ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

AGENDA

LEGEND: A - Action may be taken
I - Information
1 - Included
2 - Handout
3 - Separate
4 - Verbal

JPA: **ACCEL CLAIMS COMMITTEE MEETING**

DATE/TIME: Wednesday, December 18, 2024 at 2:00 PM

LOCATION: Teleconference
Link: https://alliantinsurance.zoom.us/j/97544985454?pwd=GNavPbjqCzfcoYGSTI6CaBdoHRgc98.1
Meeting ID: 975 4498 5454
Passcode: 313362
Dial: (669) 900-6833

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.

Per Government Code section 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 Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL 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.

MEMBER LOCATIONS VIA TELE - CONFERENCE

- **City of Bakersfield**, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
- **City of Monterey**, 735 Pacific Street, Suite A, Monterey, CA 93940
- **City of Ontario**, 200 North Cherry Ave., Ontario, CA 91764
- **City of Santa Cruz**, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060
- **City of Santa Monica**, 1685 Main Street, Room 131, Santa Monica, CA 90401

PAGE			
		A. CALL TO ORDER	
		B. CONSENT CALENDAR	(A)
3-5	*1*	**1.** Approval of Minutes for the September 23, 2024 Claims Committee Meeting *The Committee will review these minutes and will take action to approve or give direction.*	
		C. REPORTS	
		1. CLAIMS COMMITTEE'S REPORT	
6	*1 & 3*	a) 2024 ACCEL Claims Audit Draft *Members will be given a draft of the Claims Audit report that will be presented to the Board. Action may be taken to provide a recommendation to the Board or direction given.*	(A)
7-8	*1 & 4*	b) Claims Audit Team *Rob Powers will provide the Committee a verbal report on the Claims Audit Team.*	(I)
9-20	*1*	c) Litigation Update *George Hills will provide the Committee a litigation update.*	(I)
21-23	*1*	d) ACCEL Attorney Panel Update *Members will receive an update from the Claims Administrators regarding the Attorney Panel. Action may be taken to provide a recommendation to the Board or direction given.*	(A)

3 d) **CLOSED SESSION – Pursuant to Gov't Code 54956.95** (A)
Members will review the following Closed Session items and may take action or give direction.

i. Committee Review – ACCEL Open Loss Run
ii. George Hills Estimated Loss Payments
iii. Supplemental Claims Audit Report

RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS

D. PUBLIC COMMENTS (I)

4 *The public is invited at this point to address the Committee on issues of interest to them.*

ADJOURNMENT

ACCEL
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560 Mission Street, 6th Floor, San Francisco, CA 94105

MINUTES OF THE
ACCEL CLAIMS COMMITTEE MEETING
Monday, September 23rd, 2024, at 2 PM

LOCATION:
TELECONFERENCE

Link: https://alliantinsurance.zoom.us/j/98757462000?pwd=ptf4ObhaSeErfLaOH3cMB77CVRvm5c.1

Meeting ID: 987 5746 2000
Passcode: 490203
Dial: (669) 900-6833

MEMBERS PRESENT:
Jena Covey, City of Bakersfield *(left at 3:44 PM)*
Lisa Cox, City of Monterey Alternate
Marquie Lugo, City of Ontario Alternate
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica

MEMBERS ABSENT:
None

GUESTS AND CONSULTANTS:
Ben Oram, George Hills Company
David Tratuz, George Hills Company
Rich Santana, George Hills Company
Conor Boughey, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Jena Covey called the meeting to order at 2:02 PM.

B. CONSENT CALENDAR

A motion was made to approve the consent calendar.

B1. Approval of Minutes for the August 29, 2024, Claims Committee Meeting

MOTION: Ross Brandon **SECOND:** Lisa Cox **MOTION CARRIED**

	Jena Covey	Lisa Cox	Marquie Lugo	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					

C. REPORTS

C1. CLAIMS COMMITTEE'S REPORT

C1a. CLOSED SESSION – Pursuant to Gov't Code 54956.95

A motion was made to enter into Closed Session at 2:05 PM.

MOTION: Oles Gordeev **SECOND:** Ross Brandon **MOTION CARRIED**

	Jena Covey	Lisa Cox	Marquie Lugo	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	X
Nay					
Abstain					

A motion was made to come out of Closed Session at 3:55 PM.

MOTION: Oles Gordeev **SECOND:** Lisa Cox **MOTION CARRIED**

	Jena Covey	Lisa Cox	Marquie Lugo	Ross Brandon	Oles Gordeev
Aye		X	X	X	X
Nay					
Abstain					

Lorissa Huey reported out of closed session that direction was given to the Claims Administrators.

D. PUBLIC COMMENTS

There were no public comments.

ADJOURNMENT

Lorissa Huey adjourned the meeting at 3:59 PM.

ACCEL

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Item No. C.1.a
Claims Committee
December 18, 2024

2024 ACCEL CLAIMS AUDIT DRAFT

ISSUE: Rob Powers, ACCEL's Claim Auditor will walk through a draft of the 2024 Claims Audit. This audit will be reviewed by the Claims Committee (CC) at today's meeting and then presented to the Board at the January 23 & 24, 2025 Board Meeting. Rob will be at the January Board Meeting.

