment in favor of law enforcement officials. Plaintiff had escaped from prison and had been on the run for three weeks. A court may consider facts in the light depicted by bodycam footage to the extent the footage and the audio blatantly contradict testimonial evidence. Viewing the post handcuffing evidence in the light most favorable to the plaintiff, as the footage did not blatantly contradict plaintiff's claims, the alleged post handcuffing punching and dog biting by the canine officer could be excessive force under the Eighth Amendment. The claims against other officers on failure to intervene and failure to intercede failed as a matter of law.

CIVIL RIGHTS CASES - CONTINUED

Summaries provided by Noah G. Blechman, McNamara, Ambacher, Wheeler, Hirsig & Gray

Discussion: Plaintiff escaped from prison while working on a highway work crew and was on the run for three weeks. During this time, the San Joaquin County Sheriff's Office joined with the California Department of Corrections Fugitive Apprehension Team. Prior to locating Hughes, officers considered the following factors in determining Hughes posed a danger to the public and the arresting officers: Hughes had prior convictions for stolen vehicle, weapons possession, and evading a police officer with disregard for safety, Hughes was affiliated with a street gang, Hughes was trained in mixed martial arts, and Hughes was possibly under the influence of methamphetamine.

When the police located plaintiff, the Stockton Police Department and the San Joaquin County Sheriff's Department created a perimeter around the neighborhood and requested air support from California Highway Patrol. Officers used a loud speaker to urge Hughes to exit the home, but they were unsuccessful. Four officers, including the canine officer Michael Rodriguez, entered the home to detain the plaintiff. Bodycam footage demonstrates that the plaintiff did not come out or reply to the officers when they demanded he come out of the bedroom. Hughes did not come out with his hands up as he claimed. The footage also clearly refuted plaintiff's claim that he was beaten for at least two minutes. However, the footage is not clear on the post-handcuffing force, if any was used.

Typically, when ruling on a motion for summary judgment the district court is required to view the facts in the light most favorable to the nonmoving party, or here, the plaintiff. However, to the extent the plaintiff's story was blatantly contradicted by the video footage, the district court properly relied on the footage. Based on those facts, the Court found that initial use of the canine reasonable under the circumstances. Not all of the assertions from the plaintiff were blatantly contradicted by the video evidence. Thus, while the first use of the canine was reasonable under the circumstances, there was a triable issue of fact as to if any post-handcuffing force was used by Officer Rodriguez in violation of the Eighth Amendment. The Ninth Circuit further evaluated and denied qualified immunity on the grounds that it was clearly established at the time that beating a handcuffed convict violates the Eighth Amendment, relying on Hudson v. McMillian, 503, U.S. 1, 4 (1992).

Assuming that Officer Michael Rodriguez used the alleged post-handcuffing force, the other officers present are not liable under either the failure to intervene or integral participant theories, as a matter of law. The other officers, who were not canine handlers, cannot be held liable for fleeting acts, which they did not commit, came without warning, and could not have prevented.

City of Tahlequa v. Bond (2021) 595 U.S. _____, (per curiam)

Summary: Decedent was shot and killed by police officers when he raised a hammer and made furtive motions towards an officer. The Tenth Circuit reversed the district court's grant of summary judgment in favor of the officers. The Supreme Court reversed the Tenth Circuit, holding that the officers plainly did not violate any clearly established law.

Discussion: Decedent was at his ex-wife's home when she called the police to remove him from the premises. He was intoxicated and refused to leave. Decedent did not live at the residence, but had tools in the garage. All the officers on scene knew that the Decedent was the resident's ex-husband, that he was intoxicated, and he would not leave his home. Decedent retreated into the garage. After a short time, decedent grabbed a hammer and raised it at the police as if he was holding a baseball bat. Body worn camera footage shows the officers commanding the decedent to put down the hammer. Instead of putting down the hammer, he moved from behind the workbench directly in line with one of the officers. The officers shot and killed him.

The district court granted summary judgment in favor of the officers. The Tenth Circuit reversed, holding that per Tenth Circuit Precedent, an officer could be liable for a shooting if officers' reckless or deliberate conduct created a situation requiring deadly force. In the Tenth Circuit's opinion, the officers cornered the decedent in the back of the garage and recklessly created the need to use force. The Supreme Court, without evaluating whether the officers violated the Fourth Amendment, or if recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment, held that the officers did not violate a clearly established right. The Supreme Court reiterated its point that it has repeatedly told the circuit courts not to define "clearly established rights" at a high level of generality. Not one of the decisions relied on by the Tenth Circuit came close to establishing the officers' conduct was unlawful. The Supreme Court reversed the judgment of the Tenth Circuit denying qualified immunity.

Hyde v. City of Wilcox (9th Cir. 2022)2021 U.S. App. LEXIS 3179

Summary: Decedent tried to flee from officers, who used physical force and a Taser to subdue him. The decedent died five days later, after he stopped breathing in a restraint chair. Defendants filed a motion to dismiss which the district court denied in full. The Ninth Circuit affirmed in part and reversed in part.

Discussion: Accepting facts alleged in the complaint as true, as is required at the motion to dismiss stage, Decedent was arrested on suspicion of driving under the influence, and booked around 1:30 a.m.. Decedent was mentally ill, and had been diagnosed with schizophrenia, ADHD, and bipolar disorder, conditions which he controlled with six medications, including Adderall. Decedent did not receive his prescribed medications while at the jail. He began behaving erratically. A medic pulled him from his cell to examine a head wound caused by the Decedent running head first into a wall. Once outside of his cell, he ran. A scuffle ensued that included physical force and tasering to subdue him. The complaint alleged that after he was handcuffed, an officer delivered as many as eleven closed fist strikes to the legs of Decedent, among other post-handcuffing force. Officers then placed Decedent in a restraint chair. Approximately twenty minutes later, Decedent stopped breathing. Decedent regained a pulse, but had to be placed on life support. He died five days after the incident. Decedent's parents filed the instant action, Defendants moved to dismiss the complaint.

The Ninth Circuit agreed that the complaint plausibly alleged two of the officers violated clearly established constitutional rights, but held that the force used by officers prior to Decedent being subdued and restrained was reasonable. The complaint failed to plausibly allege that the jail officers knew about the decedent's mental health condition. The officers, prior to subduing decedent, used justified intermediate force, based on the following considerations: (1) Decedent violently scuffled

with officers; (2) Officers had not yet restrained decedent; (3) Officers were forced to make split second judgments in tense, rapidly evolving circumstances. The force used after decedent was handcuffed and shackled, and was no longer resisting was unreasonable. Defendants' argument that the complaint never plausibly alleged when the decedent stopped resisting was not persuasive, as the Court had to construe the complaint in favor of the non-moving party. The two officers who allegedly used force post-handcuffing violated clearly established law, citing precedent that the use of a chokehold on a non-resisting restrained suspect is unreasonable. Similarly, the Ninth Circuit has precedent that the use of a Taser is excessive if the suspect does not pose an immediate threat. The Court denied qualified immunity for the two officers who allegedly used force after the decedent was handcuffed, and upheld the district court's denial of the motion to dismiss as to those officers and claims. The Court reversed the district court denial for the motion to dismiss as to the remaining individual defendants on the excessive force claims.

Plaintiffs finally alleged claims for denial of medical care claims and municipal liability claims. The Court held the complaint did not plausibly allege the individual defendants violated the decedent's right to adequate medical care. Plaintiffs' claims were based on the assertions that the officers denied the decedent his medications and they did not provide him medical care after the altercation. The complaint failed to allege any facts that the individual defendants played any role in denying the decedent his medications. The complaint also failed to allege that the four officers who passed decedent when his head rolled back were any of the named defendants. There is no allegation that the named officer who walked by his "breathless body" noticed that decedent was unconscious. Finally, once the officers noticed he was pulseless, they immediately tried to revive him. The plaintiffs' municipal liability claims were similarly deficiently plead. The district court incorrectly agreed that this single incident demonstrated both that the training was defective and the supervisory defendants were deliberately indifferent to the unconstitutional consequences. An inadequate training policy cannot be inferred from a single incident. The Court reversed the denial of the motion to dismiss on the medical care claims and the failure to train claims.

Ochoa v. City of Mesa (9th Cir. 2022) 26 F.4th 1050

Summary: The district court correctly granted summary judgment on the Fourteenth Amendment right to familial association claim because the officers did not have time to deliberate their actions, and under the purpose to harm test, the conduct was not conscience shocking. The district court correctly applied the purpose to harm test.

