



AGENDA

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

JPA: ACCEL CLAIMS COMMITTEE MEETING

DATE/TIME: Tuesday, March 4th, 2025, at 9 AM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/95894384203?pwd=EUzy2KrT9XUpoQuf4INzbRmfymA7vk.1>

Meeting ID: 958 9438 4203

Passcode: 132950

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** • City of Bakersfield, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
- LOCATIONS** • City of Monterey, 735 Pacific St. Suite A, Monterey, CA 93940
- VIA TELE -** • City of Ontario, 200 North Cherry Ave., Ontario, CA 91764
- CONFERENCE** • 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)

3-6

- 1 1. Approval of Minutes for the December 18, 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

7-25

- 1 a) Clarification Of Claims Reporting Requirements - ACCEL Claims Reporting and Handling Policy and Procedure (A)
The Committee will have a discussion about the claims reporting requirements effective date of the Claims Reporting and Handling Policy and Procedure. Action may be taken to make a recommendation to the Board or direction given.

26-32

- 1 b) Member Claims Training (A)
The Claims Committee will discuss additional training opportunities for its Members and may take action to provide a recommendation to the Board or provide further direction

33-36

- 1 c) Litigation Update (I)
George Hills will provide the Committee a litigation update.



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

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



**MINUTES OF THE
ACCEL CLAIMS COMMITTEE MEETING
Wednesday, December 18, 2024, at 2 PM**

Item No. B.1
Claims Committee
March 4, 2025

**LOCATION:
TELECONFERENCE**

Link: <https://alliantinsurance.zoom.us/j/97544985454?pwd=GNavPbjqCzfcoYGSTI6CaBdoHRgc98.1>

Meeting ID: 975 4498 5454

Passcode: 313362

Dial: (669) 900-6833

MEMBERS PRESENT:

Jena Covey, City of Bakersfield
Lisa Cox, City of Monterey
Marquie Lugo, City of Ontario
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica (joined at 2:09 PM)

MEMBERS ABSENT:

None

GUESTS AND CONSULTANTS:

Rob Powers, R. E. Powers Company, LLC (left at 3:15 PM)
Ben Oram, George Hills Company
David Tratus, 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 2:00 PM.

B. CONSENT CALENDAR

B1. Approval of Minutes for the September 23, 2024 Claims Committee Meeting

A motion was made to approve the consent calendar.

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



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

C. REPORTS

C1. CLAIMS COMMITTEE’S REPORT

C1a. 2024 ACCEL Claims Audit Draft

Robert Powers, ACCEL’s Claims Auditor presented the 2024 ACCEL Claims Audit Draft that includes the executive summary, narratives for each Member, except for the City of Anaheim, and ACCEL’s Claims Administrator, George Hills Company. The City of Anaheim’s audit has been completed at the time of the Claims Committee Meeting, however, the report was not ready at the time of the meeting. Anaheim’s Claims Audit report will be presented at the January 2025 Board Meeting.

Members had a roundtable discussion about Bakersfield’s audit results.

A motion was made to make a recommendation to the Board to review the Claims Audit with the inclusion of the City of Anaheim’s portion. Also, to direct the Program Administrators to agendize at the January 2025 Board Meeting for consideration a supplemental Claims Audit for the City of Bakersfield. The Scope of Work for Rob Powers is 100 claims and review of overall claims handling.

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

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



C1b. Claims Audit Team

Rob Powers announced that Craig Schweikhand will be joining the Claims Audit Team. An informational update will be reported to the Board at the January 2025 Meeting.

C1c. Litigation Update

Ben Oram provided the Committee the quarterly litigation update. He discussed cases about Employment – Public Entities and PAGA Claims, Wage and Hour Exemption, and Police Excessive Force.

Members asked questions, which were addressed.

C1d. ACCEL Attorney Panel Update

Lorissa Huey reported that the Board created an Attorney Panel in October 2023. One of the attorneys on the panel, Robert Cutbirth, SBEMP Attorneys sent a notice of Disengagement to ACCEL on October 15, 2024.

Ben Oram and David Trautz, ACCEL’s Claims Administrators did not see a need to add another person to the panel at this time.

No reportable took place.

C1e. CLOSED SESSION – Pursuant to Gov’t Code 54956.95

A motion was made to enter into Closed Session at 3:15 PM.