The City of Anaheim audit occurred on Dec 5, 2024, and isn't available for the CC agenda mailing date distribution. Rob will provide a verbal update to the CC at today's meeting.

RECOMMENDATION: Staff recommends the Committee review the draft Claims Audit and take action to make a recommendation to the Board at the January 23 & 24, 2025 Board Meeting to "Receive and File" the report or provide direction as appropriate.

Additional Consideration:

In favor: The Committee may vote to form a recommendation to the Board to "Receive and File" the attached "Draft" to complete this year's audit cycle and allow the production of the "Final" Claims Audit. Once approved by the Board, the audit will be finalized and posted on the ACCEL Website.

Against: Upon Committee review, if any further questions, edits or comments may change the results of findings of the report, the Committee may vote to instruct the Auditor or Administrators to take further action prior to presenting it to the Board for acceptance.

FISCAL IMPACT: No financial impact is expected from the recommended action. The fee for FY 24/25 is $57,958.

BACKGROUND: This is the seventh year that Rob Powers at R.E. Powers & Company, LLC will perform the Claims Audits. Rob's contract was renewed in 2023 for three-years, for audit years 2024, 2025, and 2026. The 2017 and prior Claim Audits were conducted by Tim Farley from Farley Consulting Services.

SEPARATE: 2024 ACCEL Claims Audit Draft

CRAIG SCHWEIKHARD

Summary of qualifications

- 38 Years Insurance Experience – 35 Years of Experience with Public Entity Pools
- 26 Years of Experience Supervising Public Entity Accounts and Adjusters
- Acknowledged Expert in Public Entity Claims. Frequent Speaker at PARMA, CAJPA, PRIMA, AON Risk Pool Symposium, Tri-County City Attorney Association, Munich Re National Claims Roundtable.

Education

- 1976 – 1981 Bachelors of Art, Political Science, California Polytechnic University San Luis Obispo. (International Program 78-79, Jerusalem, Israel.)
- 1982 – 1983 Master of Business Administration (MBA), Thunderbird School of Global Management (Arizona State University) (Summer Program – American University of Cairo, Egypt.)
- Associates in Risk Management for Public Entities, (ARM-P) completed 2002 & 2013
- IEA –Introduction to Workers' Compensation Claims (WC006)
- Certificate in Legal Principles of Claims Law (American Educational Institute)
- Management and Supervision Certificate from University of California Santa Barbara.
- Praesidium Guardian Certification (Sexual Abuse Training Certificate)

PROFESSIONAL EXPERIENCE

2017– 2024 San **Mateo County Schools Insurance Group** **Redwood City, CA**

Executive Director – 6 employees – Budget: $55 Million and Member Equity of $38,788,119

- Managed Self-Insured Liability and Property program, including board representation on the Schools Excess Lability Fund (SELF-Vice Chair and Claim/Coverage Comm.) and CSAC-EIA/PRISM Boards (Chairman of Legislative Comm., Member Underwriting Comm. And Claims/Coverage Comm.).
- Managed Workers' Compensation program for 23-member district pool overseeing membership in PIPS program and supervising TPA. Managing transition to a self-insured Workers' Compensation program with excess coverage through CSAC-EIA/PRISM, including selecting of new TPA, new MOC for self-insured program and implementation of loss control program. New program saved pool $22 million dollars in five year and $24,000,000 member equity in five years.
- Oversaw Self-Insured Dental and Vision Benefits program which returned one million dollars of equity to membership annually.
- Supervised a team of Loss Control professionals responsible for reducing exposure to the membership, including training, and creation of Countywide Safety Committees. Implementation of a new countywide Sexual Abuse Prevention program and a WC Return to Work Program.
- Analyzed programs and worked with brokers to obtain favorable renewal in a hard insurance market. CAJPA Accreditation with Excellence during tenure at pool.

2010 – 2017 California **Joint Powers Risk Management Authority** **Livermore, CA**

Claims Administrator

- Managed high exposure cases for a 100-member excess liability pool
- Assisted in purchase and implementation of new claims and pool management data system

6934 Sunridge Dr. • Livermore, CA. 94551
Phone 925-667-1512 • E-mail cshweik@gmail.com

- Assisted in the preparation and conduct of JPA board meetings including the presentation of agenda items in open and closed session. Assist in planning and participation in Strategic Planning. Assist in planning of annual board meetings and training

2009 – 2010 **County of Sonoma** **Santa Rosa, CA**

Risk Analyst II – 2 Staff Persons

- Handled claims for County and supervised liability program
- Established claims procedures and conducted RFP for legal services.
- Worked with County Counsel and outside law firms to achieve successful defense of cases

2004 – 2009 **Gregory B. Bragg & Associates, Inc./York ISG.** **Oxnard, CA**

Branch Manager – Claims Trainer – 10 Employees

- Supervised public entity Claims adjusters and accounts in five offices throughout State.
- Managed high exposure cases for Cities, School JPA (VCSSFA), and Excess Pools (BICEP & CalTIP)
- Handled complex coverage issues and helped rewrite Ventura County Schools Self-Funding Authority's MOC.
- Managed Excess Insurance Reporting and Coordination with all Excess Carrier on Claims