Discussion: In 2016, Mesa police officers shot and killed Sergio Ochoa, decedent. The decedent had been fighting with his ex-girlfriend, who called 911 and told the dispatcher a gun was involved. The caller also told dispatch decedent used drugs and was under the influence of drugs. Decedent fled when encountered by the police. Decedent ran into a third party's home during his flight. Officers entered the home and saw decedent entering the backyard through a sliding glass door. Decedent had two knifes in one hand and refused to commands to drop the knives. Body camera footage captured what happened next. One officer fired a beanbag round, one officer released a canine, and in response to one or the other, decedent took a step sideways (and asserted by plaintiffs, away from the officers). Officers then fired about 30 shots at decedent and he fell to the ground on his stomach, with at least one hand near his waistband under his body. Decedent did not respond to commands to show his hands. The officers ordered the canine to drag decedent so his hands were visible. Decedent died at the scene. His children and mother field the instant litigation asserting a Fourteenth Amendment claim and a state law wrongful death claim. At oral argument, plaintiffs confirmed they were not asserting any Fourth Amendment claims.

The applicable substantive law regarding plaintiff's deprivation of familial association claims per the Fourteenth Amendment is whether or not the officer's conduct shocks the conscience. The test to determine if actions are "conscience shocking" turns on if the officers had time to deliberate prior to their conduct. On these facts, the officers had no time to deliberate prior to shooting decedent, thus, the facts support the district court's application of the purpose to harm test. The purpose to harm test is more demanding of the plaintiff, and defines conscience-shocking behavior as conduct undertaken with a purpose to harm, unrelated to objective law enforcement objectives. The officers' conduct was consistent with legitimate law enforcement objectives and did not violate the Fourteenth Amendment. Undisputed facts showed that the officers encountered a frantic man who said decedent did not belong in the house and who was evacuating children from the home, decedent appeared angry and agitated and had at least one knife he refused to put down inside the house, and two knives when encountered in the backyard. When decedent took a step instead of dropping the weapons, the officers had to make a snap decision about his intentions about the threat decedent posed. Decedent's failure to follow police commands forced them to react instantly, without deliberation. At least four law enforcement objectives were apparent, officer safety, protection of the occupants still inside the home, apprehension of an apparently dangerous suspect, and protection of the public at large in the event the decedent escaped from the backyard. The Court affirmed the grant of summary judgment in favor of the officers.

Estate of Aguirre v. County of Riverside (9th Cir. 2022) 29 F.4th 694

Summary: There was a material dispute of fact as to whether the decedent was raising the bat in a threatening manner when he was shot. Further, the officer failed to give a warning prior to using deadly force. Finally, the coroner's report indicated decedent had been shot twice in the back. The Ninth Circuit affirmed the district court denial of qualified immunity.

Discussion: On April 15, 2016, Sgt. Ponder responded to a call of a person destroying property with a bat-like object and threatening a woman with a baby. Upon arriving, the officer exited his patrol car with his gun drawn and ordered decedent to drop the stick he was holding. He did not drop the stick. The officer attempted to use pepper spray, but it was not effective. Decedent may have then retreated and retrieved a baseball bat from the nearby bushes. Accounts conflict, with some eyewitnesses indicating decedent advanced on the officer with at least one weapon raised, while others say the decedent did not move, with the stick pointing down. The officer then fired his weapon six times without issuing a warning. Three of decedent's children filed this action. Defendant moved for summary judgment. The district court granted the motion on the claims against the county and the Fourteenth Amendment claim, but denied summary judgment on the Fourth Amendment claim and ruling the officer was not entitled to qualified immunity.

CIVIL RIGHTS CASES - CONTINUED

Summaries provided by Noah G. Blechman, McNamara, Ambacher, Wheeler, Hirsig & Gray

As a threshold matter, plaintiffs unsuccessfully challenged the jurisdiction of the appellate court, arguing the finding that there are triable issues of fact precluded summary judgment and that the officer "waived" his qualified immunity arguments by failing to present the facts in the light most favorable to the plaintiff. The Ninth Circuit held that they "undoubtedly" had jurisdiction over the appeal and that advocacy and a defense friendly presentation of facts does not deprive the Court of jurisdiction.

Turning to the qualified immunity claim, the Court held the officer's conduct, construing all facts in the light most favorable to non-movant, plaintiffs, was not objectively reasonable. There was a material dispute of fact as to whether decedent was in fact coming towards the officer "on the attack." There was a dispute of fact as to how decedent was holding the weapon at the time he was shot. Taking plaintiff's facts as true, decedent posed no threat and the use of deadly force was unreasonable. Relying on Garner, the Court held that the right, when a suspect poses no immediate threat to the officer or others deadly force is not justified, was clearly established. The Court's asserts its reliance on Garner is appropriate based on the recently decided Rivas-Villegas v. Cortesluna, 142 S. Ct. 4, 8 (2021) (per curiam), which reiterated that in an obvious case Garner, though cast at a high level of generality, can clearly establish that a constitutional violation has occurred. The Court also relied on Hayes, wherein the court denied qualified immunity when officers shot a suspect 6-8 feet away when he was holding a knife tip down and was not attempting to evade arrest, and George v. Morris, wherein the court denied qualified immunity when officers shot a suspect who emerged from his home holding a pistol, pointed down. Officers must not use deadly force against non-threatening suspects, even if those suspects are armed. The Court affirmed the denial of qualified immunity to the officer.

Russell v. Lumitap (9th Cir. 2022) 31 F.4th 729

Summary: The panel affirmed in part and reversed in part. The on-call doctor and one of the nurses had access to facts from which an inference could be drawn that the decedent was at serious risk. Despite access to those facts, the nurse did not call the paramedics nor the on call doctor. The on call doctor, who had not examined the decedent, could not have reasonably believed it was constitutionally adequate not to examine the patient with decedent's symptoms when decedent had not responded to a dose of nitroglycerin. Nurse Trout, who did promptly call the on-call physician was not deliberately indifferent. Finally, Nurse Lumitap should have inferred the decedent was at serious risk if not hospitalized.

Discussion: On January 8, 2016, Patrick John Russel (decedent) was arrested and booked in the Orange County Jail. Later, he was hyperventilating, vomiting and dry heaving. He told Nurse Teofiolo he was having an anxiety attack and could not breathe. She gave him Pepto Bismol, but did not notify the doctor on duty or paramedics. Approximately an hour and a half after that, he complained of chest pain, but indicated he had done 30 pushups the day prior. Nurse Teofiolo recommended he stretch and referred him for a mental health screening. In the light most favorable to the plaintiffs, decedent was in distress and unable to express his needs clearly. When decedent arrived at the Intake Release Center, Nurse Trout saw him and he complained of chest pain and told her the pain was radiating to his arm and jaw. He was short of breath and his hands and feet were numb. He had vomited on the bus on the way there. In response, Nurse Trout gave him nitroglycerin. His pain continued, and Nurse Trout called Dr. Le, the on-call physician. Dr. Le ordered her to administer Motrin and refer to mental health. The jail has a policy to call paramedics for inmates' experienced acute angina not subsiding with the first dose of nitroglycerin. Dr. Le never examined decedent, though he was only 15 minutes away. An hour later, decedent complained to Nurse Teofilo that he was experiencing flu-like symptoms. At 5:32 a.m., (3.5 hours after the last visit with Nurse Teofilo) decedent returned complaining of severe chest pain and was hyperventilating. He was also tachycardic. Nurse Teofilo called Nurse Trout and asked why decedent was not hospitalized. She ultimately decided not to call paramedics; she administered more Motrin and kept decedent for observation. At 7:00 a.m., decedent complained of continued chest pain to Nurse Lumitap and he was in physical distress. At 10:43 a.m., Nurse Lumitap consulted a "non-party" nurse, who advised her to maintain the same course of treatment. Decedent continued to deteriorate, and Nurse Lumitap continued to maintain the same course of treatment. By 12:20 p.m., decedent was tachycardic, pale, sweating profusely and was unresponsive. Nurse Lumitap then called paramedics, who arrived shortly thereafter. Decedent soon died and an autopsy revealed he died from an aortic dissection. Decedent's parents sued Nurse Teofilo, Nurse Trout, Nurse Lumitap, and Dr. Le. At the summary judgment stage, the district court denied qualified immunity to all the healthcare team members.

