



President
Mr. Dave Warren
City of Placerville

Vice President
Ms. Liz Ehrenstrom
City of Oroville

Treasurer
Mr. Tim Sailsbery
City of Willows

Secretary
Vacant

**NORTHERN CALIFORNIA CITIES SELF INSURANCE FUND
CLAIMS COMMITTEE MEETING
AGENDA - Revised**

Date: Thursday, September 27, 2018
Time: 10:00 a.m.
Location: Rocklin Event Center - Garden Room
2650 Sunset Blvd.
Rocklin, CA 95677

A – Action
I – Information

1 – Attached
2 – Hand Out
3 – Separate Cover
4 – Verbal

MISSION STATEMENT

The Northern California Cities Self Insurance Fund, or NCCSIF, is an association of municipalities joined to protect member resources by stabilizing risk costs in a reliable, economical and beneficial manner while providing members with broad coverage and quality services in risk management and claims management.

A. CALL TO ORDER

B. APPROVAL OF AGENDA AS POSTED A 1

C. PUBLIC COMMENTS

This time is reserved for members of the public to address the Committee on matters pertaining to NCCSIF that are of interest to them.

pg. 3 **D. CONSENT CALENDAR A 1**

All matters listed under the consent calendar are considered routine with no separate discussion necessary. Any member of the public or the Committee may request any item to be considered separately.

pg. 4 1. Claims Committee Meeting Minutes - May 17, 2018

pg. 7 **E. CLOSED SESSION TO DISCUSS PENDING CLAIMS A 3**

(Per Governmental Code Section 54956.95)
*REQUESTING AUTHORITY

Workers Compensation:

1. NCWA-556991 v. City of Nevada City*
2. NCWA-557372 v. City of Elk Grove*
3. NCWA-556416 v. City of Marysville*
4. NCWA-60737 v. City of Red Bluff*
5. NCWA-387542 v. City of Rocklin*

Liability:

1. Richardson v. Town of Paradise*
2. Johnson v. City of Yuba City*



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- F. REPORT FROM CLOSED SESSION** **I 4**
The Committee will announce any reportable action taken in closed session

- pg. 8 **G. APPROVAL OF NCCSIF DEFENSE ATTORNEY LIST FOR LIABILITY** **A 1**
The Committee will be asked to approve revising the NCCSIF Liability Defense Attorney List to include attorneys from Lenahan, Lee, Slater, Pearse & Majernik, LLP.

- pg. 23 **H. DEFENSE COUNSEL RATE INCREASE** **A 1**
Approve Caulfield Law Firm 2018 fee schedule.

- pg. 25 **I. NCCSIF FY 17/18 LIABILITY PROGRAM CLAIMS AUDIT** **A 1**
The Committee will review the most recent Liability Program claims audit conducted by Risky Business Pros in May 2018 to accept and file.

- pg. 38 **J. REVISION OF POLICY AND PROCEDURE A-6B WORKERS' COMPENSATION SHARED LAYER SETTLEMENT AUTHORITY** **A 1**
Review the proposed changes to Policy and Procedure A-6b for recommendation to the Board.

- pg. 42 **K. ROUND TABLE DISCUSSION** **I 4**
The floor will be open to Committee members for any topics or ideas that members would like to address.

- L. ADJOURNMENT**

UPCOMING MEETINGS

- Risk Management Committee Meeting - October 25, 2018
- Board of Directors Meeting - October 25, 2018
- Police Risk Management Committee Meeting - November 1, 2018

Per Government Code 54954.2, persons requesting disability related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Raychelle Maranan at Alliant Insurance Services at (916) 643-2712.

The Agenda packet will be posted on the NCCSIF website at www.nccsif.org. Documents and material relating to an open session agenda item that are provided to the NCCSIF Claims Committee less than 72 hours prior to a regular meeting will be available for public inspection and copying at 2180 Harvard Street, Suite 460, Sacramento, CA 95815.

Access to some buildings and offices may require routine provisions of identification to building security. However, NCCSIF does not require any member of the public to register his or her name or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.



Agenda Item D.

CONSENT CALENDAR

ACTION ITEM

ISSUE: The Committee reviews items on the Consent Calendar, and if any item requires clarification or discussion a Member should ask that it be removed for separate action. The Committee should then consider action to approve the Consent Calendar excluding those items removed. Any items removed from the Consent Calendar will be placed later on the agenda in an order determined by the Chair.

RECOMMENDATION: Adoption of the Consent Calendar after review by the Committee.

FISCAL IMPACT: None.

BACKGROUND: Routine items that generally do not require discussion are regularly placed on the Consent Calendar for approval.

ATTACHMENT(S):

1. Claims Committee Meeting Minutes - May 17, 2018 (Draft)



**MINUTES OF THE
NCCSIF CLAIMS COMMITTEE MEETING
ROCKLIN EVENT CENTER, ROCKLIN, CA
MAY 17, 2018**

COMMITTEE MEMBERS PRESENT

Liz Cottrell, City of Anderson
Liz Ehrenstrom, City of Oroville (**Chair**)
Gina Will, Town of Paradise
Dave Warren, City of Placerville
Tim Sailsbery, City of Willows

CONSULTANTS & GUESTS

Marcus Beverly, Alliant Insurance Services
Raychelle Maranan, Alliant Insurance Services
Dori Zumwalt, York Risk Services
Steven Scott, York Risk Services
Cameron Dewey, York Risk Services
Alex Davis, York Risk Services

A. CALL TO ORDER

Chair Liz Ehrenstrom called the meeting to order at 10:03 a.m.

B. APPROVAL OF AGENDA AS POSTED

A motion was made to approve the Agenda as posted.

Motion: Tim Sailsbery **Second:** Dave Warren **Motion Carried**
Ayes: Cottrell, Ehrenstrom, Will, Warren, Sailsbery

C. PUBLIC COMMENTS

No public comments were made.

D. CONSENT CALENDAR

1. Claims Committee Meeting Minutes - March 22, 2018

A motion was made to approve the items in the Consent Calendar as presented.

Motion: Gina Will **Second:** Liz Cottrell **Motion Carried**
Ayes: Cottrell, Ehrenstrom, Will, Warren, Sailsbery



E. CLOSED SESSION

Pursuant to Government Code Section 54956.95, the Committee recessed to closed session at 10:05 a.m. to discuss the following claims:

Liability:

1. Johnson vs. City of Yuba City
2. Chapman vs. Lincoln
3. Burke vs. City of Folsom

Workers Compensation:

1. NCWA-557704, NCWA-557440 and NCWA-555638 vs. City of Yuba City
2. NCWA-527637, City of Rocklin
3. NCWA-556699, City of Lincoln

F. REPORT FROM CLOSED SESSION

The Committee reconvened to open session at 11:16 a.m.

Chair Ehrenstrom indicated no formal announcement is necessary as direction was given to the Program and Claims Administrators for the claims referenced above

G. ROUND TABLE DISCUSSION

The Committee discussed general claims related issues.

Ms. Dori Zumwalt discussed the mandated adoption of an evidence-based formulary for medications prescribed to California injured workers and the State Division of Workers' Compensation to incorporate the formulary into its Medical Treatment Utilization Schedule. The formulary is intended to further the goal of providing appropriate medications expeditiously while minimizing administrative burden and associated costs.

Astrida Trupovnieks arrived at 11:17 a.m.

Sandy Ryan arrived at 11:19 a.m.

Chair Ehrenstrom indicated that the JPA must communicate each claim settlement amount to the members and enforce accountability measures from each member to ensure proactive approach as opposed to reactive in correcting unsafe conditions and timely reporting of claims. Ms. Zumwalt indicated the Supervisor 101 training promotes the message of accountability at all level and conveys that every employee is responsible around safety.



H. ADJOURNMENT

This meeting was adjourned at 11:30 a.m.

NEXT MEETING DATE: September 27, 2018 in Rocklin, CA

Respectfully Submitted,

Secretary

Approval Date

DRAFT



Agenda Item E.