1988 - 2004 **Carl Warren & Company** **Ventura, CA**

Claims Adjuster, Claims Supervisor, Branch Manager – 7 employees

- Handled complex public entity claims for a wide range of clients (VCSSFA, ACCEL, BICEP)
- Managed office of five adjusters and two-person clerical staff in day-to-day operations.
- Managed cases through appeals process including cases to State and Federal Supreme Court.
- Managed Excess Insurance Reporting and Coordination with all Excess Carrier on Claims

PROFESSIONAL ORGANIZATIONS

CAJPA Board President/Vice Chair (2022) and Executive Committee Member – 2018 - Present

CAJPA Legislative Committee – 2009 – Present

CAJPA Litigation, Tort Liability, and Insurance Committee. – Vice Chairman – 2016 – 2018

CSAC-EIA/PRISM Legislative Committee – 2017 – Present. Chairperson -2023 - present

CSAC-EIA/PRISM Voting Board Member – 2018 – 2024 – Underwriting Comm. -Claims and Coverage Comm

SELF Vice Chair/Board Member and Executive Committee – District V – 2017 – Present

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Item No. C.1.c
Claims Committee
December 18, 2024

LITIGATION UPDATE

ISSUE: At today's meeting, Ben Oram, ACCEL Litigation Manager will provide another update because the Committee requested these to be provided quarterly.

RECOMMENDATION: This is an information item; no action is necessary.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: The Program Administrators discussed services with ACCEL's Claims Chair, Tracey Matthews. As a result of that discussion, ACCEL requested that George Hills provide a quarterly update.

ACCEL has not previously received litigation updates as part of our litigation management services but has received updates at strategic planning meetings.

The Litigation Update documents are posted on the ACCEL Website in the Members' Only section.

ATTACHMENT: Litigation Update from George Hills.

EMPLOYMENT – PUBLIC ENTITIES AND PAGA CLAIMS

Stone v. Alameda Health System
California Supreme Court; Docket: S279137
Opinion Date: August 15, 2024

Summary Rules:
Public entities are not "persons" and therefore not subject to PAGA penalties. Public Entities are exempt from meal and rest break Labor Code provisions.

Facts:
Plaintiffs, employees of a hospital operated by Alameda Health System (AHS), alleged that AHS violated California labor laws by denying meal and rest breaks, failing to keep accurate payroll records, and not paying full wages. They sought civil penalties under the Labor Code Private Attorneys General Act of 2004 (PAGA).

The Alameda County Superior Court sustained AHS's demurrer without leave to amend, concluding that AHS, as a public entity, was not subject to the Labor Code provisions cited by plaintiffs. The court also dismissed the PAGA claim, reasoning that public entities are not "persons" subject to PAGA penalties. The California Court of Appeal reversed in part, holding that AHS was not exempt from the meal and rest break requirements or the wage payment statutes. It distinguished AHS from state agencies, noting that the enabling statute indicated AHS was not an agency, division, or department of the county. However, the court agreed that AHS was exempt from the wage statement requirements and that it was not a "person" subject to default PAGA penalties.

Analysis and Holding:
The California Supreme Court reversed the Court of Appeal's judgment. It held that the Legislature intended to exempt public employers, including hospital authorities like AHS, from the Labor Code provisions governing meal and rest breaks and related wage payment statutes. The Court also concluded that public entities are not subject to PAGA penalties for the violations alleged. The case was remanded to the trial court to reinstate its ruling on the demurrer and conduct any further proceedings as appropriate.

EMPLOYMENT – TIME TO APPEAL

Meinhardt v. City of Sunnyvale
California Supreme Court; Docket: S274147M
Opinion Date: August 22, 2024

Summary Rules:
The time to appeal a judgment following administrative mandate runs from notice of entry of judgment, not from filing an order or ruling.

Facts:
David Meinhardt, a police officer, was suspended for 44 hours by the City of Sunnyvale Department of Public Safety, a decision upheld by the City of Sunnyvale Personnel Board. Meinhardt filed a petition for a writ of administrative mandate in the Santa Clara County Superior Court, challenging the suspension. On August 6, 2020, the court issued an order denying the petition. The City served Meinhardt with a notice of entry of this order on August 14, 2020. Subsequently, on September 25, 2020, the court entered a formal judgment, which Meinhardt served on the City on September 22, 2020.

The Fourth Appellate District, Division One, dismissed Meinhardt's appeal as untimely, holding that the August 6 order was the final judgment from which the appeal should have been taken. The court reasoned that the order was sufficiently final to constitute the judgment, thus starting the 60-day period for filing an appeal.

Analysis and Holding:
The Supreme Court of California reviewed the case to resolve the issue of when the time to appeal begins in administrative mandate proceedings. The court held that the time to appeal starts with the entry of a formal judgment or the service of notice of entry of judgment, not with the filing of an order or other ruling. The court emphasized the importance of clear, bright-line rules to avoid confusion and ensure that parties do not inadvertently forfeit their right to appeal. Consequently, the Supreme Court reversed the judgment of the Court of Appeal, finding that Meinhardt's appeal, filed within 60 days of the entry of the formal judgment, was timely.

EMPLOYMENT – FREE SPEECH VIA TEXT

Adams v. County of Sacramento
Ninth Circuit; Docket: 23-15970
Opinion Date: September 9, 2024

Summary Rules:
Private text messages with racist content to few people will not be protected as speech on a public matter.