The relevant inquiry is not if decedent received bad medical care, or if bad medical care cost decedent his life, but whether or not the medical care was so substandard it was unconstitutional. The qualified immunity analysis has two well-known elements, if the government official violated a constitutional right, and if, at the time of the alleged violation the right was clearly established. For pretrial detainees, the plaintiff need not show subjective deliberate indifference; it is sufficient that the care was objectively unreasonable. If a reasonable official under the circumstances would have drawn the inference that the decedent was at risk of suffering serious harm, that is sufficient to demonstrate deliberate indifference. It is something more than negligence, but less than subjective intent, akin to reckless disregard. An aortic dissection is a serious medical need and resulted in decedent's death. Decedent's symptoms, vomiting, hyperventilation, severe chest pain radiating to his arm and jaw, numbness in hands and feet, and tachycardia, are medical issues a reasonable doctor would find worthy of treatment. To defeat qualified immunity, plaintiffs must show a reasonable official with the knowledge of the healthcare team would have understood their actions presented such a substantial risk of harm to decedent that the failure to act was unconstitutional. Their subjective appreciation of the risk is not an element of the clearly established law inquiry. Case law indicates that ignoring classic heart attack signs is deliberate indifference.

Dr. Le was not entitled to qualified immunity because a reasonable doctor should have known after Nurse Trout's call regarding the continued and increased severity of symptoms that decedent needed to be hospitalized. Again, decedent was having classic symptoms of a heart attack. Nurse Teofilo was not entitled to qualified immunity because though she was relying on Dr. Le's recommendations, an objectively reasonable nurse would have known, as decedent deteriorated, that she needed to call Dr. Le again, or call for paramedics

per jail policy. Nurse Trout is entitled to qualified immunity because she promptly called Dr. Le and relied on his recommendations. No clearly established law would have put a reasonable nurse on notice that she could violate decedent's constitutional rights while relying on Dr. Le's recommendations. Nurse Lumitap was not entitled to qualified immunity, as an objectively reasonable nurse would know after so much time had elapsed from the doctor's recommendation, with symptoms continuing and worsening, that she could not reasonably rely on Dr. Le's initial recommendations without calling him again. She should have called Dr. Le or called for paramedics. The Court affirmed the denial of qualified immunity to all members of the medical team, except for Nurse Trout.

CLAIM PRESENTATION

Summaries provided by Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP

Andrews v. Metropolitan Transit System I (2022) 74 Cal. App.5th 597

Summary: A written notice of rejection is insufficient to trigger the six-month statute of limitations if it fails to include the attorney advisement portion of the warning set forth in Government Code section 913.

Discussion: Plaintiff Treasure Andrews ("Plaintiff") presented a claim to the Metropolitan Transit System and other related defendants (collectively "MTS") after she was injured on a bus. MTS rejected the tort claim in writing. The notice of rejection included the following warning: "Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6. [¶] This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Tort Claims Act, Government Code Sections 900 et[ ] seq. Other causes of action, including those arising under federal law, may have shorter time limitations for filing." Notably, it did not include the language in Government Code section 913 to consult an attorney. MTS addressed the notice to Plaintiff's attorney and contended it was mailed the same day. Plaintiff's attorney denied receiving the notice.

Eight months after the MTS mailed its notice of rejection, Plaintiff filed her lawsuit. MTS demurred to the complaint alleging that the complaint was barred by the six-month statute of limitations. The trial court overruled the demurrer finding that the notice of rejection failed to include the full warning in Government Code section 913 and concluding that the notice was insufficient so that the six-month statute of limitations did not apply.

MTS then moved for summary judgment, arguing again that Plaintiff's action was barred by the statute of limitations. In her opposition, Plaintiff argued that the notice of rejection was defective because it did not comply with Government Code section 913. The trial court granted the motion, finding that MTS had complied with Government Code section 913 under the circumstances because Plaintiff was represented by counsel and the notice of rejection was sent to Plaintiff's counsel. Judgment was entered against Plaintiff and she appealed.

The appellate court reversed the trial court decision. Government Code section 913(b) sets forth a warning that "shall" be included if a claim is wholly or partially rejected. It states, "If the claim is rejected, in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form: [¶] 'WARNING [¶] Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. [¶] You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately." Only when a notice of rejection substantially complies with the statute will a notice be sufficient to trigger the six-month statute of limitation.

The appellate court also rejected MTS' argument that it substantially complied with the statute even with the attorney advisement language omitted because Plaintiff already retained an attorney. The appellate court held that it was possible for a claimant to have representation only for the limited purpose of submitting a claim or the representation could have ended by the time the public entity delivered its notice of rejection. As such, including the attorney advisement language still served a useful purpose, which advanced an objective of Section 913 – to ensure claimants are aware they should consider consulting an attorney and do so promptly.

Because MTS' notice of rejection did not comply with Government Code section 913, the two-year statute of limitations applied instead of the six-month statute of limitations.

Cavey v. Tualla (2021) 69 Cal.App.5th 310

Summary: An unauthorized, unratified tort claim has no legal effect so that a written rejection of an unauthorized, unratified tort claim also has no legal effect, and thus, will not start the six-month statute of limitations.

Discussion: On May 8, 2017, Plaintiff Ashley Cavey ("Plaintiff") was a passenger in a vehicle struck by a truck driven by an employee of Kings Canyon Unified School District ("District"). Plaintiff sought treatment at Lark Chiropractic, which had Plaintiff sign several documents, including a one-page documents labeled "CLAIM FOR DAMAGES." This document included information that would normally be included in a tort claim including, the time and date of the accident, the accident location, the circumstances of the accident, the California Highway Patrol report number for the accident, and Plaintiff's injuries. On June 5, 2017, Lark Chiropractic sent the claim signed by Plaintiff to the District. Plaintiff, in a declaration, stated that she did not know she had signed a government claim form nor did she know that Lark Chiropractic had presented a tort claim on her behalf.

On June 13, 2017, Plaintiff retained counsel to pursue her personal injury claim. About a week after the retention, Plaintiff's counsel informed the District of their representation. Plaintiff did not inform her counsel about the Lark Chiropractic tort claim because she was not aware that she had signed a tort claim or that Lark Chiropractic had presented the tort claim.

On July 19, 2017, the District rejected the tort claim presented by Lark Chiropractic. That notice of rejection was sent to Plaintiff's counsel, not to Lark Chiropractic. Plaintiff's counsel, who was still not aware that Lark Chiropractic had presented a claim, assumed the reject letter related to claims of other claimants in the accident.

On September 18, 2017, Plaintiff's counsel presented a tort claim to the District on behalf of Plaintiff. The District did not respond to this claim, so it was rejected by operation of law on November 6, 2017.

On April 2, 2018, Plaintiff's counsel filed a complaint on behalf of Plaintiff. On April 18, 2017, Plaintiff's counsel emailed a courtesy copy to the District. The District responded, "The Notice of Rejection of Claim was mailed to your office on July 19, 2017; the statute ran on January 19, 2018. It doesn't appear that this suit was filed prior to January 19, 2018."

In July 2018, Plaintiff filed a petition for an order permitting a late claim against the District, or in the alternative, for an order deeming the claim presented by Plaintiff's counsel to be the operative claim for purposes of plaintiff's lawsuit. The court denied Plaintiff's petition.

In October 2018, the District filed a demurrer to the complaint arguing that Plaintiff's action was barred by the six month statute of limitations. The trial court sustained the demurrer with leave to amend.

CLAIM PRESENTATION - CONTINUED

Summaries provided by Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP

In April 2019, Plaintiff filed a first amended complaint. This complaint included allegations about the claim being presented by Lark Chiropractic without Plaintiff's authorization and the subsequent notice of rejection and claim presented by Plaintiff's counsel. In particular, Plaintiff pleaded that the tort claim presented by her counsel was the only one authorized by Plaintiff. The District filed another demurrer contending that the complaint was time-barred, which the Court sustained without leave to amend. The Court entered a judgment of dismissal, and Plaintiff appealed.

The appellate court first recognized that Government Code section 910.2 required that a "claim shall be signed by the claimant or by some person on his behalf" and Government Code section 910 required the "claim shall be presented by the claimant or by a person acting on his or her behalf." The appellate court noted that Plaintiff had signed the claim presented by Lark Chiropractic so that it satisfied Government Code section 910.2, but the critical question was whether the Lark Chiropractic claim satisfied the requirement in section 910 that a claim be presented by a personal acting on the claimant's behalf.

After reviewing cases involving unauthorized claims and considering the legislative purposes of the Government Claims Act, the appellate court interpreted Section 910 to mean that a claim is presented by a person acting on the claimant's behalf if "the claimant knowingly and intentionally authorized the third person to present it, or alternatively, if the claimant knowingly and intentionally ratified the claim after it was presented to the public entity." As such, an unauthorized, unratified claim has no legal effect, and a public entity's notice of rejection of an unauthorized, unratified claim has not legal effect and thus, does not trigger the six-month statute of limitations.

Using this test, the appellate court concluded that the claim presented by Lark Chiropractic was not presented "by a person acting on [Plaintiff's] behalf" and was impliedly repudiated by the claim presented by Plaintiff's counsel as well as the lawsuit itself. As such, that claim was a nullity and had no force or effect. Thus, the District's notice of rejection of that claim was also a nullity and had no legal effect. Therefore, the District's rejection notice did not start the six-month statute of limitations.