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					



A motion was made to come out of Closed Session at 4:14 PM.

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

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

Lorissa Huey reported out of Closed Session that no reportable action took place.

D. PUBLIC COMMENTS

There were no public comments.

ADJOURNMENT

Jena Covey adjourned the meeting at 4:16 PM.



Item No. C.1.a
Claims Committee
March 4, 2025

CLARIFICATION OF CLAIMS REPORTING REQUIREMENTS - CLAIMS REPORTING AND HANDLING POLICY AND PROCEDURE

ISSUE: The Claims Committee (CC) is directed from the Board from the January 2025 Board Meeting to clarify the language regarding the effective date of the new reporting requirements in the ACCEL Claims Reporting and Handling Policy and Procedure (P&P).

The ACCEL Memorandum of Coverage (MOC) is the document that ultimately governs our coverage and reporting for that specific policy year.

For example, if the Member was compliant with the MOC reporting requirements, ACCEL would not have a basis to argue lack of reporting for the policy year.

1. The MOC applies per its written language each year it is issued.
2. ACCEL adopted an Administrative P&P the Claims Reporting and Handling P&P to outline of what is expect from Members for claims handling and reporting, unless it is otherwise stated it applies to all claims, all program years. When reporting requirements change in the Administrative P&P it is implied to apply to all open claims.
3. Because these can be at conflict with each other, what does ACCEL want to do? The options are:
 - a. Leave as is, which result in slight over reporting in older years.
 - b. State that the Administrative P&P reporting requirements only applies when the MOC change took effect which was July 1, 2023.
 - i. Claims after July 1, 2023, must follow the new reporting requirements.
 - ii. Claims before July 1, 2023, should adhere to the reporting requirements outlined in the MOC for their respective policy year

RECOMMENDATION: It is recommended that the Committee review to clarify the Administrative P&P's intent, propose changes if needed to the Board or give further direction.

Additional Consideration

In favor: Members may be in favor in changing the language to resolve the conflict between the MOC and Administrative P&P as it ensures consistent reporting expectations.

Against: Members may be against changing the current language to align with the MOC reporting years as the intent was to always apply to all open claims including older years. This is a clarification to the policy, not a change in intent.

FISCAL IMPACT: There is no fiscal impact to the recommended action.



BACKGROUND: At the June 2023 Board Meeting, the Board took action to bind coverage with excess carrier Great American and Starstone (currently support the ANML program). Great American added more criteria to its claims reporting requirements. The ACCEL MOC also includes claims reporting requirements and falls under the Underwriting Committee’s purview. ACCEL and its Members should comply with both ACCEL and Excess Insurer reporting requirements. Direction was given to the CC to review ACCEL’s Claims Reporting and Handling P&P and proposed to the Board to adopt the new requirements. The Board took action at the October 2023 Board Meeting to adopt the new requirements with the exception that the carrier states, “Any claim with an assigned trial date in the next 30 days”, the CC wants the P&P to state 60 days instead, and rearrange that sentence to the list of claims classifications.

Excess claims reporting is critical to ACCEL’s contract with insurers, as a result ACCEL’s Claims Committee has revised the Claims Handling Policy and Procedure P&P to match the broadest claims reporting requirements of our excess insurers. By doing this, any claim that is reportable to an excess carrier will now also be reportable to ACCEL pursuant to our Claims Handling P & P. However, the P&P is an administrative policy, whereas the MOC is ACCEL’s coverage document and contains its own reporting requirements. In September 2023, Underwriting Committee (UC) met and reviewed the MOC to confirm if ACCEL’s claims reporting should be updated and broadened, kept the same, or develop another option. At that UC Meeting, action was taken to make a recommendation to the Board to adopt the proposed changes retroactive to July 1, 2023. The Board adopted the Committee’s recommendation at the October 2023 Board Meeting.