Facts:
Kate Adams, the former Chief of Police for the City of Rancho Cordova, was forced to resign over allegations that she sent racist text messages while working for the Sacramento County Sheriff's Office. The messages, sent in 2013, included offensive images forwarded to two friends during a private conversation. Adams claimed she was merely expressing disapproval of the images. After her resignation, the messages were publicized, leading to further professional and personal repercussions for Adams.

The United States District Court for the Eastern District of California dismissed Adams's First Amendment retaliation and conspiracy claims, ruling that her speech did not address a matter of public concern. The

court found that the private nature of the text messages and their content did not relate to broader societal issues or public interest.

Analysis and Holding:
The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's dismissal. The Ninth Circuit held that Adams's private text messages, which were part of a casual conversation and not intended for public dissemination, did not constitute speech on a matter of public concern under the Pickering v. Board of Education standard. The court emphasized that the content, form, and context of the messages indicated they were of personal interest rather than public interest. Consequently, Adams's First Amendment retaliation and conspiracy claims were dismissed, and the case was remanded for further proceedings on other unresolved claims.

EMPLOYMENT – WAGE AND HOUR EXEMPTION

Silloway v. City and County of San Francisco
Ninth Circuit; Docket: 22-16079
Opinion Date: September 11, 2024

Summary Rules:
Wage and Hour cases dealing with exempt employees must analyze the specific manner in which employees are compensated rather than a salary ordinance.

Facts:
Staff nurses employed by the City and County of San Francisco alleged that the City violated the Fair Labor Standards Act (FLSA) by not paying them time-and-a-half for overtime work. The City argued that the nurses were exempt from this requirement under the FLSA's professional-capacity exemption, claiming that the nurses were paid on a salary basis. The nurses contended that they were paid on an hourly basis, as their annual compensation was divided into hourly rates and they were paid only for hours worked.

The United States District Court for the Northern District of California granted summary judgment in favor of the City, concluding that the annual pay figures published in the salary ordinance provided definitive evidence that the nurses were compensated on a salary basis. The court found the nurses' hourly pay rates to be an administrative tool and dismissed the nurses' claims of improper pay deductions.

Analysis and Holding:
The United States Court of Appeals for the Ninth Circuit reversed the district court's decision. The appellate court held that the district court erred by relying on the salary ordinance and not examining how the nurses were actually paid. The proper focus for the salary basis test is whether an employee receives a predetermined amount of compensation on a weekly or less frequent basis. The court found that material factual questions remained regarding whether the City satisfied the salary basis test in practice. Specifically, the court noted discrepancies in the payroll data that suggested the nurses might not have received their predetermined compensation in certain pay periods. The court also found that the City did not provide evidence of reimbursing the nurses for any improper deductions, which precluded the use of the "window of correction" defense. The case was remanded for further proceedings to resolve these factual issues.

POLICE EXCESSIVE FORCE – LESS LETHAL DURING PROTEST

Marroquin v. City of Los Angeles
Ninth Circuit; Docket: 23-55423
Opinion Date: August 27, 2024

Summary Rules:
A new trial on damages is warranted where damages are not so interwoven with liability that a new trial violates and individuals Seventh Amendment right prohibiting a judge from overruling a jury.

Facts:
The case involves Kimberly Marroquin, who sued Los Angeles Police Officer DiMaggio Rico and the City of Los Angeles under 42 U.S.C. § 1983, alleging excessive force and negligence after being injured by a less-lethal projectile during a crowd control situation following a Lakers game. Marroquin claimed that the injury caused her substantial physical and emotional harm. The jury found in favor of Marroquin on her excessive force and negligence claims but awarded inconsistent damages: $1.00 against Officer Rico and $1,500,000.00 against the City.

The United States District Court for the Central District of California granted a new trial limited to damages under Fed. R. Civ. P. 59(a)(1)(A), citing a miscarriage of justice due to the jury's improper apportionment of damages. The court also denied the defendants' motion for relief from judgment under Fed. R. Civ. P. 60(b)(2), which was based on newly discovered surveillance footage. The court found that the defendants failed to show reasonable diligence in discovering this evidence.

Analysis and Holding:
The United States Court of Appeals for the Ninth Circuit reviewed the district court's post-trial orders. The Ninth Circuit held that the district court did not abuse its discretion in granting a new trial limited to damages, rejecting the defendants' argument that the liability and damages issues were so interwoven that a damages-only trial violated their Seventh Amendment rights. The court found that the liability issues were distinct and separable from the damages issues and that the jury's confusion was likely due to an improper instruction on the verdict form.

The Ninth Circuit also upheld the district court's denial of the Rule 60(b)(2) motion, agreeing that there is no exception to the requirement of reasonable diligence, even if the newly discovered evidence is conclusive. The court affirmed the district court's decisions, maintaining the new trial limited to damages and the denial of relief from judgment based on the newly discovered evidence.

POLICE EXCESSIVE FORCE – CLASS CERTIFICATION POST-PROTEST

Black Lives Matter Los Angeles v. City of Los Angeles
Ninth Circuit; Docket: 22-56161
Opinion Date: September 5, 2024

Summary Rules:
Class certification requires the Court to "rigorously analyze" whether the evidence support certification requirements.