Moreover, even if the Lark Chiropractic claim was valid, Plaintiff's complaint was timely because the rejection notice was not sent to Plaintiff as required by Government Code section 915.4, but to her counsel, which was not identified in the Lark Chiropractic tort claim as an address to which desired notices should be sent. The appellate court concluded that the District's written rejection notice did not comply with Government Code sections 913 and 915.2 so that Plaintiff's lawsuit was subject to the two-year statute of limitations.

DANGEROUS CONDITION

Summaries provided by Maria Nozzolino, Allen Glaessner Hazelwood & Werth, LLP

Nunez v. City of Redondo Beach, 2022 WL 2965453, Case No. B308741, filed July 27, 2022

Summary: A city's policy to repair sidewalk uplifts of ½ inch or more does not create a dangerous condition. Instead, courts will consider the type and size of the sidewalk defect along with any aggravating factors.

Discussion: On February 25, 2017, Plaintiff and Appellant Monica Nunez ("Nunez") went for a group run on Redondo Beach. After the run, around 10:45 a.m., Nunez walked back to her car on a public sidewalk along Sought Catalina Avenue in Redondo Beach. As she was walking, her back foot hit a raised sidewalk slab causing her to trip, fall and sustain injuries to her left knee and right arm. The City of Redondo Beach ("City") owns and is responsible for the sidewalk.

Nunez sued the City alleging, inter alia, a cause of action for dangerous condition of public property under Gov. Code § 835. The City filed a motion for summary judgment on the ground the raised sidewalk slab was a trivial defect as a matter of law and Nunez failed to evidence any "aggravating circumstances" existed to raise a triable issue of fact as to the trivial nature of the defect. The trial court granted the City's motion and Nunez appealed.

The Court of Appeal affirmed. A condition is dangerous for purposes of liability under Gov. Code § 835 if it creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used. Gov. Code § 830(a). This principle, known as the "trivial defect doctrine", is not an affirmative defense but an aspect of duty that a plaintiff must prove to impose liability against the public entity. In the sidewalk-walkway context, the decision whether the defect is trivial is a two-step process: (1) evidence of the type and size of the defect; and (2) evidence of any additional, aggravating factors.

Here, the evidence showed the height differential between the sidewalk slabs where Nunez tripped – at its highest point – was just under three quarters of an inch. The Court of Appeal, in analyzing the first step in the analysis, relied on case law holding that offsets ranging from three quarters of an inch to one- and one-half inch have generally been held trivial as a matter of law. Accordingly, the Court of Appeal found the preliminary analysis revealed a trivial defect.

Next, the Court of Appeal considered whether there were "aggravating circumstances" to create a triable issue of fact. The City presented evidence demonstrating that there were no aggravating circumstances – it was a sunny, dry morning; the offset had no jagged edges; there was no debris in the area; and the sidewalk was free of cracks, holes, loose concrete or other defects. Additionally, the City presented evidence it had received no prior complaints about accidents involving the subject defect.

Nunez argued the aggravating circumstances included: the color continuity of the sidewalk; Nunez' lack of familiarity with the area; the fact that she tripped despite her athleticism; and shadows from nearby trees. Nunez argued each of the foregoing make the offset difficult to perceive. The Court of Appeal disagreed holding that to accept Nunez' contention would render every trivial defect in the sidewalk otherwise a dangerous condition.

Nunez further contended that a City policy which called for height differentials between a half-inch and one-and-a-half-inches be repaired did not create a triable issue of fact. The Court of Appeal reasoned the policy, in and of itself, did not create a dangerous condition where one otherwise did not exist and/or was minor, trivial or insignificant.

DUTY IN A RECREATIONAL ACTIVITY

Summaries provided by Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP & Michelle D. Mangarell, Allen Glaessner Hazelwood & Werth, LLP

Rucker v. WINCAL, LLC (2002) 74 Cal.App.5th 883

Summary: A private property owner does not owe a duty of care to a jogger who runs into the street to avoid a homeless encampment that blocked her path because the jogger was engaged in a recreational use of property within the meaning of Civil Code section 846(a). While this case is not an action brought under Government Code section 835, nor does it apply the recreational activity immunity found at Government Code section 831.7, this case may provide guidance to public entities.

Discussion: Around midnight on November 9, 2016, Plaintiff Shanna Rucker ("Plaintiff"), as part of her training for a half-marathon, went for a jog on property owned by WINCAL LLC ("WINCAL"). As she jogged on WINCAL's property, she noticed her path was blocked by a homeless encampment so she deviated onto the bicycle lane on the street and was struck by a vehicle. She sued WINCAL, alleging causes of action for negligence and premises liability.

WINCAL moved for summary judgment, arguing that under Civil Code section 846, it owed no duty to Plaintiff because she entered the property for a recreational purpose. Plaintiff argued that Civil Code section 846 did not apply because jogging was not included in the list of activities for recreational use. The trial court granted the motion, concluding that Plaintiff's jogging was for a recreation purpose. The trial court referenced another case where a court used a dictionary to determine the definition of hiking as "to take a long walk for pleasure or exercise." The trial court then relied on a Webster's dictionary definition of jog, which was "to run or ride at a low trot" or "to go at a slow, leisurely, or monotonous pace," finding that Plaintiff's jog was a leisurely run that fell within the statute. Plaintiff appealed.

The appellate court affirmed the trial court's finding, finding that the list of recreational activities in Civil Code section 846 was illustrative, not exhaustive. Recognizing that Plaintiff was engaged in an activity for "pleasure or exercise" "intended to refresh the body or mind by diversion, amusement or play," it affirmed summary judgment because Plaintiff entered WINCAL's property for a recreational purpose so that the WINCAL did not owe Plaintiff a duty of care under Civil Code section 846.

Russell v. Dept. of Corrections & Rehabilitation (2021) 72 Cal.App.5th 916

Summary: Parole officers did not owe a duty to protect a grandmother from her mentally ill grandson because the officers' interactions with the grandmother did not create a special relationship.

Discussion: Rachel Renee Russell ("Russell") was raped and murdered by her grandson, Sidney DeAvila, who suffered from severe mental illness and was on parole at the time of the murder. Russell's son, Plaintiff Steven Russell ("Plaintiff") sued the California Department of Corrections and Rehabilitation ("Department") alleging that two of the Department's parole agents had a special relationship with Russell and failed to warn her of DeAvila's dangerous propensities. A jury found the Department 60% at fault for Russell's death by failing to warn her of a foreseeable danger that was unknown to her. The Department appealed, arguing that it had no duty to warn Russell of DeAvila's dangerous propensities and even if it had a duty to warn, it is immunized from liability.

The appellate court first recognized that the Department's two parole agents were aware or should have been aware that DeAvila suffered from mental illness, abused drugs, had a history of violence, and posed a danger to those around him. However, there was no evidence that any parole agent was aware that DeAvila posed a particularized threat of harm to Russell.

The appellate court then analyzed the interactions the Department's two parole agents had with Russell to determine whether either agent formed a special relationship with her by making an express or implied promise of protection that caused her to detrimentally rely on that promise, or by otherwise lulling Russell into a false sense of security, inducing detrimental reliance and causing her to worsen her position. The parole agents had assisted Russell with DeAvila in variety ways, including ordering DeAvila to undergo mental health treatment, suggesting that Russell ration DeAvila's income, and offering to help DeAvila find a place to live. Russell had also requested that DeAvila stay with her, and a parole agent authorized DeAvila to spend his days at her house. The appellate court ultimately concluded that these interactions did not induce Russell to rely on them for protection, so that they had no duty to warn Russell of DeAvila's dangerous propensities and reversed the judgment against the Department.

Achay v. Huntington Beach Union High School District (2022) 80 Cal.App.5th 528

Summary: A school district owed a duty to protect a student from a third-party attack when she returned to campus after leaving to retrieve her schoolbooks from a still-open locker room.

Discussion: Plaintiff C. Achay was a student on a high school track team, which usually practiced after school until 5:30 pm. One day, practice ended early at 4:30 pm, so Achay and her friend, L. Sotelo walked to Starbucks and returned about 45 minutes later. On the way back to the open campus, they encountered a stranger who Achay thought was "suspicious." Someone identified him as A. Meer, a former student who was "kind of weird." Achay retrieved her schoolbooks from the girls' locker room, which was to be locked at 6:00 p.m. While Achay was walking from the girls' locker room to the school parking lot, she was stabbed by Meer. She suffered serious injuries.