CLOSED SESSION TO DISCUSS PENDING CLAIMS

(Per Governmental Code Section 54956.95)

ACTION ITEM

ISSUE: Pursuant to Government Code Section 54956.95, the Committee will hold a Closed Session to discuss the following claims:

Workers Compensation:

1. NCWA-556991 v. City of Nevada City*
2. NCWA-557372 v. City of Elk Grove*
3. NCWA-556416 v. City of Marysville*
4. NCWA-60737 v. City of Red Bluff*
5. NCWA-387542 v. City of Rocklin*

Liability

1. Richardson v. Town of Paradise*
2. Johnson v. City of Yuba City*

*REQUESTING AUTHORITY

FISCAL IMPACT: Unknown.

RECOMMENDATION: The Program Administrator cannot make a recommendation at this time, as the subject matter is confidential.

BACKGROUND: Confidential.

ATTACHMENT(S): None.



Agenda Item G.

**APPROVAL OF NCCSIF DEFENSE ATTORNEY LIST
FOR LIABILITY**

ACTION ITEM

ISSUE: The City of Rocklin is recommending the addition of Charleton S. Pearse, Benjamin D. Oram, and Adam Ambrozy from Lenahan, Lee, Slater, Pearse & Majernik, LLP to the Liability Counsel Approved List.

They are also recommended by the Claims Manager for NCCSIF's excess coverage provider, California Joint Powers Risk Management Authority (CJPRMA). They have successfully defended and managed claims for another member of CJPRMA, the Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) risk pool. We plan to use Lenahan law firm deliberately as needed for difficult dangerous condition cases or unusual cases that need a vigorous legal defense. Attached is a firm resume that includes a summary of some of those types of cases the firm managed for YCPARMIA.

RECOMMENDATION: Approve as requested.

FISCAL IMPACT: None.

BACKGROUND: The Claims Committee regularly reviews and recommends changes to the Approved List of attorneys based on feedback from members and the claims administrator.

The Lenahan firm is on NCCSIF Workers' Compensation defense panel and has successfully managed many of those claims for the JPA. Hourly rates for the firm: Sr. Partner \$225, Partner \$210, Sr. Associate \$195, and Paralegals \$90.

ATTACHMENT(S):

1. City of Rocklin Recommendation
2. Lenahan, Lee, Slater, Pearse & Majernik, LLP Law Firm Resume
3. Policy and Procedure A-9: Attachment A Defense Attorney List for Liability (red-line version)

On Thu, May 24, 2018 at 2:23 PM, Steven Rudolph <Steven.Rudolph@rocklin.ca.us> wrote:

Hi Cameron,

I understand that you are considering adding some attorneys from the Lenahan firm to the NCCSIF civil panel list. I have had experience with several members of that firm in the workers comp arena, and have been pleased with their knowledge, skill and responsiveness. We certainly can use more depth on the civil liability side of the house, and I would support their addition to the list. If you wish to discuss further, please give me a call. I hope you are doing well, and have an enjoyable holiday weekend (spent on your bike, I am sure!).

Steve

Steven Rudolph | City Manager

City of Rocklin | 3970 Rocklin Road | Rocklin, CA 95677

direct: (916) 625-5585 | Steven.Rudolph@rocklin.ca.us

LAW OFFICES OF

LENAHAN, LEE, SLATER, PEARSE & MAJERNIK, LLP

GERALD M. LENAHAN
BRIAN D. LEE
PETER O. SLATER
CHARLETON S. PEARSE
WILLIAM R. MAJERNIK, JR.
COLIN S. CONNOR
STEPHANIE A. MERRI
JEANA B. PIPKIN
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DONALD W. McMURCHIE*
STEPHEN A. BRANDENBURGER*
DOUGLAS B. WEILL*
*RETIRED

THOMAS T. FILES (1918-2009)
ROBERT G. FOLEY (1935-1995)
PAMELA J. VAN HAAFTEN (1963-2004)

ADAM M. AMBROZY
KELLY B. TIMOTHY
BENJAMIN D. ORAM
TIFFANY D. CORONA
JOEL E. KAUTZ
CHARLES S. TEMPLETON
JESSICA M. VALENTI
TYLER A. SONKSEN
COURTNEY L. MASTERTSON
BREANNA J. OWEN
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FAX: (559) 237-1577

FIRM RESUME

Lenahan, Lee, Slater, Pearse & Majernik, LLP, is the direct descendant of the original Law Offices of Files and McMurchie formed in Sacramento in 1952 when two Stanford Law School graduates, Tom Files and Don McMurchie, joined forces to open a general civil practice partnership. Over the past 65 years the Firm has experienced steady growth resulting in what is currently the largest work comp defense firm in Northern California. With 23 attorneys in the Sacramento office and a second office in Fresno, the Firm covers the entire Sacramento Valley, Bay Area, and Northern California to the Oregon border.

The Firm is divided into three practice pods, all of which involve litigation. The pods focus primarily on the defense of workers' compensation matters, pursuit of civil subrogation remedies in connection with on-the-job injuries, and liability defense, including most areas of employment and tort law.

WORKERS' COMPENSATION DEFENSE AND SUBROGATION

Compensation Defense

Tom Files was the Firm's first certified specialist in workers' compensation and charter specialist in what began as an experimental program with the State Bar. Since his retirement in 1981, the Firm has added additional certified specialists, five of whom presently lead in the representation of over fifty major insurance companies, self-insured employers, and permissibly uninsured public entities. A representative sample of those clients include the Sacramento Metropolitan Fire District, Sacramento Regional Transit, Central Contra Costa Transit Authority, San Joaquin Regional Transit, County of Sacramento, San Joaquin County, Nevada County, Amador County, Butte County, Sutter County, Yuba County, Calaveras County, Napa County, Sierra County, Siskiyou County, the Cities of Folsom, Modesto, Colusa, Citrus Heights, Elk Grove, Roseville, Rocklin, Lincoln, Dixon, Rio Vista, Nevada City, Placerville, Palo Alto, Coalinga, and Mendocino, the Towns of Truckee and Paradise, UC Davis, YCPARMIA, Elk Grove School District, San Juan USD, Schools Insurance Authority, Marin Schools Insurance Authority, Republic Insurance Company, UPS, Trader Joe's, Waste Management, Pacific Coast Building

Established 1952

Products, Mission Linen, Gordon Trucking, Argonaut, PMA Group (Pennsylvania Manufacturers), Compass Group, CareWest Insurance Group, Non Profits United, Samsung Fire & Marine Insurance Group, Eskaton Properties, and Bank of America.

The Firm's current certified specialists are partners Gerald Lenahan, Peter Slater, William Majernik, Stephanie Merri, and Jeana Pipkin. Other partners practicing in this area include Brian Lee, Moses Mendoza, Colin Connor, Yolanda Tuckerman, Christine Green, Ira Gerald Clary, Jr., and Nicole Flanagan. In addition to thirteen partners, the Firm has twelve Associates devoting substantial practice to compensation defense and has immediate plans to add more.

Compensation Subrogation

When the Firm was smaller, the same attorney would handle the defense of the workers' compensation case before the Appeals Board and also appear in the Superior Court to pursue the carrier's subrogation recovery against a negligent third-party. With the advent of specialization, fast track cases, and irreconcilable calendars, the Firm has established a sub-pod of attorneys who devote a substantial portion of their practice to recover compensation expenditures in the Superior Court.

Charleton Pearse manages the subrogation team, aided by partners William Majernik and Jeana Pipkin, and associate attorneys Adam Ambrozy and Benjamin Oram. The subrogation team is skilled and prepared in trying cases to their conclusions before the Superior Courts of this state, with or without the assistance of plaintiff's counsel.

This subrogation unit has had many consecutive years of large dollar recoveries for the Firm's compensation clients. The Firm is small enough to allow continuous coordination between the comp defense and civil subrogation attorneys. This allows the compensation defense and subrogation attorneys to maintain effective communication in order to accomplish advantageous settlement utilizing Third-Party Compromise and Release agreements and stipulated credits for third-party recovery.

EMPLOYER CIVIL LIABILITY DEFENSE

Many of the Firm's clients mentioned above adjust both workers' compensation and defense matters. It was a natural growth for the Firm's subrogation department to begin defending these clients in the Superior Court. Charleton Pearse is the partner in charge of this unit and is aided by partner Jeana Pipkin, and associate attorneys Adam Ambrozy and Benjamin Oram.

The Firm defends the employer community in Superior Court against employment discrimination, wrongful termination, sexual harassment, ADA violations, danger conditions of public property, excessive force, all Governmental Tort Claims and similar claims. Before the WCAB, the Firm's attorneys defend employees against claims of Serious and Willful Misconduct and Labor Code §132a violations.