Facts:
In the wake of George Floyd's death in May 2020, Los Angeles experienced widespread protests. The plaintiffs, including Black Lives Matter Los Angeles and several individuals, filed a class action lawsuit against the City of Los Angeles and then-LAPD Chief Michel Moore. They alleged that the LAPD used excessive force, arrested protestors without probable cause, and restricted their First Amendment rights. The lawsuit sought to certify four classes: a Direct Force Class, an Arrest Class, an Infraction Class, and an Injunctive Relief Class.

The United States District Court for the Central District of California certified all four classes. The court found that the plaintiffs had raised common questions about whether LAPD customs or policies caused their injuries. However, the district court did not rigorously analyze whether the damages classes satisfied the commonality requirement under Rule 23(a) or whether common questions predominated over individual ones under Rule 23(b)(3). The court also failed to address whether the Injunctive Relief Class met the commonality requirement under Rule 23(a).

Analysis and Holding:
The United States Court of Appeals for the Ninth Circuit vacated the district court's class certification order. The Ninth Circuit held that the district court did not rigorously analyze whether the plaintiffs produced sufficient evidence to meet the class certification requirements. Specifically, the district court did not adequately address the commonality and predominance requirements for the damages classes or identify common questions for the Injunctive Relief Class. The Ninth Circuit remanded the case with instructions for the district court to fully address Rule 23's class certification requirements.

DANGEROUS CONDITION OF PUBLIC PROPERTY

Union Pacific Railroad Co. v. Superior Court
Docket: F087132 (Fifth Appellate District)
Opinion Date: October 7, 2024

Summary Rules:
A dangerous condition of adjacent property can only create liability where evidence of the necessary factors is established.

Facts:
In this case, the decedents, Robert and Elise Sandiford, and Deon Detes Abrams, Sr., died after their vehicles collided on State Route 99 (SR 99) and struck a tree on land owned by Union Pacific Railroad Company (Union Pacific). The relatives of the decedents sued Union Pacific, alleging negligence for failing to remove the tree or take measures to protect the public from the dangerous condition it posed. Union Pacific moved for summary judgment, arguing it owed no duty to remove the tree. The trial court denied the motion, finding no judicial exception to the ordinary duty of care under Civil Code section 1714.

The trial court's denial of summary judgment was based on the application of factors from Rowland v. Christian, which did not support creating an exception to the ordinary duty of care. Union Pacific then

filed a petition for a writ of mandate with the California Court of Appeal, Fifth Appellate District, seeking to overturn the trial court's decision.

Analysis and Holding:
The California Court of Appeal, Fifth Appellate District, reviewed the case and held that Union Pacific did not have a duty to remove the tree or take other measures to protect the driving public from the alleged dangerous condition posed by the tree. The court considered the foreseeability of harm, the certainty of injury, and the closeness of the connection between Union Pacific's conduct and the injury. It also weighed public policy factors, including moral blame, the policy of preventing future harm, the burden on the defendant, and the availability of insurance. The court concluded that public policy clearly supported creating a judicial exception to the ordinary duty of care, thus granting Union Pacific's petition for a writ of mandate and directing the trial court to grant Union Pacific's motion for summary judgment.

EMPLOYMENT – CITY AUTHORITY TO DECIDE IS FINAL

Ramirez v. City of Indio
Docket: D082997 (Fourth Appellate District)
Opinion Date: October 11, 2024

Summary Rules:
Where an MOU establishes that a City Manager has final decision-making authority, a City Manager may refuse to accept and arbitrator's decision.

Facts:
Sergio Ramirez, a former police officer, was terminated by the City of Indio Police Department following an internal affairs investigation. Ramirez was initially placed on administrative leave after being charged with rape and sexual assault, though he was later acquitted of all criminal charges. Despite the acquittal, the internal investigation concluded that Ramirez had violated several departmental policies, leading to his termination. Ramirez appealed the decision through the administrative appeal process outlined in the Memorandum of Understanding (MOU) between the City and the Indio Police Officers' Association.

The arbitrator, after a full evidentiary hearing, recommended Ramirez's reinstatement with full back pay and benefits. However, the City Manager upheld the termination, citing Ramirez's poor judgment, dishonesty, and conduct unbecoming of an officer. Ramirez then petitioned the Superior Court of Riverside County for a writ of mandate, arguing that the City Manager should have deferred to the arbitrator's findings on the weight and credibility of the evidence. The Superior Court denied the petition, affirming the City Manager's decision.

Analysis and Holding:
The Court of Appeal, Fourth Appellate District, reviewed the case and affirmed the lower court's judgment. The court held that the MOU clearly vested the City Manager with the final authority to make disciplinary decisions, including the power to reject the arbitrator's advisory findings. The court found that the City Manager had conducted a thorough review of the arbitrator's recommendations and the evidence before making the final decision. The court also concluded that the administrative appeal process provided Ramirez with due process, as it included notice, an opportunity to respond, and a meaningful hearing. The judgment of the Superior Court was affirmed, upholding Ramirez's termination.