ATTACHMENT: ACCEL’s Claims Reporting Handling Policy and Procedure

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: CLAIM REPORTING AND HANDLING

DATE: May 1, 1987

AMENDED DATE: January 23, 2025

REVIEWED DATE: October 3, 2024

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- VIII. Claims Reimbursement Requests**
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I. Statement

It is the policy of the Authority for California Cities Excess Liability Joint Powers Authority (hereinafter referred to as “Authority”) that:

1. Each Member Agency will report all occurrences, claims, and lawsuits (hereinafter referred to as “claims”) meeting the Authority’s reporting criteria to its Claims Administrator as soon as possible and in accordance with the Authority’s Memorandum of Coverage (“MOC”).
2. Each Member Agency will assume primary responsibility for managing all reported claims filed against the Member Agency. However, the Authority reserves right to associate in or participate with a Member Agency in the negotiation, investigation, defense, appeal, or settlement of a claim subject to the terms and conditions of the Authority’s MOC.
3. The Authority’s Claims Administrator is responsible for notifying the Authority’s excess insurance carriers of all Member Agency claims with the potential to exceed the Authority’s retained limit in accordance with excess carriers’ claims reporting and handling policies. However, each Member Agency is responsible for notifying and complying with all insurance policies unaffiliated with the Authority, and purchased individually by the Member Agency (i.e., Non-Authority purchased coverage).
4. Should a discrepancy arise between this document and the Authority’s MOC, the MOC will govern.

II. Role of Claims Committee

The Claims Committee is composed of Board Members appointed by the Executive Committee and approved by the Authority; the Committee Chair is selected by Committee members. Committee membership shall not meet or exceed a quorum of the Board. The Claims Committee, with support from the Authority's claims management firm, is responsible for the following activities:

1. Monitoring all claims reported by Member Agencies to the Authority to ensure reserves are adequate, defense strategies are sound, coverage issues are promptly identified and communicated to Member Agencies, and excess carriers are promptly notified of claims with potential to exceed the Authority's retained limit;
2. Reporting key developments and/or concerns regarding active claims to the Authority's Board of Directors;
3. Providing recommendations to the Board of Directors on claims and claims matters requiring Authority action, including, but not limited to, coverage determinations, reserve levels, defense strategies, settlement offers, and decisions to try or appeal lawsuits;
4. When appropriate, soliciting and reviewing coverage opinions and other related coverage matters (e.g. reservation of rights letters). The Claims Committee Chair may approve releasing the coverage statement to the Member, to be ratified at the following Claims Committee Meeting;
5. Overseeing the activities of the Authority's claims management firm; and
6. Assisting with the selection of the Authority's claims management firm and claims auditor.

The Claims Committee will meet at least quarterly to fulfill its designated responsibilities.

III. Role of Claims Administrator

The Authority will retain the services of a claims management firm to oversee all claims reported by its Member Agencies. The claims management firm, in turn, will assign a claims administrator to the Authority. The Claims Administrator will serve as the Authority's point of contact for all reported claims and be responsible for fulfilling the scope of work contained in the service contract between the Authority and the claims management firm. The Claims Administrator will notify the excess carriers of claims in accordance with excess carriers' claims reporting and handling policies.

It is the duty of the Claims Administrator to report any claim or occurrence to each excess carrier, without regard to liability, that meets the reporting requirements in each of the excess policies, (e.g. death, traumatic brain injury, paralysis, burns, and other severe injuries, or a reserve of half or more of the retention) or which meet ACCEL's reporting requirements in Section IV below.

The Claims Administrator will classify each reported matter based upon the facts of the loss and the total incurred (outstanding reserves plus amount paid to date) reported by the Member Agency at the time of initial reporting and will utilize all available information provided to ACCEL for that purpose. The Claims Administrator will assign each matter to one of the four classifications set forth below and will thereafter adjust the classification as new information becomes available.

The intent of this tiered structure is to prioritize and balance the handling of the matters with the greatest exposure and/or significance to ACCEL. Member Agencies are encouraged to communicate with ACCEL and its Claims Administrator early and often. Where any Member Agency obtains information of importance, they are encouraged to communicate that information as soon as reasonably practicable.

Where a Member Agency obtains information indicating a claim's facts or Total Incurred requires a Tier adjustment, the Member Agency will report such information to the Claims Administrator. The Claims Administrator will evaluate the material and determine whether a classification change is warranted and will thereafter provide an update to the Claims Committee at the next regularly schedule Claims Committee or Board of Directors meeting, whichever occurs first.

If a change in classification is made to any matter, the Claims Administrator will adjust its review and update schedule accordingly.