CONCLUSION

The continued success of the Firm will be derived from the skills and integrity of its partners and associates, the stability of its composition, the diversity of its practice and its reputation for quality legal representation. A majority of the principals have practiced solely with this Firm and plan to remain throughout their legal careers. Individual resumes for each of the attorneys are available upon request or by visiting the Firm website at www.lenahanlaw.net. Questions concerning the specifics of legal representation can be directed to any partner or to the managing partner Gerald Lenahan in our Sacramento office or Brian Lee in our Fresno office.

Established 1952

Plaintiff v. City of Davis; County of Yolo
(Dangerous Condition of Public Property)

Plaintiffs' Counsel: Greene, Broillet & Wheeler (Santa Monica)
Defense Counsel: Charleton Pearse, Benjamin Oram, and Adam Ambrozy

Venue: Yolo County Superior Court

Facts:

Plaintiff was rendered a quadriplegic when he crashed his bicycle into a steel vehicle gate used to close an access road leading into a City waste water treatment plant. Plaintiff filed suit against the City and County alleging dangerous condition of public property under Gov. Code 830 and 835. The case was filed in Yolo County superior court. Plaintiff alleged \$30,000,000 in damages.

Discovery:

Retention of a nighttime visibility expert witness and an accident reconstructionist was required early in the case due to a massive update to the plant which changed the condition and require immediate inspection. The case required multiple demurrers and two motions for summary judgment, one for each defendant. Through our discovery efforts it was determined that plaintiff was highly intoxicated at the time that the accident occurred and presentation of that evidence at a critical juncture at mediation resulted in settlement.

Resolution:

The case was litigated until within a month or two of trial when it settled at mediation for an offer of "trial costs" which amounted to \$750,000. The settlement was achieved despite paid medical bills in excess of \$4.2 million and required Plaintiff to satisfy all medical liens out of the proceeds.

Plaintiff v. County of Yolo
(Civil Rights and Employment Discrimination)

Plaintiffs' Counsel: Law Office of Mary Alice Coleman
Defense Counsel: Charleton Pearse, Benjamin Oram

Venue: U.S. District Court for the Eastern District of California

Facts:

Plaintiff was the Asst. Director of the Department of Employment and Social Services. She served as acting director during a period of illness of the Director. Plaintiff perceived child abuse and child neglect on the part of the Director in relation to her own children and reported the Director to Child Protective Services for a neighboring County. Plaintiff was terminated from employment a short time later and filed suit alleging violation of 1st Amendment and civil rights, breach of contract, and violation of Whistleblower statutes.

Resolution:

Litigation ensued and we ultimately filed a motion for summary judgment which was granted in its entirety. Plaintiff appealed to the Ninth Circuit but later abandoned her appeal.

Plaintiff v. City of Davis

(Dangerous Condition of Public Property)

Plaintiffs' Counsel: John M. Feder - Rouda, Feder, Tietjen & McGuinn (San Francisco)

Defense Counsel: Charleton Pearse, Adam Ambrozy

Venue: Yolo County Superior Court

Facts:

Plaintiff, 18 years old, sustained a spinal fracture when a 60' City tree fell over onto the vehicle driven by plaintiff. The tree had been known by the City to be diseased and was marked for removal nearly 9 months prior to incident. The reason for delay in removal was due to a failure in communication of the City arborist and the committee which ordered removal. Plaintiff alleged \$12,000,000 in damages.

Discovery:

Thorough research on plaintiff including surveillance video which demonstrated significantly higher levels of functional ability that was disclosed in written discovery, in deposition, or to Plaintiff's medical experts.

Resolution:

The case was fully litigated through MSC at which time settlement was reached in the amount of \$168,500.

Plaintiff v. City of Davis

(Dangerous Condition of Public Property and Negligence)

Plaintiffs' Counsel: Mark O. Hiepler – Hiepler and Hiepler (Oxnard)

Defense Counsel: Charleton Pearse, Adam Ambrozy

Venue: Yolo County Superior Court

Facts:

Plaintiff was a UC Davis college student who was riding her bicycle in a cross-walk when she was hit by a City employee driving a City truck on the job. She sustained severe injuries including traumatic brain injury. Plaintiff alleged that the cross-walk constituted a dangerous condition of public property and negligence on the part of the driver who hit her.

Discovery:

The case was fully litigated including retention of expert witnesses to work up the traumatic brain injury assessment. Plaintiff claimed damages in the amount of \$13,000,000. The case became even more complex after plaintiff's attorney tampered with evidence during expert discovery requiring a motion for sanctions which was granted and awarded the City \$12,356 in sanctions to be paid by the plaintiff.

Resolution:

The case was fully litigated and settled on the eve of trial for \$450,000.00.

Plaintiff v. City of West Sacramento

(Dangerous Condition of Public Property and Negligence)

Plaintiff's counsel: Steven Brown Esq., Law Offices of Brown & Gessell

Defense counsel: Charleton Pearse, Adam M. Ambrozy

Venue: Yolo County Superior Court

Facts:

Plaintiff was a minor who was struck by a motor vehicle while crossing a roadway on her bicycle. Plaintiff alleged the City maintained a dangerous condition of public property due to visibility issues for oncoming traffic. Plaintiff alleged damages of 1.2 million. It was discovered through the City's investigation that Plaintiff was riding her bicycle on a Class I Bikeway at the time of the collision. As such, the City asserted that it was immune from liability.

Resolution:

At the Mandatory Settlement Conference, the City offered \$30,000 to Plaintiff while the driver of the motor vehicle who struck Plaintiff tendered her policy limits.

Plaintiffs v. Esparto Unified School District

(Vicarious Liability of District Employee, Wrongful Death of a minor)

Plaintiffs' counsel: Steven Sabbadini, Esq

Defense Counsel: Charleton Pearse and Adam Ambrozy

Venue: Yolo County Superior Court

Facts:

Plaintiffs, parents of the decedent, alleged that teachers at Defendant school failed to adequately supervise and protect the health of decedent who suffered an aneurysm while lifting weights alone in a high school gym. Plaintiffs alleged damages of over 2.2 million dollars. The City investigated the specific medical condition that led to decedent's death and along with expert consultations determined that decedent would not have survived even if he received immediate medical attention.

Resolution:

The parents of the decedent agreed to accept \$75,000 in settlement of their wrongful death claims against the Defendant School District.

Plaintiff v. City of Davis

(Dangerous Condition of Public Property)

Plaintiff's counsel: Stanley Fleshman, Esq.; Dreyer, Babich, Buccola, Wood & Campora, LLP
Defense counsel: Charleton Pearse, Benjamin Oram

Venue: Yolo County Superior Court

Facts:

Plaintiff was a 54-year-old triathlete training for an Ironman event. She was riding her bicycle on a sidewalk at the end of a 50-mile training ride when her front wheel got stuck in a gap/crack in the sidewalk. She flipped over the handle bars, fractured her hip and sustained other injuries. The sidewalk was named as a trail in the City's bicycle map. Plaintiff originally pled that she was injured while riding on a City bicycle trail. Her deposition was taken where she argued that the trail was not a sidewalk and could never be construed as a sidewalk. The City filed a motion for judgment on the pleadings which was granted but plaintiff was given the opportunity to amend. Plaintiff amended to call the pathway a sidewalk. The City filed a motion for summary judgment based on trail immunity establish by Government Code section 831.4.

Resolution:

Plaintiff settled for a waiver of costs after the motion for summary judgment was filed.

Plaintiff v. City of Davis, et al.

(Civil Rights and Excessive Force)

Plaintiffs' Counsel: pro per
Defense Counsel: Charleton Pearse, Benjamin Oram

Venue: Yolo County Superior Court

Facts:

Plaintiff was riding his bicycle at night when he encountered a City policer officer and fell to the ground. Plaintiff claimed that the office blinded him with the vehicle mounted flood light and caused severe back injuries. Plaintiff alleged violation of his civil rights and excessive force. Plaintiff alleged \$6,200,000 in damages.