Achay sued defendant Huntington Beach Union High School District ("District") for negligence. The District moved for summary judgment on the grounds of duty (no duty of care at the time of the stabbing) and causation (there was no basis for a reasonable juror "to find a causal connection between the [alleged] negligence and the injury ..."). The trial court granted the motion finding the District had no duty of care because at the time of the stabbing, Achay was no longer on campus during school hours during a school-related activity. The trial court also held that it could not assume that more security would have prevented the incident from occurring. Achay filed an appeal.

The appellate court reversed and found the District owed Achay a duty of care because she was stabbed while on campus during "school-related or encouraged functions" (after school sports). The court also found that Achay's brief sojourn to Starbucks did not relieve the District of its legal duty of care. Achay was an enrolled student who returned to her campus for a legitimate school-related activity, which involved

DUTY IN A RECREATIONAL ACTIVITY - CONTINUED

Summaries provided by Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP & Michelle D. Mangarell, Allen Glaessner Hazelwood & Werth, LLP

retrieving her schoolbooks from her locker in a still-open locker room. But for her practice ending early, Achay would normally be on campus until 5:30 or 6:00 p.m. Thus, under the facts of the case, the District had a continuing duty to use reasonable means to protect her safety.

Further, the appellate court found that there is a triable issue of material fact regarding whether the District used reasonable security measures to protect its students (such as Achay), from arguably preventable violence by third parties entering campus (such as Meer), during on-going after school sports functions.

The appellate court reversed the trial court's order granting the District's motion for summary judgment.

SEXUAL ABUSE & MOLESTATION

Summaries provided by Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP

X.M. v. Superior Court (2021) 68 Cal.App.5th 1014

Summary: Victims of child sexual abuse cannot recover treble damages against a public entity under Civil Code section 340.1 because Government Code section 818's immunity against punitive damages applies.

Discussion: X.M., a student a Maple Elementary School, sued Hesperia Unified School District ("District") claiming he was assaulted on campus by one of their employees. He sought treble damages under Code of Civil Procedure section 340.1, alleging his assault resulted from HUSD's cover up of a prior assault by the same employee. The trial court granted the District's motion to strike the increased damages on the ground that treble damages are primarily punitive and therefore barred by Government Code section 818. X.M. file a petition for writ of mandate.

The appellate court affirmed the trial court order. The appellate court affirmed that Government Code section 818 applies to damages that are primarily punitive, recognizing that the twin goals of punitive damages (retribution and deterrence) are not actually advanced if the defendant is a public agency and the tort is committed by an individual employee.

While the appellate court recognized that treble damages are generally, but not always punitive, it held that Civil Code section 340.1 bore the hallmarks of punitive damages. The statutory text and the legislative history did not indicate compensation as the provision's primary function as opposed to retribution and deterrence. As such, Government Code section 818's immunity against punitive damages applies to Civil Code section 340.1 treble damages provision.

IMMUNITIES & AFFIRMATIVE DEFENSES

Summaries provided by Maria Nozzolino, Allen Glaessner Hazelwood & Werth, LLP & Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP

Mubanda v. City of Santa Barbara (2022) 74 Cal.App.5th 256

Summary: City was immune under the hazardous recreational activity immunity for the drowning death of a paddleboarder.

Discussion: The City of Santa Barbara's ("City") Waterfront Department administers all matters pertaining to the Harbor, including overseeing the leases of commercial tenants who do business in the Harbor. One such tenant, the Santa Barbara Sailing Center ("SBSC"), rents stand-up paddle boards and other watercraft to members of the public. At the time of the incident giving rise to litigation, SBSC was operating under a lease which required it to pay the City 10 per cent of its gross receipts from rentals, including paddle boards. The Harbor experiences natural conditions and has many longstanding artificial features that may pose a risk to paddle boarders. Recognizing paddle boarding could be hazardous and was becoming popular in the Harbor, City officials took a number of steps to minimize the risks including posting signs to remind paddle boarders to stay in the designated areas, actively patrolling the Harbor, and distributing safety lanyards to rental businesses.

On April 29, 2017, thirty-year old Davies Kabogoza and Laura Tandy arrived at SBSC to rent paddle boards. Kabogoza had been paddle boarding before but could not swim. Kabogoza signed a release agreement indicating he understood outdoor activities could result in physical injury. As Kabogoza and Tandy approached Stearns Warf, they decided to turn around and paddle back to the Harbor. While turning, Kabogoza fell off his paddle. Kabogoza panicked and Tandy was unable to assist him. Kabogoza drowned in approximately 35 feet of water. His safety lanyard (an inflatable belt pack) was never inflated.

Plaintiff and Appellant Agnes Nabisere Mubanda ("Mubanda"), Kabogoza's mother, brought statutory causes of action under Gov. Code § 830 et seq., against the City for dangerous condition of public property, gross negligence, and wrongful death.

The City sought summary judgment based on governmental immunities, including natural condition of the harbor (Gov. Code § 831.2), hazardous recreational activity (Gov. Code § 831.7), discretionary function (Gov. Code § 820.2) and primary assumption of the risk. The trial court granted the motion concluding the City had established as a matter of law that it was immune under the hazardous recreational immunity. Mubanda appealed.

The Court of Appeal affirmed. First, the City did not have a duty to warn paddle boarders of the risk of falling off a stand-up paddle and drowning in the Harbor because the risk was inherent in that type of recreational activity. The Court of Appeal agreed with the trial court's finding that there was no evidence showing paddle boarders were not aware of the dangers of the choppy water or inclement weather and the associated risk of drowning. Second, it agreed that there were no facts supporting a claim for gross negligence, which requires a showing of the want, scant care or gross departure from the ordinary standard of conduct. Govt. Code § 831.7(c)(1)(E). The City had taken many steps prior to Kabogoza's drowning to promote safety while paddle boarding. Finally, the fact that the City received a 10 percent fee on rentals did not render the hazardous recreational immunity inapplicable under Government Code section 831.7(c)(1)(B). The Court of Appeal found that a percentage of gross sales as part of a lease agreement was not the same as receiving a specific fee.

Cleveland v. Taft Union High School District (2022) 76 Cal. App.5th 776

Summary: The phrase "mental examination of any person" in Government Code section 855.6 means "the process of inspecting visually or by use of the other senses the physical, emotional and mental state of the person in question" so that a school district's entire threat assessment team was not immunized under the mental examination immunity from liability arising out of a student shooting another shooting at school.

Discussion: In January 2013, high school student Bryan O. shot Plaintiff Bowe Cleveland ("Plaintiff"), another student, in the stomach with a shotgun near the start of their first period science class at Taft Union High School.

Approximately a year before the incident, on February 25, 2012, during a bus ride on a field trip, employees at the school overheard a conversation between Bryan and classmates wherein Bryan stated he had thought about shooting someone at school and recalled a dream he had about shooting someone at school. These employees filed incident reports. The following Monday, on February 27, 2012, the school initiated a threat assessment and suspended Bryan for five days.

As part of the threat assessment, on February 27, 2012, the school psychologist met with Bryan where Bryan described the discussion as one about bullies and what the student would do about bullies. He also told the school psychologist about his prior dream.

Following that meeting, on February 29, 2012, three students completed incident reports relating to Bryan drawing stick figures with machine guns shooting smaller stick figured and was titled "The Playground" and rumors that Bryan had a hit list. Subsequently, a school resource officer searched Bryan's home but found no firearms or a hit list.

The school psychologist also met with Bryan's mother, who confirmed Bryan's prior dream and that there were no weapons in the house.

The school psychologist prepared a "Threat Assessment Report" which categorized the level of risk as being a four on a scale of one to five – "[i]nsufficient evidence of violence potential, sufficient evidence for the unintentional infliction of emotional distress upon others." The report recommended that Bryan return to school with the stipulation that he have weekly meetings with the school counsel or psychologist for a month. Bryan returned to school in March 2012.

After Bryan returned to school, there were additional reports of Bryan making comments or gestures indicating that he wanted to hurt other students.

In December 2012, Bryan's older brother obtained a shotgun for skeet shooting. The gun was stored on a shelf in the bedroom he shared with Bryan. That same month, a student told the school that she felt Bryan would bring a gun to school.

On January 9, 2013, Bryan told a female student and his friends not to come to school the next day because something bad was going to happen. Bryan told her he was going to shoot Plaintiff.

The following day, Bryan took a shotgun to school and shot Plaintiff. Law enforcement arrived and took Bryan away.

Summaries provided by Maria Nozzolino, Allen Glaessner Hazelwood & Werth, LLP & Kimberly Y. Chin, Allen Glaessner Hazelwood & Werth, LLP

Plaintiff sued the District and its employees, alleging causes of action for general negligence, premises liability based on a dangerous condition of public property, and negligent infliction of emotional distress.