Tier 1: Matters with Member Agency total incurred of \$1,000,000.00 or greater

These matters are anticipated to have exposure within the coverage established by an ACCEL Memorandum of Coverage:

- All Tier 1 matters will be updated on a **quarterly basis** for inclusion in a litigation report to the Claims Committee.
- All matters that require funding via ACCEL will be discussed with the Claims Committee and a recommendation on ACCEL reserves provided.
- Each matter with an ACCEL reserve must be reported to the Board of Directors for review and approval consistent with Section VII below.
- The reserve approval and settlement authority processes may take place contemporaneously.
- The Claims Administrator is required to provide a comprehensive report to the Board of Directors for which a reserve is recommended. The report will cover all relevant details, facts, legal claims, defenses, civil procedure, trial settlement conference dates, and analysis of the potential exposure, member reserves, a recommendation on the amount for which approval is requested.
- The Claims Administrator will provide all required or requested updates to all relevant excess carriers.

Tier 2: Matters with Member Agency total incurred of \$500,000.00 up to \$999,999.99

These matters are anticipated to have higher value but **not expected** to have exposure within the coverage established by an ACCEL Memorandum of Coverage:

- All Tier 2 matters will be reviewed and updated every **six (6) months** unless and until a Member Agency reports a change in circumstances which warrants a change in classification.
- The Claims Administrator will provide all required or requested updates to all relevant excess carriers.

Tier 3: Matters with Member Agency total incurred of \$50,000.00 up to \$499,999.99

These matters are those for which the anticipated value is moderate or low, but which may have been reported to ACCEL out of an abundance of caution or because the reporting requirements for ACCEL and/or any excess carrier required reporting “without regard to liability.”

- All Tier 3 matters will be reviewed every **nine (9) months** unless and until a Member Agency reports a change in circumstances which warrants a change in classification.
- The Claims Administrator will provide all required or requested updates to all relevant excess carriers.

Tier 4: Matters with Member Agency total incurred of less than \$50,000.00

These matters are those for which the **anticipated value is considered to very low**, but which may have been reported to ACCEL out of an abundance of caution or because the reporting requirements for ACCEL and/or any excess carrier required reporting “without regard to liability.”

- All Tier 4 matters will be considered “**monitor only.**” A claim will be set-up by the Claims Administrator and the matter initially reviewed by a Sr. Claims Adjuster.
- All matters will be reported to excess carriers where required.
- The Claims Administrator will assign these matters to a Litigation Support Specialist that will advance all updates received from a Member Agency to the relevant excess carriers and maintain the Claims Administrator’s file.
- The Litigation Support Specialist will periodically follow-up with the Member Agencies to determine if any change in circumstances has occurred and will communicate with the excess carriers as necessary.
- The Litigation Support Specialist will keep the Sr. Claims Adjuster apprised of all significant developments in these matters.

IV. Reporting Requirements for Member Agencies

1. Member Agencies will report to the Authority’s Claims Administrator as soon as possible all events meeting any of the criteria identified below, without regard to liability:
 - a. Claims¹ in which the ultimate net loss is estimated to exceed 25% of the Member Agency’s retained limit.
 - b. Claims¹ falling within any of the following classifications:
 - i. Class action suits.
 - ii. Law enforcement actions alleging excess use of force or wrongful conviction.
 - iii. Claims involving allegations of harassment, including but not limited to sexual, employment-based or third-party.
 - iv. Sexual misconduct or molestation – including allegations of assault, misconduct, rape and related offenses.
 - v. Fatalities.
 - vi. Spinal cord injuries resulting in any degree of paraplegia or quadriplegia.
 - vii. Nerve damage injuries resulting in paralysis or loss of sensation.
 - viii. Brain damage claims including; but not limited to, closed head injuries, permanent disorientation, behavior disorder, personality change, seizure, motor deficit or other cognitive disorders.
 - ix. Burns – Third degree burns involving 10% of the body, or second degree burns involving 30% of the body.

¹ See page 1 of this policy – the definition of “claim” includes occurrences, claims, and lawsuits.