EMPLOYMENT – TERMINATION RE COVID VACCINE MANDATE

Bedard v. City of Los Angeles
Docket: B331062 (Second Appellate District)
Opinion Date: October 31, 2024

Summary Rules:
Termination of police officer was upheld for refusing to comply with COVID vaccine mandate.

Facts:
Jeannine Bedard, a Los Angeles Police Department (LAPD) officer, refused to comply with the City of Los Angeles's COVID-19 vaccination mandate and did not sign a notice enforcing the mandate. Consequently, the Chief of Police sought to terminate her employment. The LAPD Board of Rights reviewed the proposed discipline, found Bedard guilty of failing to comply with conditions of employment, and upheld her discharge. The Board also found that the City violated Bedard's due process rights by not providing sufficient time to respond to the charges and awarded her back pay, which the City did not pay.

Bedard filed a petition for a writ of mandate in the Superior Court of Los Angeles County, arguing that the disciplinary action was procedurally and legally invalid and seeking reinstatement and back pay. The trial court found the termination justified but agreed that the City violated Bedard's due process rights by giving her insufficient time to respond. The court awarded her back pay.

Analysis and Holding:
The California Court of Appeal, Second Appellate District, Division Three, reviewed the case. Bedard argued that her termination was improper because it was based on her refusal to sign an allegedly illegal contract, was too harsh a penalty, and violated her due process rights under Skelly v. State Personnel Board. The appellate court affirmed the trial court's decision, holding that Bedard's refusal to comply with the vaccination mandate justified her termination. The court found substantial evidence supporting the trial court's conclusion that Bedard's termination was not solely based on her refusal to sign the notice but also on her refusal to comply with the vaccination requirement. The court also held that the appropriate remedy for the due process violation was back pay, not reinstatement.

DANGEROUS CONDITION OF PUBLIC PROPERTY – CONSTRUCTIVE NOTICE

Maksimow v. City of South Lake Tahoe
Docket: C098705 (Third Appellate District)
Opinion Date: November 4, 2024

Summary Rules:
General notice of a weather condition is insufficient to establish notice of a specific patch of ice that caused a slip and fall incident.

Facts:
Plaintiff Lorenza Maksimow slipped and fell on an ice patch in a public parking lot in the City of South Lake Tahoe. She sued the City, alleging the ice patch constituted a dangerous condition of public property under Government Code sections 830 and 835. The City moved for summary judgment, arguing that Maksimow could not establish the existence of a dangerous condition or that the City had actual or

constructive notice of such a condition. The trial court granted the motion and entered judgment in favor of the City.

The Superior Court of El Dorado County found that Maksimow failed to raise a genuine issue of material fact regarding the City's actual or constructive notice of the alleged dangerous condition. The court sustained the City's objections to certain evidence presented by Maksimow, including climatological data and expert testimony, and concluded that there was no evidence to support the claim that the City had notice of the ice patch.

Analysis and Holding:
The California Court of Appeal, Third Appellate District, reviewed the case and affirmed the trial court's judgment. The appellate court held that Maksimow did not present sufficient evidence to establish that the City had actual or constructive notice of the ice patch. The court noted that while City employees may have been aware of snowfall and the presence of an abandoned vehicle in the parking lot, there was no evidence that they had actual knowledge of the specific ice patch that caused Maksimow's fall. Additionally, the court found that the evidence did not support an inference that the ice patch existed for a sufficient period of time to impute constructive notice to the City. Consequently, the appellate court concluded that summary judgment was properly granted in favor of the City.

EMPLOYMENT – BURDEN SHIFTING

Quesada v. County of Los Angeles
Docket: B326986 (Second Appellate District)
Opinion Date: November 19, 2024

Summary Rules:
A plaintiff must establish the illegality of a decision not to promote, rather than asserting mere qualification and shifting the burden to the employer.

Facts:
Marlon Quesada, a deputy sheriff with the Los Angeles County Sheriff's Department, was not promoted to sergeant despite taking the sergeant's examination in 2017 and 2019, scoring in band two and band one, respectively. Quesada had a mixed employment record, including two suspensions for misconduct and a 2015 investigation that was terminated due to a statute of limitations. Quesada claimed the Department improperly considered this time-barred investigation during the promotion process, which he argued was illegal.

The Superior Court of Los Angeles County denied Quesada's petition for a writ of mandate, which sought to compel the Department to promote him and provide back pay and other damages. The trial court rejected Quesada's argument for a burden-shifting approach, similar to that used in discrimination cases, and found that Quesada did not establish that the Department's decision was illegal.

Analysis and Holding:
The California Court of Appeal, Second Appellate District, reviewed the case. The court affirmed the trial court's decision, holding that the standard approach to civil litigation applies, where the plaintiff bears the burden of proving the elements of their claim by a preponderance of the evidence. The court declined to adopt a burden-shifting approach, noting that Quesada's case did not involve discrimination based on race or membership in a historically oppressed group. The court also found substantial

evidence supporting the Department's decision, including Quesada's mediocre performance evaluations and past misconduct. The court concluded that Quesada's policy arguments did not justify a departure from the standard legal approach.

CLAIMS PROCESS – LATE CLAIM

McCurdy v. County of Riverside
Docket: D083420 (Fourth Appellate District)
Opinion Date: November 21, 2024

Summary Rules:
After filing a late claim, a claimant does not show mistake, inadvertence, surprise, or excusable neglect, when he argues that he was informed improperly by three attorneys.