Discovery:

Multiple motions to compel were required due to plaintiff's refusal to cooperate in the discovery process. Through investigation, it was found that plaintiff was a known gang member who had served time in state prison. It was discovered that plaintiff had been shot in the back six times as a teenager and all relevant medical records were obtained to offset the claim that all his injuries arose out of the bicycle accident.

Resolution:

After plaintiff's deposition, a motion for terminating sanctions was filed due to plaintiff's refusal to cooperate. The motion was granted and the case dismissed with no recovery by plaintiff. A motion for attorney fees was then filed and granted which sanctioned plaintiff in the amount of \$48,460.00.

Plaintiff v. County of Yolo, et al.

(Civil Rights, ADA and Excessive Force)

Plaintiffs' Counsel: pro per

Defense Counsel: Charleton Pearse, Benjamin Oram

Venue: U.S. District Court for Eastern District

Facts:

Plaintiff was an inmate in Yolo County Jail. While incarcerated plaintiff alleges that he was assaulted by a correctional officer, denied proper medical treatment, and subjected to unsafe prison conditions. Plaintiff filed suit in federal court alleging violation of ADA, excessive force under the 8th Amendment, and cruel and unusual punishment, all under 42 U.S.C. §1983. A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure has been filed.

Resolution:

The case is currently pending.

Benjamin D. Oram, Esq.

LENAHAN, LEE, SLATER & PEARSE, LLP

2542 River Plaza Drive, Sacramento, CA 95833 • (916) 443-1030 • boram@lenahanlaw.net

EDUCATION

University of the Pacific, Mc George School Law, Sacramento, California

Juris Doctor, December 2009

- Witkin Award for highest grade in Legal Process.
- J. Rueben Clark Law Society Student Chapter

California State University, Sacramento

Bachelor of Science in Criminal Justice, June 2006

- *Magna Cum Laude*; GPA 3.76/4.00.
- Dean's Honor List all semesters.
- Honor Society of Phi Kappa Phi.

EXPERIENCE

Lenahan, Lee, Slater & Pearse, LLP, Sacramento, California

Associate Attorney, May 2010–Present

- Represent various clients in civil litigation defense cases on behalf of public and private employers, primarily in Northern California and the Bay Area arising out of employment and general liability issues, subrogation matters arising out of workers compensation claims;
- Admitted to practice in both State and Federal courts in California
- Clients include: City of Davis, County of Yolo, County of Sacramento, York Risk Services Group, Gallagher Bassett, Athens Administrators, PMA, and various additional self-insured public entities including multiple school districts, water districts, and other public entities.

Law Clerk, May 2008–May 2010

- Assisted attorneys in workers' compensation defense and civil litigation cases
- Drafted pleadings and petitions

Nevada Department of Corrections

Correctional Officer

Lovelock, NV

Sept 2000—July 2003

- Supervise inmates in state custody and ensure security of institution
- Member of the Special Response Team assigned to respond the critical incidents of all types

OTHER ACTIVITIES

- Speaker at various in-house trainings for adjusting agencies, insurers, and employers on subrogation issues
- **J. Rueben Clark Law Society**
Member
- **Port Rockwell Society**
Member

ADAM AMBROZY

2542 River Plaza Drive, CA 95833 ● (916) 443-1030 ● aambrozy@lenahanlaw.net

LICENSE

State Bar of California, December 2008

EDUCATION

University of the Pacific McGeorge School of Law
Juris Doctorate May 2008

San Jose State University
Bachelor of Arts, *with honors*, Political Science, May 2004

EXPERIENCE

Lenahan, Lee, Slater, & Pearse LLP. Sacramento, CA
Civil Litigation/Subrogation Attorney December 2008-Present

Draft pleadings, take/defend depositions, make court appearances, prepare and respond to law and motion filings, manage cases, fact investigation, prepare and respond to written discovery, attend mediations and settlement conferences, and trial.

Lenahan, Lee, Slater, & Pearse LLP. Sacramento, CA
Law Clerk May 2006-December 2008

Draft legal research memos, fact development and investigation, medical records reviews, propounding and responding to discovery requests. Perform intakes of prospective clients.

Intercare Insurance/Viia Insurance Roseville, CA
Member Services Representative Nov 2004-June 2005

Provided customer service to clients pertaining to their health insurance coverage. Provided clients with benefit explanations, claims assistance, and eligibility information.

REFERENCES UPON REQUEST

**CURRICULUM VITAE
CHARLETON S. PEARSE**

LEGAL EDUCATION

1985 **University of California at Davis, School of Law (King Hall)**
Degree: Juris Doctorate

COLLEGE EDUCATION

1982 **University of California at Los Angeles (UCLA)**
Degree: B.A., Political Science
Graduated: Cum Laude, Honors Status
Recipient: University Scholarship

1980 **Pasadena City College, Pasadena, California**
Degree: Associate of Arts, natural Sciences
Admitted: Alpha Gamma Sigma (Junior College Honor Society)

LEGAL EXPERIENCE

**1990-
Present** ***Partner, Lenahan, Lee, Slater & Pearse, LLP***
Practice limited to subrogation and civil litigation including: representation of public entities in litigation, employment litigation, sexual harassment/discrimination, insurance bad faith, product liability, fraud cases, personal injury and subrogation, all phases.

1985-1989 ***Associate Attorney, McMurchie, Foley, Brandenburger, Weill & Keeling***
Civil and workers' compensation practice including general civil practice, civil litigation, subrogation, defense of workers' compensation claims and appellate advocacy.

1984-1985 ***Law Clerk, McMurchie, Foley, Brandenburger, & Weill***
Participated in all phases of civil and workers' compensation practice including drafting pleadings, motions, petitions and appellate briefs, assisting at trial and deposition, and researching various substantive and procedural legal and medical issues.

PROFESSIONAL ORGANIZATIONS

California State Bar Association
Sacramento County Bar Association
Consumer Trial Attorneys of California
Consumer Trial Attorneys of Sacramento

NCCSIF ADMINISTRATIVE POLICY & PROCEDURE #A-9

**ATTACHMENT A - LIABILITY
Approved List of Counsel**

Name of Law Firm	Attorneys	Areas of Expertise
Angelo, Kilday & Kilduff 601 University Avenue, Suite 150 Sacramento, CA 95825 (916) 564-6100	Bruce A. Kilday Carolee Kilduff Serena Sanders Carrie McFadden Kevin Dehoff Amie McTavish	Police Liability, General Liability, Auto, Personnel, Heavy Trial Experience
Ayres & Associates 930 Executive Way, Suite 200 Redding, CA 96002 (530) 229-1340	William Ayres	Dangerous Condition, Auto, General Liability, Environmental Liability
Bertrand, Fox, Elliott et al 2749 Hyde Street San Francisco, CA 94109 (415) 353-0999	Eugene Elliott	
Caulfield Law Firm 1101 Investment Blvd., Suite 120 El Dorado Hills, CA 95762 (916) 933-3200	Rich Caulfield Andrew Caulfield	Same as above, with Construction Defect, Heavy to Medium Trial Experience
Donahue Davies LLP 1 Natoma Street Folsom, CA 95630 (916) 817-2900	Robert E Davies Brian Haydon	
Gregory P. Einhorn 48 Hanover Lane, Suite 2 Chico, CA 95973 (530) 898-0228	Gregory P. Einhorn <i>Use for Willows as needed</i>	Employment Law, General Liability, Municipal
Kronick, Moskovitz Tiedemann & Girard 400 Capitol Mall, 27 th Floor Sacramento, CA 95814	Christopher Onstott Bruce A. Scheidt * Maggie Stern David W. Tyra	Civil Rights, California Fair Employment and Housing, Tort Claims, California Public Records Employment Practices