At trial, each side presented expert testimony on the effectiveness of the District's threat assessment of Bryan. Plaintiff's expert opined that the District's threat assessment did not meet the standard of care because (1) the threat assessment was not carried out by the team collectively; (2) the school resource officer (i.e., the law enforcement officer assigned to the school) should have been a core member of the team; (3) the threat assessment team failed to communicate amongst themselves about Bryan; (4) the threat assessment team failed to adequately communicate with Bryan's parent; (5) the threat assessment team failed to recommend counseling to Bryan's parent as an intervention technique; and (6) the threat assessment team did not continue to collectively monitor Bryan and reassess the safety plan. The Defendants argued they were immune from liability under Government Code section 855.6 which provides immunity for failure to make a mental examination, or to make an adequate mental examination, for the purpose of determining whether such person has a mental condition that would constitute a hazard to the health or safety of himself or others. The jury ultimately found the District employees to be 54% responsible.

The Defendants moved for judgment notwithstanding the verdict, asserting all the members of the threat assessment team were shielded from liability by the section 855.6 immunity. The motion was denied. The District appealed from the judgment and the denial of its motion for judgment notwithstanding the verdict.

The appellate court recognized that this was a case of first-impressing, noting that there had not been a public decision on whether all members of a threat assessment team are immune from liability pursuant to Government Code section 855.6. First, the appellate court held that the immunity in Government Code section 855.6 was not limited to health care professionals, but rather any public employee, relying on cases where the immunity had been applied to DMV employees performing eyesight tests and a police officer who did not have a juvenile examined medically who later hung himself in a cell. Second, the appellate court concluded that the phrase "mental examination of any person" was limited to "the process of inspecting visually or by use of the other senses the physical, emotional and mental state of the person in question." This would typically involve a face-to-face meeting but could also include interviews by telephone or videoconference.

Based on the foregoing definition, the failures of the threat assessment team as outlined by Plaintiff's expert fell outside the immunity. The appellate court affirmed the trial court order denying the motion for judgment notwithstanding the verdict.

Brown v. El Dorado Union High School District (2002) 76 Cal.App.5th 1003

Summary: The lawsuit of a high school football player who suffered a traumatic brain injury during a football game was barred due to the release he signed.

Discussion: In August 2015, Plaintiff Nick Brown ("Plaintiff") was a sophomore at Union Mine High School and a player on its junior varsity football team. Prior to the 2015-2016 academic year, Plaintiff and his father signed a release of liability and assumption of risk agreement for athletic and cheer/stunt. The release checked off baseball and football as the activities Plaintiff was allowed to participate in. Plaintiff and his father also signed a Parent Concussion/Head Injury Information Sheet, which indicated that concussions can lead to severe brain swelling with devasting and even fatal consequences.

On August 28, 2015, Plaintiff played every play of the game until sometime in the fourth quarter when he chose to leave the playing field. During Plaintiff's last play, he was tackled by another player, but it does not appear that he took a direct blow to the head or that the tackle was particularly forceful. During prior plays, none of his tackles or falls appeared particularly forceful.

The game ended approximately five to ten minutes after Plaintiff took himself out of the game. As the team lined up for the handshake with the other team, Plaintiff's coach heard him slur the word "coach" and fall towards him. A chiropractor who was at the game examined Plaintiff and realized there was cognitive dysfunction. An ambulance was called and Plaintiff was transported to the hospital.

Plaintiff's surgeon concluded he suffered a large left subdural hematoma with midline shift and cerebral herniation, which was treated with emergency surgery.

Plaintiff sued El Dorado Union High School District ("District"). The District brought a motion for summary judgment. The trial court granted the District's motion for summary judgment, finding the case was barred by the affirmative defense of express assumption of risk due to the release and waiver Plaintiff and his father signed and by the principle of primary assumption of risk. Plaintiff appealed.

The Court of Appeal affirmed the judgment. First, the appellate court agreed that the action was barred by the release Plaintiff and his father signed. The Court of Appeal found that the release covered all allegedly negligent acts by Plaintiff's coaches, and any other employee or volunteer, while they were engaged in coaching, training, instructing, or supervising in football, including those involved in diagnosing and/or treating Plaintiff for potential injuries suffered while playing football. Plaintiff and his father also unequivocally agreed to assume the risk of injuries caused by the negligent acts of the District employees in coaching and supervising Nick while he played football and in treating him for those injuries.

Second, the appellate court found that the release expressly covered all injuries Plaintiff might suffer playing football because paperwork sent with the release discussed the possibility that a player might suffer a concussion or other head injury and that those injuries could have devasting and/or fatal consequences.

Finally, the appellate court held that Plaintiff could not establish gross negligence. Specifically, the Court of Appeal rejected Plaintiff's arguments that the District's employees were grossly negligent in monitoring or instructing him during the game and providing medical care.

EMPLOYMENT CASES

Summaries provided by Derek Haynes & Dylan de Wit of Porter Scott

Lawson v. P.P.G. Architectural Finishes, Inc. (2022) 12 Cal.5th 703

Summary: Employers defending whistleblower retaliation claims brought under Labor Code section 1102.5 have a higher evidentiary burden to prove that they took adverse employment actions against employees for legitimate, non-retaliatory reasons. After Lawson, employers will need to prove "by clear and convincing evidence" that they would have taken the same adverse action against an employee even had the employee not engaged in protected activity.

Discussion: Plaintiff Wallen Lawson claimed that his employer, PPG Architectural Finishes, Inc., wrongfully terminated him in retaliation for him "speaking out" about his supervisor, who allegedly directed Plaintiff to defraud his retail store customers. PPG claimed that it terminated Plaintiff for poor performance.

The trial court granted PPG's summary judgment motion after applying the classic McDonnell Douglas analysis. It held that Plaintiff met his prima facie burden, but PPG "articulated" a legitimate, non-retaliatory justification for terminating Plaintiff and Plaintiff did not respond with sufficient evidence of pretext.

On appeal, Plaintiff argued that the trial court erred in applying the McDonnell Douglas analysis to a retaliation claim under Labor Code section 1102.5. Plaintiff argued the court, instead, should have applied the framework set forth in California Labor Code section 1102.6, which states:

> In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5. (Emphasis added.)

Plaintiff argued that under Labor Code section 1102.6, employees need only show that their whistleblowing activity was a "contributing factor" for the adverse action, and not that the employer's proffered reason for the adverse action was pretextual.

The California Supreme Court agreed with Plaintiff. The Court sought to "resolve the confusion" regarding the appropriate analysis for Labor Code section 1102.5 retaliation claims by clarifying that Labor Code section 1102.6, not McDonnell Douglas, supplies the applicable framework. The Court stated that the McDonnell Douglas test is poorly suited for whistleblower retaliation claims because it presumes that an employer's reason for the adverse action "is either discriminatory or legitimate." Labor Code section 1102.5, however, allows for recovery even if both retaliatory and legitimate factors contribute to the adverse action.

Defendant argued that Labor Code section 1102.6 may set forth the correct standard for trials, but not summary judgment motions. In dismissing this argument, the Court acknowledged that the new framework makes it easier for plaintiffs to overcome summary judgment. It reasoned, however, that it would be nonsensical to impose a higher evidentiary burden on plaintiffs on summary judgment than at trial.

Applying Labor Code section 1102.6 as the standard makes it more difficult for employers defending whistleblower retaliation claims. Before Lawson, employers simply had to "articulate" a legitimate, non-retaliatory reason for the adverse employment action. Courts often held that the proffered legitimate reason did not need to be the only reason. It just needed to be one of the reasons for the employers to satisfy their burden under McDonell Douglas.

Vatalaro v. County of Sacramento (2022) 79 Cal.App.5th 367

Summary: Despite the California Supreme Court's employee-friendly decision in Lawson, discussed above, the California Court of Appeal found in favor of the employer (Sacramento County) in a whistleblower retaliation claim under Labor Code section 1102.5.

Discussion: Plaintiff Cynthia Vatalaro was an administrative analyst for Defendant Sacramento County. She was promoted to an administrative services officer position on a probationary basis. Upon her promotion, Plaintiff's supervisor issued Plaintiff a list of job duties for the new position. Plaintiff complained to human resources that the job duties were "inappropriate" as they fell below her service classification. Defendant later terminated Plaintiff from the administrative services officer position after concluding that she did not meet performance expectations during the probationary period. Plaintiff was then demoted back to her administrative analyst position.

Plaintiff ultimately filed suit asserting a whistleblower retaliation claim under Labor Code section 1102.5. She alleged Defendant terminated and demoted her in retaliation for her complaining about the job duties for the administrative services officer position.