Facts:
Donald McCurdy appealed an order denying his petition for relief from the notice requirement of the Government Claims Act. McCurdy had submitted a claim for damages to the County of Riverside over a year after the Court of Appeal granted his petition for writ of habeas corpus, which found that he received ineffective assistance of counsel from a public defender during a probation revocation hearing. The County denied his claim for being untimely, as it was not presented within six months of accrual. McCurdy applied for leave to file a late claim, which was also denied. He then filed a petition for relief in the trial court, arguing that his claim did not accrue until the remittitur issued on the writ of habeas corpus and that he had one year to present his claim. Alternatively, he argued that he was misled by three attorneys who advised him that the one-year period applied.

The Superior Court of Riverside denied McCurdy's petition, finding that his claim accrued when his probation was revoked and was therefore untimely under either the six-month or one-year period. The court also found that McCurdy did not show mistake, inadvertence, surprise, or excusable neglect to justify filing a late claim.

Analysis and Holding:
The Court of Appeal, Fourth Appellate District, Division One, State of California, reviewed the case. The court concluded that McCurdy's claim arose in tort and was subject to the six-month claims period under section 911.2. The court also found that the trial court did not abuse its discretion in finding that McCurdy did not show mistake, inadvertence, surprise, or excusable neglect. Consequently, the Court of Appeal affirmed the trial court's order.

POLICE EXCESSIVE FORCE – SCOPE OF EMPLOYMENT

Juarez v. San Bernardino City Unified Sch. Dist.
Docket: D084517 (Fourth Appellate District)
Opinion Date: November 25, 2024

Summary Rules:
When it is a disputed issue, whether a school district police officer acted in the course and scope of his employment is a question of fact for a just and cannot be resolved on MSJ.

Facts:
Plaintiffs Antonio Juarez, Jose Hinojosa, Jose Espinosa, and Maria Morfin filed a lawsuit against the San Bernardino City Unified School District following an incident involving Officer Alejandro Brown, a District employee. In February 2018, Juarez found a cell phone and later, Officer Brown, tracking his phone, confronted the plaintiffs, identifying himself as a District police officer. Brown, armed and displaying his badge, demanded compliance, struck Juarez with his firearm, and threatened the others. Brown later pled guilty to assault and battery and threatening the plaintiffs under color of law.

The Superior Court of Riverside County sustained the District's demurrer to the plaintiffs' second amended complaint without leave to amend, leading to the dismissal of the case. The court found the complaint insufficient to establish that Officer Brown was acting within the scope of his employment with the District and dismissed the claims of negligence, battery, assault, negligent hiring, supervision, and retention, false arrest and imprisonment, intentional and negligent infliction of emotional distress, and violation of the Bane Act.

Analysis and Holding:
The Court of Appeal, Fourth Appellate District, Division One, State of California, reversed and remanded the case. The appellate court held that the scope of employment is a factual issue that cannot be resolved as a matter of law on demurrer. The court found that Officer Brown's off-duty misconduct, while investigating a suspected theft and wielding his authority as a peace officer, could be regarded as an outgrowth of his employment. The court directed the trial court to vacate its order sustaining the demurrer, enter a new order overruling the demurrer, and conduct further proceedings. The appellate court also rejected the District's arguments regarding the Bane Act and found the plaintiffs' allegations sufficient to state a cause of action for negligent hiring, supervision, and retention.

NEGLIGENT PROVISION OF MEDICAL TREATMENT

Murphy v. City of Petaluma
Docket: A168012 (First Appellate District)
Opinion Date: November 25, 2024

Summary Rules:
City paramedics do not have a duty to provide medical assessment of an individual who repeatedly refused treatment and claimed no injury, even where she was actually injured and later sustained harm.

Facts:
A woman was involved in a head-on car collision in Petaluma, California. Fire department paramedics responded to the scene and repeatedly offered her medical assistance, which she declined, stating she was not injured. Despite being warned of potential serious injuries that might not yet be symptomatic, she refused transport to a hospital. Hours later, she suffered a debilitating stroke due to a hypertensive crisis triggered by the collision. She subsequently filed a lawsuit against the City of Petaluma and the paramedics, alleging gross negligence for failing to properly assess her medical condition and transport her to a hospital.

The Sonoma County Superior Court granted summary judgment in favor of the defendants, ruling that the paramedics did not assume a duty of care to provide the medical assistance claimed by the plaintiff. The court found that the paramedics did not initiate medical care but merely offered it, which the plaintiff refused. Therefore, the paramedics did not owe a duty to perform a full medical assessment.

Analysis and Holding:

The California Court of Appeal, First Appellate District, Division One, reviewed the case. The court affirmed the lower court's decision, holding that the paramedics did not assume a duty to provide medical assistance under the negligent undertaking doctrine. The court emphasized that the paramedics' duty was limited by the plaintiff's repeated refusals of medical assistance and transport to a hospital. The court concluded that the paramedics' actions did not increase the risk of harm to the plaintiff and that they left her in the same condition as when they arrived. Thus, the paramedics did not owe a duty to provide the medical care the plaintiff claimed was necessary.

ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

Item No. C.1.d
Claims Committee
December 18, 2024

ACCEL ATTORNEY PANEL UPDATE

ISSUE: The ACCEL Board approved an Attorney Panel at the October 2023 Board Meeting. The Panel includes ACCEL's current Legal Counsel, Byrne Conley to remain the Primary General and Coverage Counsel, while the attorney panel will consist of Scott Vida, Pollak Vida & Barer and Robert Cutbirth, SBEMP Attorneys for coverage opinions, reservations of rights, and other legal work required by ACCEL. Steve Brower, Brower Law Group will be utilized on special claims cases due to his high fee and value.

Robert Cutbirth, SBEMP Attorneys sent a notice of Disengagement to ACCEL on October 15, 2024. Ben Oram and David Trautz, ACCEL's Claims Administrators will provide the Committee a verbal update since this relates to coverage related work assignments.

RECOMMENDATION: It is recommended that the Committee discuss the next steps, if any, and take action to make a recommend to the Board or provide direction to George Hills, ACCEL's Claims Administrators, or other direction may be given.

Additional Consideration

In favor: A vote in favor would indicate that if the Committee would like to have a replacement on the panel, direction would be given to George Hills to propose a replacement for additional attorneys.

Against: A vote against would indicate that the Committee feels there is a sufficient number of attorneys on the panel and no need to find a replacement at this time.

FISCAL IMPACT: Cannot be determined at this time. The Admin Budget includes the Legal Counsel Budget and for FY 24/25, we budgeted $20,000. Currently, ACCEL pays:

Gibbons & Conley
- Byrne Conley: $225/hr
- Paralegals: $102/hr

Scott Vida, Pollak Vida & Barer
- Partners/Owner: $350/hr
- Associates: $300/hr
- Paralegals: $135/hr

Steve Brower, Brower Law Group
- ACCEL discount rate: $500/hr for Steve and Tae

ACCEL
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Corporation Insurance License No. 0C36861
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BACKGROUND: Below is a list from soliciting feedback from other internal resources.

- Greg Rolen
  Haight Brown & Bonesteel, LLP
  Three Embarcadero Center, Suite 200
  San Francisco, CA 94111

- Debra Sturmer
  Lerch Sturmer LLP
  One Samsome St, Suite 2060
  San Francisco, CA 94104

- Blane Smith
  Law Office of Blane A. Smith
  455 University Ave, Suite 270
  Sacramento, CA 95825

- Doug Alliston
  Alliston Law Office
  2795 E. Bidwell #100-140
  Folsom, CA 95630

- ~~Robert A. Cutbirth~~
  ~~SBEMP Attorneys~~
  ~~1800 E. Tahquitz Canyon Way~~
  ~~Palm Springs, CA 92262~~

- ~~Richard Frischer~~
  ~~Lamb & Frischer Law Firm, LLP~~
  ~~500 Lighthouse Ave, Suite A~~
  ~~Monterey, CA 93940~~

- Scott Vida
  Pollak Vida & Barer
  11500 West Olympic Blvd., Suite 400
  Los Angeles, CA 90064

- ~~Andy Downs~~
  ~~Bullivant Houser~~
  ~~101 Montgomery Street, Suite 2600~~
  ~~San Francisco, CA 94104-4146~~

- Steve Brower
  Brower Law
  26062 Red Corral Rd
  Laguna Hills, California 92653

Prior to 2015, David Garthe in Oakland was ACCEL's Coverage Counsel and has retired. As such, ACCEL has given direction to the Program Administrators to approach potential new Coverage Counsel.

In 2015, The Administrators approached several potential Coverage Counsels for ACCEL. Byrne Conley shown interest in the position. Byrne works with several other Municipal Insurance Pools in the State and is known to the Administrators to be a competent Coverage Counsel. Back then, ACCEL did not 'officially' have General Counsel either. We were able to combine these roles and Byrne Conley has been ACCEL's General Counsel and Coverage Counsel since 2015.

Byrne has a deep understanding of JPAs and provides fair and member-oriented coverage stances which is a benefit to ACCEL. As ACCEL's claims activity increases, there is a need for more coverage counsel work. At a prior Claims Committee Meeting, the Committee agreed that by June 1st, ACCEL should develop an action plan on additional coverage counsel options and other matters (e.g., reservation of rights letters, coverage opinions).

ATTACHMENT: ACCEL Attorney Panel

ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
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560 Mission Street, 6th Floor, San Francisco, CA 94105

ACCEL Legal Counsel Panel
Adopted: October 12, 2023
Amended: October 15, 2024

Primary General and Coverage Counsel:

Gibbons and Conley
Byrne Conley
3480 Buskirk Ave., Suite 200
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Phone: (925) 932-3600
abcjr@gibbons-conley.com

Attorney Panel for ACCEL coverage work and assigned engagements:

Pollak Vida & Barer

Scott Vida
- Claims related matters (includes but not limited to): Coverage Opinions, Reservations of Rights

11500 West Olympic Blvd., Suite 400
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Phone: 310-203-1603
Scott@pollakvida.com

Gibbons and Conley

Byrne Conley
- Claims related matters (includes but not limited to): Coverage Opinions, Reservations of Rights

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**Typically engaged for higher profile cases*