NCCSIF ADMINISTRATIVE POLICY & PROCEDURE #A-9

**ATTACHMENT A - LIABILITY
Approved List of Counsel**

Name of Law Firm	Attorneys	Areas of Expertise
Peters, Habib, McKenna Juhl-Rhodes & Cardoza, LLP P.O. Box 3509 Chico, CA 95927 (530) 342-3593	Dave Rush Mark Habib Jim McKenna Lia Juhl	Dangerous Condition, Police Liability, General Liability, Auto, Good Trial Experience
Porter Scott P.O. Box 255428 Sacramento, CA 95865 (916) 929-1481 Fax: (916) 927-3706	Nancy Sheehan John Whitefleet Kevin Kreutz Terry Cassidy Carl L. Fessenden Steve Horan Russell Porter	Police, Civil Rights, Dangerous Condition, Inverse Condemnation, Auto, General Liability, Heavy to Light Trial Experience
Matheny Sears Linkert & Jaime, LLP 3638 American River Drive Sacramento, CA 95864 (916) 978-3434 Fax: (916) 978-3430	Matthew Jaime Douglas Sears Richard Linkert Michael Bishop	
The Law Office of Justin N. Tierney 2000 U Street Sacramento, CA 95814 (916) 451-3426	Justin N. Tierney	Dangerous Condition, Auto, Medium Trial Experience
The Law Office of James A. Wyatt 2130 Eureka Way Redding, CA 96001 (530) 244-6060 P.O. Box 992338 Redding, CA 96099-2338	James A. Wyatt	Dangerous Condition, Civil Rights, Police, Wrongful Termination, Auto Liability, Labor Law, Heavy Trial Experience
Murphy. Campbell, Alliston & Quinn, PLC. 8801 Folsom Boulevard, Suite 230 Sacramento, CA 95826 (916) 400-2300	Stephanie L. Quinn	Auto, Wrongful Deaths, Slip and falls, Fire and Trespassing Experience

NCCSIF ADMINISTRATIVE POLICY & PROCEDURE #A-9

**ATTACHMENT A - LIABILITY
Approved List of Counsel**

Name of Law Firm	Attorneys	Areas of Expertise
Cota Cole LLP 2261 Lava Ridge Court Roseville, CA 95661 (916) 780-9009	Dennis Cota Derek Cole Daniel King	Land Use, civil rights, environmental issues.
Allen, Glaessner, Hazelwood, Werth 180 Montgomery Street, Ste. 1200 San Francisco, CA 94104 (415) 697-2000	Dale Allen Mark Hazelwood Steve Werth	Police liability, ADA, sidewalk, employment practices, general municipal liability
Arthofer and Tonkin, Attorneys At Law 1267 Willis Street Redding, CA 96001 (530) 722-9002	Kenneth Arthofer Griffith Tonkin	Public entity, injury, real estate
Randall Harr 44282 Highway 299 East McArthur, CA 96056 (530) 336-5656 rlh@randallharrlaw.com	Randall Harr	
Lenahan, Lee, Slater, Pearse & Majernik LLP 2542 River Plaza Drive Sacramento, CA 95833 (916) 443-1030	Charleton S. Pearse Benjamin D. Oram, Esq. Adam Ambrozy	Dangerous Condition and Vicarious Liability cases

* *Bruce A. Scheidt will be used only as respects the Eaton vs. Rocklin litigation.*

Revision Date: ~~March 22, 2018~~ [September 27, 2018](#)



BACK TO AGENDA

**Northern California Cities Self Insurance Fund
Claims Committee Meeting
September 27, 2018**

Agenda Item H.

DEFENSE COUNSEL RATE INCREASE

ACTION ITEM

ISSUE: The attached email dated September 14, 2018 from Cameron Dewey list Caulfield Law Firm hourly rate: Sr. Partner, \$225.00; Partner, \$210.00; Sr. Associate, \$195; and Paralegal, \$90.00.

RECOMMENDATION: Approve the rate increase.

FISCAL IMPACT: None.

BACKGROUND: The current hourly rate for Caulfield Law Firm is \$190.00.

ATTACHMENT(S): Cameron Dewey email dated 9/14/2018 with Caulfield Law Firm 2018 Rates

Raychelle Maranan

From: Dewey, Cameron <cameron.dewey@yorkrsg.com>
Sent: Friday, September 14, 2018 1:27 PM
To: Marcus Beverly; Raychelle Maranan; Zumwalt, Doriene
Subject: NCCSIF New Attorney Recommendation and rate increase
Attachments: Recommendation from Steve Rudolph.pdf; Lenahan Firm Resume.pdf

This message has originated outside the organization.

Marcus, at the request of the City Attorney of Rockin we have interviewed and request consideration of the Lenahan Law Firm. We need to have another firm with specialty with Employment Law and this firm has very good qualifications in that area, as well as dangerous condition expedience. The firm resume is attached and they agree to the going rates as follows:

Sr. partner \$225.00
partner \$210.00
Sr. Associate \$195.00
Paralegal \$90.00

Additionally the Caulfield Law Firm has asked for a rate increase to :

Sr. partner \$225.00
partner \$210.00
Sr. Associate \$195.00
Paralegal \$90.00

Cameron Dewey AIC
Sr. Property Casualty Manager
m. 530.768.7385
o. 916.960.0997
York Risk Services Group
P.O. Box 619079
Roseville, CA 95678

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Agenda Item I.

NCCSIF FY 17/18 LIABILITY PROGRAM CLAIMS AUDIT

ACTION ITEM

ISSUE: Rick Buys of Risky Business Pros completed a liability claims audit in May 2018 and will present his findings to the Committee.

Most claim files met standard liability claim practices in all categories. Litigation management and budgets were found to be exceptional, with only one file missing a budget. Other areas of strength include timely excess reporting, diary maintenance, communication, and settlement decisions.

Areas of improvement centered on reserving updates, investigation, and immunities. The Program Administrators have discussed the results with both York and the auditor and have agreed to make changes to the reserving practices previously outlined with York. We have also discussed the need for caseloads to remain at levels such that the adjusters can do their own field work.

RECOMMENDATION: Review, accept and file.

FISCAL IMPACT: None, already budgeted.

BACKGROUND: Every odd year NCCSIF conducts an audit of member Liability claims to ensure it is being managed according to NCCSIF standards and best practices.

ATTACHMENT(S):

1. NCCSIF 2017 Liability Claims Audit Report as of May 2018
2. York Response to Liability Claims Audit



NCCSIF.org

Northern California Cities Self Insurance Fund - A Joint Powers Authority



NCCSIF

2018 Liability Claims Audit Summary

EXECUTIVE SUMMARY

NCCSIF is a governmental risk sharing pool, created in 1979 and comprised of 22 Members. NCCSIF is governed by a Board appointed by its Member entities. In addition to the Board of Directors, the pool has a Claims Committee, Risk Management Committee and a Police Risk Management Committee.

Overall, the 2018 liability claims audit reveals that most claim files (66%) meet standard liability claim practices in all categories. Some of those files exceed standard practices, meeting “exceeds” or “best practices” standards. The audit showed consistent proper written and oral communication on claims between the Members, York Risk Services Group staff and NCCSIF staff, including reporting and communication on “Critical Incident” cases that pose significant exposure to the pool, before a claim or lawsuit is presented to the Member (which meets industry “Best Practices”). In some areas, communication channels could be improved, and there are areas for improvement in other areas, as discussed below.

Files exhibit strong litigation management protocols, consistently making good settlement decisions. I found only one file that did not have a litigation budget from defense counsel, which is an exceptional result.

One issue, for NCCSIF to consider, that carries across all types of claims and departments, involves automatic rejection of every claim after 45 days. I find no exceptions to this policy. Most public agencies have abandoned this practice for a variety of reasons:

- *There is no need to send formal notice of rejection after 45 days, except to start the tolling period for filing suit.*
- *Treating claims that pose no liability exposure the same as those that are pose clear liability, makes no sense.*
- *Unrepresented claimants talk to people about their claims, and they will undoubtedly get feedback from relatives, friends, neighbors and coworkers that they need an attorney to protect against the rejection notice.*
- *It can needlessly force cases into litigation.*
- *Plaintiff attorneys read into the automatic rejection that they can't deal with claim adjusters and need to file suit to get any traction on the claim.*

It is usually better that each case be evaluated on its merits after a proper evaluation. If a claimant is dragging out a case unnecessarily, then the formal rejection after 45 days can be sent with an explanation that you are willing to discuss settlement, but need to put a time limit on the case to protect your entity. Verbal and written communication with a claimant is also recommended in advance of the rejection letter, explaining the reason behind sending the notice.

STATISTICAL DATA

Member Data (from Audited Files only)

A total of 75 files were examined on-line through the York CMIS system. Of these, 15 files were closed within the previous six months of the audit; sixty (60) were open files (of which 10 were in the process of closing).