- x. Amputation – complete or partial.
 - xi. Impairment of vision or hearing – 50% or greater.
 - xii. Multiple injuries arising out of one occurrence, including but not limited to; massive internal injuries or multiple fractures involving more than one claimant.
 - xiii. Severe disfigurement.
 - xiv. Long term hospitalization (30 days or more).
 - xv. Multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency’s retained limit.
 - xvi. Any claim with an assigned trial date in the next 60 days that has not been otherwise reported.
- c. Lawsuits or writs involving employment practices liability.
- d. Demands in excess of \$250,000 arising out of any of the following settings:
- i. Statutory demand;
 - ii. Post closed discovery (not expert) demand;
 - iii. Mandatory Settlement Conference demand;
 - iv. Mediation demand; or
 - v. Arbitration demand.
2. Member Agencies will ensure that the initial report provided to the Claims Administrator contains a brief description of what occurred, along with all available/relevant documents (e.g., claim, investigative reports, photos, medical reports, the operative complaint and answer, etc.), all current financial information including the amount paid to date in legal fees and cost, the members current reserve amounts and an estimate of any anticipated Ultimate Net Loss based on the information then available.

Member Agencies will provide the initial report and all future reports to the Authority’s Claims Administrator:

George Hills Company
P.O. Box 278
Rancho Cordova, CA 95741
Phone: (855) 442-2357
Attention: Ben Oram / David Trautz
Ben.Oram@georgehills.com / David.Trautz@georgehills.com
(916) 269-4108 / (747) 282-2810

Once a reported claim is litigated, Member Agencies will promptly advise the Claims Administrator of legal counsel selection and forward a copy of the lawsuit along with any additional relevant documents available that were not provided with the initial report.

3. Member Agencies will ensure that assigned legal counsel provides the Claims Administrator with a case analysis report (“CAR” – sample attached) or equivalent as soon as reasonably possible after receipt of the lawsuit.

4. Member Agencies shall provide written status reports every ninety days thereafter or when a significant development occurs that could change the value of a claim or lawsuit, whichever occurs first. Status reports should include all current financial information including the amount paid to date in legal fees and cost, the members current reserve amounts and an estimate of any anticipated Ultimate Net Loss based on the information then available. Further, Member Agencies will ensure that status reports are complete and contain sufficient information for the Claims Administrator to properly evaluate the claim or lawsuit and keep the Claims Committee informed of key developments that may require its action. If Member Agencies fail to comply with these requirements, the Claims Administrator will promptly alert the Claims Committee and may request intervention.
5. Member Agencies shall provide photos, video, diagrams, reports, estimates, statements, deposition transcript and/or summaries, motions for summary judgment, adjudication, dismissal, and/or demurrers, as well as any appellate briefs, orders/rulings/judgments, for inclusion in the file maintained by the Claims Administrator and for transmission to all relevant excess carriers, all within ninety (90) days of receipt of the listed materials.

Member Agencies may provide verbal updates to ACCEL and/or its excess carriers as long as such reports are acceptable to both ACCEL and the excess carriers. Where ACCEL or any excess carrier requests a written report, the Member Agency shall provide a written report to satisfy the duty to cooperate with the excess carriers and therefore to ensure that coverage remains intact.

6. ACCEL's Litigation Manager will provide Members with a loss runs to review at least twice a year. The valuation dates will be 9/30 and 3/31. The Claims Administrators will send the loss runs within seven (7) days after the valuation date to the Members. Members are to notify the Claims Administrators if any of the claims should be reclassified into a different tier within thirty (30) days.

V. Coverage Determinations

The Claims Administrator will promptly evaluate all reported claims to determine whether coverage is available under the Authority's MOC.

If this review reveals a potential coverage issue(s), the Claims Administrator will send the affected Member Agency a partial disclaimer of uncovered damages and provide a copy to the Program Administrator. Upon further review of claim details, the Claims Administrator will request Claims Committee approval to issue a reservation of rights letter that clearly states the basis and justification for the finding; a copy of the letter will be provided to the Program Administrator and each Claims Committee Member. The Claims Chair has Authority to approve the issuance of a Reservation of Rights if circumstances dictate that the Claims Committee may not be able to approve. Any Reservations of Rights approved by the Claims Chair will be presented to the Claims Committee for ratification at the next Claims Committee meeting. The Claims Committee, in turn, will apprise the Board of Directors of all reservation of rights letters issued to Member Agencies and will provide regular status updates until matters resolve. All denials of coverage must be approved by the Authority.

Member Agencies can dispute a reservation of rights letter by contacting the Authority's Board President and requesting that an item be placed on the next available Board of Directors meeting agenda to discuss the matter. In the event of a conflict (i.e., the Board President's Member Agency

is disputing a reservation of rights letter), the Vice President will assume the Board President's responsibilities.