Defendant moved for summary judgment, claiming it terminated and demoted Plaintiff for legitimate, non-retaliatory reasons. Defendant supported its Motion with personnel documents that Plaintiff's supervisor prepared while Plaintiff was serving in the administrative services officer position on a probationary basis. The documents included a memorandum detailing insubordinate, disrespectful, and dishonest conduct by Plaintiff. Plaintiff's supervisor listed multiple specific instances of that conduct. Plaintiff did not introduce any evidence disputing her supervisor's accusations of inappropriate conduct.

The trial court granted summary judgment. It applied the McDonnell Douglas burden-shifting approach that courts applied before the California Supreme Court decided Lawson, discussed above. Applying the McDonnel Douglas test, the trial court held that Defendant successfully articulated a legitimate, non-retaliatory reason for why it terminated and demoted Plaintiff and Plaintiff failed to introduce evidence of pretext.

Plaintiff appealed. She argued that the Court erred by applying the McDonnell Douglas test instead of the test announced in Lawson. The Court of Appeal agreed that the trial court should have applied the Lawson test. However, it nonetheless affirmed the trial court's order granting summary judgment, holding that Defendant's evidence was sufficient to support summary judgment under the more demanding "clear and convincing" evidence requirement under Lawson. The Court cited the detailed documents Plaintiff's supervisor prepared evidencing Plaintiff's performance deficiencies.

EMPLOYMENT CASES - CONTINUED

Summaries provided by Derek Haynes & Dylan de Wit of Porter Scott

Scheer v. Regents of the University of California (2022) 76 Cal.App.5th 904

Summary: The employee-friendly evidentiary standard set forth in Lawson applies to claims other than just those pled under Labor Code section 1102.5.

Discussion: Plaintiff Arnold Scheer ("Plaintiff") was a Chief Administrative Officer at the UCLA Department of Pathology and Laboratory Medicine. After he was terminated, he sued his employer alleging wrongful termination in retaliation for whistleblowing complaints he made regarding alleged violations of safety procedures and mismanagement that resulted in lost and mislabeled medical specimens.

Plaintiff brought retaliation claims under three separate statutes: (1) Labor Code section 1102.5; (2) Government Code section 8547.10, which specifically allows University of California employees to recover civil damages arising out of unlawful retaliation; and (3) Health and Safety Code section 1278.5, which prohibits retaliation against any employee of a health facility who complains about unsafe patient care.

Defendant moved for summary judgment. The trial court applied the burden-shifting approach set forth in McDonnell Douglas v. Green (discussed above) and granted the Motion, dismissing all three causes of action.

On appeal, Plaintiff argued that the trial court erred in applying the McDonnel Douglas test instead of the test announced in Lawson, discussed above. Predictably, the Court of Appeal agreed that the trial court should have applied the Lawson test when analyzing plaintiff's retaliation claim under Labor Code section 1102.5, as the Supreme Court held in Lawson.

However, the Court also held that the Lawson test applies to Plaintiff's retaliation claim under Government Code section 8547.10. The Court relied on the fact that the relevant language in Government Code section 8547.10 is identical to the language in Labor Code section 1102.5. Government Code section 8547.10 states:

> [O]nce it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. (Emphasis added.)

The Court observed that although Lawson involved a claim under Labor Code section 1102.5, it was instructive in determining the correct framework for analyzing retaliation claims under Government Code section 8547.10 as well given the similarity in the language of the statutes.

However, the Court held that Plaintiff's third retaliation cause of action, pled under Health and Safety Code section 1278.5, was not subject to Lawson's heightened evidentiary standard on summary judgment. It cited the fact that Health and Safety Code section 1278.5 does not include any specific language requiring application of the "clear and convincing" evidentiary standard called for in Labor Code section 1102.5 and Government Code section 8547.10.

Shields v. Credit One Bank, N.A. (9th Cir. 2022) 32 F.4th 1218

Summary: Even short-term impairments can qualify as "disabilities" under Title I of the Americans with Disabilities Act ("ADA") because the ADA does not include any categorical time limitations for disabilities.

Discussion: Plaintiff Karen Shields filed a lawsuit alleging that her former employer violated the ADA by terminating her after she underwent a bone biopsy surgery and requested a leave of absence for several months to recover. To prevail on a failure-to-accommodate claim, plaintiff-employees must first prove that they qualify for ADA protections by establishing that they were "disabled" at all relevant times. The ADA defines "disability" as a physical or mental impairment that "substantially limits" one or more major life activities.

Here, the Defendant moved to dismiss Plaintiff's Complaint, arguing that Plaintiff failed to plead facts sufficient to show that she had a disability that "substantially limited" a major life activity. Defendant relied on the fact that Plaintiff's Complaint did not include allegations establishing "any permanent or long-term effects" from her impairment. The district court agreed and granted Defendant's Motion, dismissing Plaintiff's Complaint.

Plaintiff appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit reversed the trial court's order granting the Motion to Dismiss. It held that courts should expressly reject "narrow definitions" of what constitutes a "substantially limitation." The Court explained that the "duration of an impairment" is one factor relevant to whether an impairment substantially limits a major life activity, but the fact that a plaintiff's impairment was short-term does not necessarily preclude it from ADA protections. Even short-term impairments may be covered if they are sufficiently severe. In other words, there is a sliding-scale that considers both the duration and severity of the impairment.

Pollock v. Tri-Modal Distribution Services, Inc. (2021) 11 Cal.5th 918

Summary: The statute of limitations for an employee to file an administrative complaint with the California Department of Fair Employment and Housing ("DFEH") on a failure-to-promote claim accrues when the employee knows or reasonably should have known that somebody else was selected for the job.

Discussion: Plaintiff-employee Pamela Pollock ("Plaintiff") was a customer service representative at Defendant Tri-Modal Distribution Services, Inc. ("Tri-Modal"). Plaintiff began dating Tri-Modal's executive vice president, Michael Kelso ("Kelso") in 2014. According to Plaintiff, Kelso wanted their relationship to become sexual, but Plaintiff refused. She therefore ended the relationship in 2016.

Plaintiff was subsequently denied a series of promotions. Plaintiff claimed she was the most qualified candidate for the promotions and was only denied them because she refused to have a sexual relationship with Kelso. The promotion relevant to the instant issue was awarded to another employee in March 2017. That employee did not actually start in the new position until May 2017.

Plaintiff ultimately filed suit alleging quid pro quo sexual harassment under the FEHA. Before doing so, on April 18, 2018, she filed an administrative complaint with the DFEH, which is a mandatory

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prerequisite to pursuing claims under the FEHA. At the time, administrative complaints had to be filed within one year "from the date upon which the alleged unlawful practice ... occurred." That deadline has since been extended to three years.

Kelso moved for summary judgment arguing that Plaintiff's claim was barred because she did not file her DFEH administrative complaint within one year of the alleged unlawful conduct. The promotion was awarded to another employee in March 2017, but Plaintiff did not file her administrative complaint until April 2018. Plaintiff opposed the Motion, arguing the unlawful conduct (the failure to promote) did not actually occur until May 2017, when the other employee started in the position. The trial court agreed with Kelso and granted his Motion. Plaintiff appealed. The appeal ultimately went to the California Supreme Court.

The issue was when the statute of limitations on Plaintiff's failure-to-promote claim accrued. Kelso argued that it accrued when the promotion was awarded to another employee (March 2017). Plaintiff argued that it accrued when the other employee started the new job (May 2017).

The Supreme Court held that the statute of limitations does not accrue on either the date the job is awarded to someone else or the date the other employee starts the new job. It accrues on the date plaintiffs know or reasonably should have known that they were not selected for the position, regardless of when another employee is offered or starts the position.

The Court explained that the statute of limitations should not accrue on the day another employee is offered the job because plaintiffs might not always know when that occurs. It also should not accrue on the day another employee starts the new job because that is not the alleged unlawful act. The alleged unlawful act is the decision to deny plaintiff the promotion, which can occur well before another employee starts the new job.

The Supreme Court remanded the case because the record was not clear regarding when Plaintiff knew or should have known that she was denied the promotion.

Zamora v. Security Industry Specialists, Inc. (2021) 71 Cal. App.5th 1

Summary: A disabled employee could maintain causes of action for discrimination and failure to engage in the interactive process when the employer refused to reassign or transfer him to a vacant position after he suffered a disabling injury. Employers must consider all available positions when evaluating whether they can accommodate a disabled employee's restrictions. Doing so requires a robust interactive process.

Discussion: Plaintiff was a field supervisor for Defendant Security Industry Specialists. He suffered an on-the-job injury to his leg. He continued working with the injury for a while before ultimately going out on leave. While Plaintiff was still on leave, Defendant announced that it was laying-off four field supervisors as part of a reduction in force. It ranked all field supervisors using objective criteria. Plaintiff ranked 16 out of 19 field supervisors. Thus, he was laid-off. Two field supervisors who were ranked below him, however, were demoted to patrol positions instead of suffering layoffs. Plaintiff was not offered that option.