MEMBER	NUMBER OF CLAIMS
Anderson	3
Auburn	7
Colusa	2
Corning	2
Dixon	0
Elk Grove	0
Folsom	22
Galt	4
Gridley	1
Ione	1
Jackson	0
Lincoln	4
Marysville	5
Nevada City	0
Oroville	2
Paradise	1
Placerville	0
Red Bluff	3
Rio Vista	3
Rocklin	8
Willows	1
Yuba City	6
TOTAL	75

DEPARTMENTAL ANALYSIS *(Including ADA & EPL Claims)*

DEPARTMENT	ACTIVITY	NUMBER
POLICE	Shooting	4
	Taser/Hands On	5
	Other Civil Rights	6
	Auto/Pursuit	3
	Employment Practices	2
	Miscellaneous	1
Sub-Total		21
PUBLIC WORKS	Roads	12
	Sidewalks	9
	Miscellaneous	16
	Employment Practices	1
	ADA Discrimination	1
Sub-Total		39
ADMINISTRATION	Miscellaneous	3
	Employment Practices	1
	ADA Discrimination	1
Sub-Total		5
PARKS & RECREATION	Miscellaneous	6
	Employment Practices	1
Sub-Total		7
FIRE	Miscellaneous	1
Sub- Total		1
TRANSIT	Passenger	2
Sub-Total		2
GRAND TOTAL		75

LOSSES BY KEY DEPARTMENTS

PUBLIC WORKS/ENGINEERING:

Thirty-nine (39) of the seventy-five (75) audited claims fall within this department. Public Works and Engineering claims typically account for the most frequent claims with cities, and they often carry high exposure, especially due to Proposition 51 and Inverse Condemnation exposures on certain types of claims.

- Frequency of claims is on the rise in recent years due, in part, to driver and pedestrian distraction over cell phones and other technology issues.

Fourteen (14) of thirty-nine (39) audited files failed to meet one or more significant indicators of standard claim handling requirements (which represents 36% of the public works audited files), the most prevalent area involving sidewalk trip and fall claims (typically the most common lawsuits filed against cities).

- In my experience, most cities have added a “Sidewalk Liability Ordinance” in their ordinances, following the San Jose model.
- This ordinance typically reduces sidewalk trip and fall claim exposures by 50%. NCCSIF may want to lobby Members to consider passing such an ordinance.

The audit results indicate that fronting property owners on sidewalk claims are often not identified and/or claims tendered to them to reduce the member exposure. Examples include:

- Lujan vs Galt; Curtis vs Lincoln; Ortega vs Yuba City; Hutton vs Yuba City (bicycle accident on the sidewalk); Marquez vs Colusa; Solomon vs Red Bluff; Harrison v Rio Vista (Rio Vista has an ordinance but did not follow the San Jose model, so it is ineffective); Palmer vs Folsom; and Brown vs Folsom.

In another case, Gregory vs Folsom, (a flooding claim that involves multiple residential claims), each claimant is handled as a separate claim though they involve the same flooding incident on the same date, in the same neighborhood.

- NCCSIF may want to consider handling these multiple claims as a single occurrence, subject to a single SIR/deductible (research with other JPA’s may be helpful on this issue).
- The file notes that additional investigation is needed on this claim, but that investigation does not appear to be underway. The case may go into litigation without proper investigation and risk transfer being performed. Konrad v Auburn similarly lacks a completed investigation and risk transfer attempts.

Schut vs Folsom shows excellent initial work on a fatal road accident, including hiring defense counsel early to assist with case analysis and provide attorney/client privilege. However, slow incident reporting from Folsom to York resulted in failure to inspect the vehicles as part of the defense investigation, and I see no information on insurance on the responsible driver for this accident.

- Design immunity documents must be procured early to confirm we can pursue this possible defense, as well as, obtaining accident history at the accident location.

POLICE:

Twenty-one (21) of the seventy-five (75) audited claims fall within this department. Police claims are typically the second leading cause of claims in frequency and severity, to Public Works. They also carry high severity exposures due to plaintiff attorney fees awards.

- Both frequency and severity are on the rise in recent years on police claims, making proper management more critical than in recent memory.
- Six (6) of the twenty-one (21) police claims audited failed to meet one or more significant indicators of standard claim handling requirements (which represents 29% of the audited police files), with the most frequent being low indemnity reserves.

Alexander vs Marysville is a very recent fatal shooting case and it appears there is little liability exposure, but that is based solely on preliminary and unconfirmed reports. There is an unrealistic \$2 indemnity reserve and follow-up is needed with the police department and the district attorney to confirm there is no liability exposure; additionally, a defense attorney might be necessary to provide attorney/client privilege on the investigation.

Hutchison vs Red Bluff involves the fatal shooting of two dogs, which can present a civil rights action. Excellent work is shown by getting involved before a claim is filed. I see no police report in the file, but this is a new case and it is not available yet. There may be some negative witnesses, and a \$1 indemnity reserve is not reflective of the potential exposure; which needs to be re-evaluated once the investigation and report are concluded.

Cruz vs Rocklin is a well-handled fatal shooting case, but a \$2 indemnity reserve is naïve due to: pressure from courts to settle, the current public perception we are finding with juries, and the potential for plaintiff attorney fees in the hundreds of thousands of dollars for even a minimum, nuisance value finding by a jury.

Johnson vs Yuba City will likely result in a plaintiff verdict. An early settlement should be pursued, if possible. An evaluation from defense counsel may be helpful to the City in deciding how best to proceed.

Ybarra vs Yuba City involves a social media case from an edited video on Facebook of an officer striking a suspect in the face, multiple times. There are several unidentified potential witnesses that could be very helpful. This information may be in the police report, but it is not in the file. A more proactive approach might be helpful in evaluating this case and the \$2 indemnity pending reserve.

Bruce Kilday of Angelo, Kilday & Kilduf, defends many of the high exposure police cases due to his extensive experience in this field, and that experience is proving helpful in the early management and eventual resolution or trial of police cases.

There are on-going, national concerns that are adding exposure on police claims and require our attention:

- The rules and regulations for use of Body Cams by police departments is unclear until the Federal Courts and Department of Justice set those rules. We had the same experience with tasers over the last decade, with disastrous costs, until those rules and regulations were developed.
- An increasingly high percentage of police claims involve suspects with drugs, alcohol or mental illness, or a combination of the three. Jury verdicts seem to tell us police departments should succeed in dealing with these individuals where society has failed. Specific training of officers on these issues can help reduce these liability exposures, which seem to be growing in frequency and severity.

ADMINISTRATION *(Including Employment Practices Liability):*

Six (6) of the seventy-five (75) audited claims fall in this category. EPL claims are of special concern because:

- They have a very high plaintiff verdict success ratio,
- Attorney fees are awarded to successful plaintiffs, and
- They are very expensive cases to defend due to exhaustive investigations, required experts, and the number of depositions involved.

One (1) of the six (6) cases, Corbett vs Galt (a Parks & Recreation claim), needs review for potential settlement.

- This case might be settled for a nominal amount, but it does not appear to be thoroughly investigated despite the moderate demand from plaintiff attorney and his cooperative attitude.
- The file documentation does not leave me confident of victory in trial.
- There should always be a cost evaluation of a possible settlement amount versus verdict potential analyzed by defense counsel, to help balance the risk on this case This is helpful in the City's evaluation and setting an action plan for this case.

OTHER DEPARTMENTS:

Three (3) of the seven (7) audited Parks & Recreation files are missing basic claim documentation, including scene photos, witness contacts, and investigation of tender of defense potential.

- On example, Carraway vs Galt, involves a claim for alleged spinal injury to a middle school girl injured in cheerleading practice. Liability appears doubtful, but I see no investigation to confirm that the City is not involved in this matter, despite the claimant's representation and a possibly severe injury.
 - A CCP 1038 letter can be sent to plaintiff attorney, if unable to get the necessary information on this case.
 - Early tendering of the defense to the school district, and other potential codefendants is appropriate.

OTHER KEY INDICATORS

Staffing Management:

Cameron Dewey is the supervisor on the NCCSIF account. He has extensive public entity experience and is well qualified for the position. His presence is seen on all files. A number of adjusters are used on the account, with the more serious cases going to the senior adjusters. All adjusters appear to be knowledgeable with public entity claims and how best to investigation and defend the claims.

Caseloads for adjusters are in the 110 to 125 files per adjuster, which is a manageable level for field adjusters, though 120 is a better goal at high end, in my experience. There is an indication that caseloads may increase to 135 to 150 per adjuster.

- This could reduce the ability of adjusters to spend the time necessary in the field to complete through investigations, and with it, the adequate defense of claims would suffer. That is the common result of turning "field" adjusters into "desk" adjusters, which is what such heavy case load implies.
- For this reason, any increase in caseloads should be thoroughly addressed between NCCSIF and York before implementation of new cases loads is considered.

Reserving:

Seventeen (17) of the seventy-five (75) files showed improper indemnity reserves; this is the most common criticism noted in the audit, and that is generally true in most claim audits. For example, a number of cases showed settlement evaluations calculated by defense counsel at numbers that were far higher than the indemnity case reserve on a file; or a CCP 998 or Rule 68 offer is being considered or has been filed with the court at a higher number than the indemnity reserve shows.

- Files should to be continuously reviewed for reserve adequacy any time action is taken on a case, or additional information is obtained.
- Many of the noted seventeen cases showed an indemnity reserve of \$1. This is especially inappropriate on police, EPL, inverse condemnation and Proposition 51 related claims because of their special, inherent exposures.
- Defense attorneys rarely advise that any of our cases have more than an 80% - 90% chance of bringing a defense verdict for the City.
- For this reason, indemnity reserves should be set at a number that reflects our chance of winning the case, after a full evaluation, compared to the potential settlement/verdict value.
- Expense reserves were consistently on the mark and need no further comment.

Litigation Management:

A total of thirty-eight (38) of seventy-five (75) files are litigated cases (51%). None of the litigated files are handled by the City Attorney's office, and all are appropriately assigned to outside counsel. Litigation budgets were secured on all but one of the files, which is hitting a very high mark; additionally, most files show good monitoring to assure the initial budget was accurate and it is revised if the budget has been exceeded or appears it will be exceeded.

- The defense firms are doing a solid job defending Member lawsuits, providing timely reports, and communicate well with Member and York staff.
- I see a lot of different defense firms used on the audited files. I mention this only because consolidating the number of firms could assist in streamlining defense of cases with firms that become more familiar with the JPA's members, provide potential defense cost savings, and NCCSIF becoming a more important client with those firms, as part of the process.
- On a whole, the defense of litigated claims is well handled.
- The only possible concern is that on a few audited files, adjusters might be relying upon defense to make decisions on tactics on cases without any comments or communication from the Member or York. This includes a few files that appear to be idle, awaiting filing of suit, as noted above on a few cases.
- Evidence of communication with all key stakeholders and defense attorneys on the strategy of cases should be evident in all files.
- Additionally, for reserve purposes, it would be helpful to see defense evaluations as to a likely defense verdict, as well as, settlement evaluations becoming standard in the reports from defense counsel, so all stakeholders have a realistic view of the exposures on the litigated cases.
- It may also be helpful for department heads to attend mediations/settlement conferences, so they better understand the exposures that causes losses in their departments.

File Management:

Files are generally well organized, and successfully meet the following standards:

- Timely Reporting.
- Diary Maintenance.
- Proper Notices.
- Reporting Requirements.
- Proper Disposition and Authority.

Results indicate the potential for improvement in the following areas:

- Adequate Claim Investigation (22% of audited files did not meet this requirement).
This was found as an issue mostly on cases with limited loss severity and doubtful liability. However, it is always fortuitous as to which claims eventually prove to have higher than expected severity and liability.
- Defenses and Immunities Pursued (13% of audited files did not meet this requirement).
This was especially noted as an issue on sidewalk trip and fall claims, as noted above.

MEMBER REPORTING TO NCCSIF / YORK

Proper and timely reporting of claims to York was found in almost every case, and York's activity on claims started immediately upon receipt from the Member. Any variance was quite rare and not in need of comment.

- There is clear communication in both directions between the Members and York.
- There is also effective communication seen on appropriate files coming from the city departments to their risk management staff. This is especially important on "*Critical Incident*" cases and is practiced routinely in the audited files, which meets "*best practices*" industry standards.
- On police cases, there should also be effective communication between the Members and the County D.A.'s office. The D.A. can be of great assistance in pushing conviction on excess force arrests, which if successful, provides an excellent defense to the officers and department (per *Heck vs Humphrey*).
 - Providing defense counsel with authority to assist in communication and suggestions with the D.A. in obtaining that conviction, or a successful plea bargain on other issues based upon pleading to the excess force charges is well worth the cost. I believe this is being performed on police cases, but better documentation of that process should be apparent in the claim files.

CASE MANAGEMENT AT THE EXCESS LEVEL

Cases that meet the reporting requirements are reported to NCCSIF, as seen in all audited files. They are sometimes reported even when they do not meet reporting requirements and a claim has not yet been filed, such as when special circumstances warrant a precautionary reporting.

- This approach meets "*best practices*" for proactive claims management, utilizing all resources to assist with strategy on high exposure cases.

CONCLUSION

Unfortunately, we are in a cycle where the frequency and severity of claims against public entities are on the rise. The attitude of jurors has shifted over the last five or six years, especially as to police liability claims.

- Juries are giving higher awards to plaintiffs in all tort cases, not just police cases.
- For this reason, the climate for taking claims through trial is currently poor, with some types of cases being worse than others.
- Careful evaluation of cases is critical throughout the life of a claim, and we cannot necessarily expect the same results we seen in the past, at trial.

A proactive approach to managing claims is critical, as a reactionary approach leads to cases getting out of control and proceeding into litigation without proper investigation and preservation of defenses or evidence. Files generally show such a proactive approach, but a few additional suggestions appear appropriate:

- Tenders of defense need to be pushed harder than ever as codefendants (included carriers for our partners who add us as “additional insureds”) are resistive to any obligations to public entities these days, including public entity-to-public entity cases.
- Relying upon another defendant to set up and take responsibility is unlikely in this climate and must be taken into consideration in the evaluation of your claims. Settling around codefendants early in such cases can sometimes be an effective strategy.

Overall, this audit finds that claims are adjusted in a manner than generally meets standard requirements and in many cases, exceeds standard requirements.

An industry-wide challenge to find and train adjusters to replace retiring “baby-boomers” will continue as a challenge for both the private and public sectors. However, addressing the areas noted above will strengthen any claim program, so the program can work towards meeting overall “*best practices*” standards.

Sincerely,

RICK BUYS, ARM

RICKBUYS.ARM@GMAIL.COM

925-383-3100



Professional Risk Management Services”



York Risk Services Group
P.O. Box 619058
Roseville, CA 95661-9058

September 19, 2018

Northern California Cities Self Insurance Fund
Marcus Beverly, Alliant

Re: Response to Audit Results for NCCSIF – Risky Business Pros

Dear NCCSIF Board and Mr. Beverly,

This letter is in response to the Risky Business Pros audit report conducted in August 2018 for NCCSIF. We are pleased with the conclusion that we generally meet standard requirements and in many cases, exceed standard requirements. We have reviewed the audit findings and offer the following comments.

The auditor recommendations in blue are excerpts from the Audit Report that outline the auditor's comments. Each section in blue is followed by our comments, in black, in response to same:

There is no need to send formal notice of rejection after 45 days, except to start the tolling period for filing suit.

The current policy with NCCSIF is to issue formal notice of rejection after 45 days. We have found no empirical data to suggest that rejecting claims at 45 days brings increased litigation. In fact, our experience indicates that issuing the rejection keeps claims moving forward to resolution and allows the files to close quicker, thus reducing the overall expense of a claim. Our adjusters contact all claimants to discuss their claim. If there is exposure on behalf of the City, we advise the claimant that they will be receiving the rejection which sets the statute of limitations to either settle the claim or file a lawsuit within six months. While we support the policy to issue the notice of rejection because it caps the timeframe for claim resolution and moves files to closure expeditiously, we recommend NCCSIF review the policy and advise accordingly.