Plaintiff filed suit alleging disability discrimination under the FEHA. Defendant moved for summary adjudication on Plaintiff's disability discrimination claim. The trial court applied the McDonnell Douglas burden-shifting analysis. As part of that analysis, the plaintiff has an initial burden to prove, amongst other things, that he could perform the essential functions of the job with or without accommodations. The trial court found plaintiff could not meet that burden given he was out on leave at the time of the layoff. Thus, the court granted Defendant's Motion.

The Court of Appeal reversed. The Court explained that when evaluating whether an employee can perform the essential functions of the job with or without accommodations at the prime facie stage of the McDonnell Douglas analysis, courts must consider whether the plaintiff-employee could have been transferred to any alternative position. That is not limited to other similar positions. Courts also have to consider whether employees can perform the essential functions of available lower-ranking positions, even if transferring the employee to a lower-ranking position would amount to a demotion. The Court explained that employers have an "affirmative duty" to consider all available positions.

In Zamora, the Court of Appeal found that there was a triable issue of fact regarding whether Plaintiff could perform the essential functions of other positions with or without accommodations. The record was devoid of any evidence that Defendant even considered alternative positions for Plaintiff. It was not enough for Defendant to just declare that Plaintiff was unable to perform the essential functions of his existing position with or without accommodations.

Doe v. Anderson Union High School (2022) 78 Cal.App.5th 236

Summary: School districts owe a greater duty to students than most employers own their employees. The case is instructive on what courts will consider when evaluating claims of negligent hiring and supervision.

Discussion: Plaintiff was a 17-year-old student attending high school within the Anderson Union High School District ("District"). She sued the District alleging that it negligently hired and supervised a teacher who had a sexual relationship with Plaintiff. The Court ruled in the District's favor, finding that the sexual relationship was not reasonably foreseeable to the District based on the information known to it.

Before the teacher was hired, the District subjected him to an extensive background investigation. Nothing arose during that investigation that suggested any risks.

After the teacher was hired, it is undisputed that he then had a sexual relationship with Plaintiff, an underage student. The relationship started with handholding and texting. It progressed to the student meeting with the teacher for sexual activities in the teacher's classroom after hours and at his home. One school employee saw the student alone with the teacher in the classroom, but did not see any inappropriate conduct. He reported the situation to the school receptionist, but she did not take any further action.

The District also maintained security cameras at the school, including one that recorded video of the doors into the teacher's classroom. The District's policy was to review video footage only if an incident was reported that may have been caught on video.

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Plaintiff filed suit against the District alleging negligent hiring and supervision of the teacher. The District moved for summary judgment. It argued that it did not know, either in the hiring process or during its supervision of the teacher, that he posed a risk of harm to students. The trial court granted the Motion, ruling that there was no evidence the District knew or should have known that the teacher posed a risk of harm to students. Plaintiff appealed.

The Court of Appeal affirmed the trial court's ruling. The Court held that although school districts and their employees have a special relationship with their students arising from to the mandatory character of student attendance, that duty only extends to guarding students from foreseeable sources.

The Plaintiff agreed that negligent hiring claims hinge on the foreseeability of harm based on the hiring entity's knowledge of facts suggesting that an applicant may pose a risk. However, she argued that a negligent supervision claim in the school context does not. Rather, she argued that sexual abuse between school employees and students is per se foreseeable. The Court rejected this position. In fact, California courts have repeatedly held that sexual misconduct is not automatically foreseeable any time a minor and adult are alone together in a room.

Reviewing the record, the Court found that there was no evidence to support a conclusion that the District knew or should have known that the teacher would have sex with Plaintiff or any other students. Without that evidence, Plaintiff was essentially asking the Court to hold that the District had a duty to constantly monitor video footage of every student, teacher, employee, and campus visitor. It refused to impose such an unreasonably burdensome duty on the District.

Dept. of Corrections and Rehab. v. State Personnel Board (2022) 74 Cal.App.5th 908

Summary: The Court affirmed a judgment in favor of an Applicant, who filed suit against the California Department of Corrections ("Department") alleging she was denied employment interviews because of her race and age. The Department failed to offer evidence of legitimate reasons for its actions that was sufficient to overcome the presumption of discrimination created after Applicant established a prima facie case of unlawful discrimination. This case reiterates the importance of properly preparing witnesses before they testify. It is not enough for witnesses to just claim ignorance on an issue that is crucial to the case. Employers must identify the witnesses who actually made the adverse decisions and have those individuals testify regarding the reasons for their decisions.

Discussion: The Department employs its own physicians and surgeons. It also contracts with third-party entities that provide medical personnel to work at various correctional facilities. Applicant worked for one of those third-party entities as a physician/surgeon. She was often assigned to work at the Department's correctional facilities. She is Black and was 52 years old at all relevant times.

Applicant eventually applied to work directly for the Department as a physician/surgeon in mid-2008. She advised that she was willing to work at multiple correctional facilities, including one she worked at through the third-party entity. After applying, Applicant contacted the Department to check on the status of the hiring process. She was advised that the Department was scheduling interviews with candidates. She was never contacted for an interview. The Department ultimately hired a Hispanic physician "between 21 and 39 years of age" for the position.

The Department interviewed candidates for another open physician/surgeon position in July 2008. Again, Applicant was not selected for an interview. The Department eventually hired a white woman between "40 and 69 years of age" who had similar qualifications as Applicant

In August 2008, Applicant told the health care manager at one of the correctional facilities she was working at that she was interested in another available physician/surgeon position with the Department. Applicant applied for the position. The Department ultimately hired a male candidate who is Asian.

One month later, Applicant learned that the credentialing unit for the Department was revoking her credentials, thereby precluding her from working at the correctional facilities as a contractor through the third-party entity.

Applicant then filed a complaint with the State Personnel Board ("Board") alleging the Department did not interview or hire her for any of the positions because of her age and/or race. Following a hearing, the Board found that Applicant failed to establish unlawful discrimination. Applicant then filed a petition in the superior court challenging that decision. The superior court granted the petition and directed the Board to set aside its decision and reconsider the matter.

On reconsideration, the Board found that Applicant was not denied the position in May 2008 for any discriminatory reasons. However, the Department did fail to provide any evidence of legitimate, nondiscriminatory reasons for refusing to interview Applicant for the positions in July 2008 and August 2008. The Board further determined that the Department's vague and inconsistent reasons for revoking the Applicant's credentials failed to establish that the decision was taken for legitimate, nondiscriminatory reasons.

The Department petitioned for writ of administrative mandamus seeking an order setting aside the Board's decision. The petition was denied and the Department appealed. On appeal, the California Court of Appeal affirmed the Board's rulings.

The Court of Appeal analyzed Applicant's discrimination claims using the McDonnell Douglas burden-shifting framework under the Fair Employment and Housing Act ("FEHA"). Notably, the Court explicitly stated that the McDonnell Douglas burden-shifting approach applies during trial, not just when analyzing discrimination claims on summary judgment. That issue has been somewhat unsettled, with some recent decisions suggesting McDonnell Douglas does not apply at trial.

The Court held that the burden to prove that discrimination was a substantial motivating reason for the adverse action only applies in the third stage of the analysis, where plaintiffs must prove pretext. The Court explained that the analysis does not reach that stage unless or until the employer satisfies the second stage of the analysis, requiring that the employer offer evidence of a legitimate, nondiscriminatory reason for the adverse action. If the employer does not meet that burden, then the presumption of discrimination that arises when the plaintiff proves a prima facie case of discrimination during the first stage of the analysis remains.

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Applying that standard to the facts of the case, the Court found that the Department failed to carry its burden at the second stage of the analysis of offering evidence of a legitimate reason for not interviewing Applicant. In fact, the Department failed to offer any admissible evidence regarding why Applicant was not interviewed. The Department's witnesses testified that they did not know why Applicant was not interviewed. The Court explained that it is possible that Applicant applied too late or that the other candidates were more qualified, but the Department failed to offer any testimony from someone with hiring authority to explain that. The Court noted:

> "We conclude that where a plaintiff establishes a prima facie case of discrimination based on a failure to interview her for open positions, the employer must do more than produce evidence that the hiring authorities did not know why she was not interviewed. Nor is it enough for the employer . . . to cobble together after-the-fact possible nondiscriminatory reasons. While the stage-two burden of production is not onerous, the employer must clearly state the actual nondiscriminatory reason for the challenged conduct."

The Department did not do that. Therefore, the Court affirmed the judgment in favor of Applicant.


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