Sidewalk Liability Ordinance:

The auditor indicates that most cities have added a "Sidewalk Liability Ordinance" following the San Jose model. However, in the NCCSIF pool, only one city has this ordinance. Therefore, we are unable to

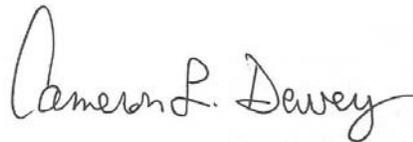
include the property owners in the claim. Our adjusters are trained to look at what caused the deviation fundamentally and then develop a proper course of action. If, for example, the tree roots from a City owned or maintained tree lifted the sidewalk, we are unable to bring in the adjacent property owner on a “premise liability” type claim. We believe that NCCSIF’s current policy prevents increased litigation by needlessly adding the property owner unless there is evidence of liability. We recommend NCCSIF review the current policy and advise whether additional cities will adopt the Sidewalk Liability Ordinance.

Reserving at \$1.00 and \$2.00 values.

The current policy with NCCSIF is to reserve files at \$1.00 and \$2.00 based on the investigation and exposure. We are more than happy to adjust the \$1.00 and \$2.00 reserving practice as directed by NCCSIF. We would like point out that the files referenced in the audit findings were investigation only and claims have not even been filed. We take a proactive approach with police involved shootings and reserve the file accordingly once an actual claim has been filed.

We appreciate our partnership with NCCSIF in administering the liability claims. We are dedicated to handling claims in accordance with NCCSIF’s policies and look forward to fulfilling our commitment in providing excellent service to the pool. Please let us know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Cameron P. Dewey". The signature is written in a cursive style with a large initial 'C'.

Cameron Dewey
Senior Property Casualty Unit Manager

cc: Bettina Hooper
Dori Zumwalt



Agenda Item J.

**REVISION OF POLICY AND PROCEDURE A-6b
WORKERS' COMP SHARED LAYER SETTLEMENT AUTHORITY**

ACTION ITEM

ISSUE: Currently the Claims Committee can settle claims up to \$250,000 (\$150,000 above the Member's \$100,000 Banking Layer). Claims in excess of that amount go directly to the Board of Directors for approval up to the current \$500,000 Shared Layer limit. Consideration should be given to grant the Executive Committee the explicit authority to settle claims up to the limit of the Shared Layer.

This would allow the Program and Claims Administrators greater ability to obtain settlement authority as needed from the Executive Committee, with at least five members for a quorum, rather than assembling at least twelve members of the Board to approve settlement. Most of the settlements are approved via teleconference meetings due to the sporadic nature of their timing and the relative infrequency of in-person meetings.

The Program Administrators have drafted suggested revisions to the applicable policy, as seen in the attached red-line version of P&P #A-6 b. Some cleanup language is suggested in addition to the authority changes,

OPTIONS FOR CONSIDERATION

1. Approve recommended changes as presented.
2. Approve changes as revised.
3. Direct the Program Administrators to take other action.

RECOMMENDATION: Review and recommend changes as presented or amended.

FISCAL IMPACT: None.

BACKGROUND: The Workers' Compensation Shared Risk Layer Claims Settlement Authority was first effective September 17, 1993 and has been revised six times since then. It confirms a member's authority to settle claims within their Banking Layer and lays out a process for approving claims within the Shared Layer. The similar P&P for the Liability Program was revised in 2017 to give the Executive Committee authority to settle those claims up to the Shared Layer limit.

ATTACHMENT(S): DRAFT Red-Line version of P&P A-6b

ADMINISTRATIVE POLICY AND PROCEDURE #A-6 b

SUBJECT: WORKERS' COMPENSATION SHARED RISK LAYER CLAIMS SETTLEMENT AUTHORITY

Policy Statement:

In accordance with the Memorandum of Coverage, the Northern California Cities Self Insurance Fund (NCCSIF) shall pay promptly when due to those eligible ~~under the agreement~~ the benefits required of the Member by Workers' Compensation law, in excess of the Member ~~Retained limit~~Banking Layer.

~~All claims shall be submitted to the Claims Administrator in accordance with the provisions of the Claims Administration Agreements.~~

It shall be the policy of the NCCSIF to grant the authority to the Executive Committee to act as or appoint members of the Claims Committee. The ~~functions and~~ responsibilities of the Claims Committee ~~shall be~~include:

1. Meet as necessary to review all open reported claims likely to involve the Authority's shared risk portion of the Workers' Compensation program.
2. Resolve claims as outlined in procedure below.

Procedure:

1. The claims administrator shall notify the Program Administrator of a need to review potential losses which are likely to involve the ~~shared~~Shared Risk layers.
2. The NCCSIF ~~claims-Claims administrator-Administrator~~ shall make recommendations to the Claims Committee.
3. It is the policy of the ~~Northern California Cities Self Insurance Fund~~NCCSIF that Members of the Workers' Compensation Program shall have the opportunity to participate in the final claim settlement process (i.e. Stipulations with Findings and Award or a Compromise & Release with Findings and Award) as provided for by this policy and procedure. Though Workers' Compensation benefits are mandated and established by ~~State~~state law, the amount and actual settlement of a claim is the responsibility of the Claims Administrator upon approval of the Member, Claims Committee and as required the ~~Board of Directors~~Executive Committee.

The NCCSIF Claims Administrator shall review any recommendations for the Claims Committee with the Member Board Representative and either get the written approval of

the Board Representative for the proposed action, or invite the Board Representative to attend or send representation for the City to the Claims Committee meeting to discuss any objections to the action being recommended.

4. Workers' Compensation costs that extend into the Shared Risk Layer will be reviewed at each annually by the Claims Committee meeting.

The Workers Compensation Claims Administrator shall have the responsibility and authority to issue checks from the Authority's trust account in satisfaction of legal requirements to pay benefits to industrially injured workers of the member cities. The Administrator will issue checks for state mandated benefits including Indemnity, Medical, Rehabilitation and Expense categories. For checks below \$5,000, one authorized ~~signature or stamp approver~~ from the administrator is required. For checks above \$5,000, two ~~signatures approvers~~ are required.

5. Claims Settlement Authority:

Various levels of settlement authority have been established as NCCSIF policy. ~~These levels are~~ as follows:

\$0 to \$100,000 (or Member's Retained Limit) – City with the Claims Administrator (TPA)

The Claims Administrator with the approval of the City shall have authority to settle claims up to, and including \$100,000 per occurrence. Only the Claims Manager for the Claims Administrator will hold this authority.

\$100,000 to \$250,000– Claims Committee

In the event that an ultimate net loss is likely to be in excess of the Member's Retained Limit either through court judgment or agreement, then NCCSIF will, for that portion which is in excess of the Retained Limit, make such payment to the claimant on behalf of the Member. The NCCSIF Claims Committee has authority to authorize claims settlement up to \$250,000 per occurrence. ~~The excess carrier will be involved in accordance with the carrier policy reporting and settlement requirements.~~

\$250,000 to Shared Risk Layer Limit

Claims settlement recommendations in excess of the Claims Committee's Authority shall be presented by the Claims Committee to be approved by the ~~Board of Directors~~ Executive Committee prior to final settlement. The excess carrier will be involved in accordance with the carrier policy reporting and settlement requirements.

A report of claims settlements will be made to the Board of Directors ~~at each meeting~~ annually.

All of the foregoing notwithstanding, if time is of the essence in a specific ~~claim-litigation matter~~, the President and Claims Committee Chairperson, on the advice of the Claims Administrator, shall have the authority to ~~determine terms of~~ approve ~~emergency~~ settlement, subject to \$100,000 limitation within the shared risk layer, excess of the Members' retained limit. If ~~however~~, the President or ~~Claims Committee~~ Chairperson's City is involved in the claim, then the authority is delegated to two non-involved Members of the Claims Committee.

Effective Date: September 17, 1993

First Revision Date: March 22, 1994

Second Revision Date: June 19, 1998

Third Revision Date: September 18, 1998

Fourth Revision Date: December 17, 1999

Fifth Revision Date: June 15, 2007

Sixth Revision Date: October 16, 2009

Seventh Revision Date: TBD



BACK TO AGENDA

Northern California Cities Self Insurance Fund
Claims Committee Meeting
September 27, 2018

Agenda Item K.

ROUND TABLE DISCUSSION

INFORMATION ITEM

ISSUE: The floor will be open to the Committee for discussion.

RECOMMENDATION: None.

FISCAL IMPACT: None.

BACKGROUND: The item is to the Claims Committee members for any topics or ideas that members would like to address.

ATTACHMENT(S): None.