Upon review of claim details, if coverage is not clear and the Claims Administrator cannot make a coverage determination, the Claims Administrator will present the claim to the Claims Committee for review and potential approval of a coverage opinion. Further, if time is of the essence, a Member disputes ACCEL's coverage, the Claims Committee or Claims Committee Chair may authorize a coverage opinion. When a coverage opinion is solicited by ACCEL, ACCEL's Claims Committee will review the opinion and may authorize sharing with the affected Member. Coverage opinions will not be shared with the Member without the prior approval from the Claims Committee or Claims Committee Chair.

VI. Duty to Disclose a Potential Conflict of Interest

Members have a duty to disclose a conflict of interest if a conflict of interest or potential conflict exists.

VII. Settlement Authority Process

As stated in the ACCEL Bylaws Article XI Settlement of Claims:

All claims settlement recommendations shall be presented by the Claims Committee to the Board of Directors for its approval prior to final settlement.

ACCEL's Board will review claims covered by ACCEL's Memorandum of Coverage and take the following steps to review and grant authority to resolve claims:

1. The TPA will review claims for exposure to ACCEL's shared risk layer.
2. Claims which are likely to exceed the member retention and require ACCEL funds to resolve will be brought to the Claims Committee for review.
3. For claims in which an ACCEL reserve is being requested, the claim shall be brought to ACCEL's Board for review and action. If a reserve is approved, the reserve will be posted on ACCEL's loss run and indicates ACCEL's level of approval to resolve the claim.
4. If an opportunity to resolve a claim arises, and the amount is less than the approved reserve, ACCEL authorizes the following levels of authority. If the claim involves the Chair's own city, the President will have authority to approve.
 - a. \$1,000,000 to \$2,000,000 - Claims Committee Chair or the Claims Committee in an event there is a conflict situation.
 - b. \$2,000,000 to \$5,000,000 - Claims Committee
 - c. \$5,000,000 to Authority's Retained Limit - ACCEL Board
5. If a claim resolution exceeds the Board approved reserve, the claim must be brought back to the Board for further discussion and potential action.
6. Any claim involving ACCEL's funds requires a final report to the Board, informing the Board of the claim resolution and financial impact to ACCEL.
7. Claims payments will be processed in accordance with ACCEL's Accounting Guide.

Confirmation of Authority: Prior to attending a settlement conference, the Claims Administrator should provide written notification to the Member Agency and to the Claims Committee of the settlement plan including the details of the mediation or settlement conference, if applicable, the reserves set by ACCEL, confirmation on the potential target settlement value, and where applicable, confirmation that the remainder of the Member Agency SIR may be tendered in the course of finding a resolution.

VIII. Claims Reimbursement Requests

For claims that fall under the Policy Year 2015-16 and after, the Authority's MOC allows for a Member Agency to seek reimbursement from the Authority.

When seeking reimbursement Member Agencies are required to provide the Authority's Claims Administrator a summary as well as all invoices and documentation to substantiate the exhaustion of the Member SIR and the amount requested in the claim reimbursement.

The statement above does not change any agreement between the Authority and a Member Agency which allows the Member Agency (such as a flat fee agreement) to provide a summary report of the amount requested as part of the claim reimbursement along with a signed affidavit that all bills have been reviewed for accuracy, appropriateness, and reasonableness.

The Authority will reimburse Members or credit their Self-Insured Retentions (SIRs) for reasonable attorney fees and necessary litigation expenses incurred while managing, investigating, defending or litigating covered claims.

ACCEL Members are required to notify the Claims and Program Administrators regarding any claim in which attorney rates are in excess of \$400/hour. The Program Administrators will agendize the claim for the Claims Committee to review rates for reasonableness. The Committee may take action or provide direction.

To process claims reimbursement requests the following will occur:

- 1) Once prior written authorization is given to settle an excess case, or a judgment puts it into the Authority or other excess layers, the Member or its administrator must submit:
 - a) Copies of all settlement documents, including releases, annuity forms (if structured), and properly filed dismissals.
 - b) Copies of all itemized bills from defense attorneys, claims administrators, expert witnesses and any other cost bills. (*see attached sample billing procedures*)
 - c) Copies of valid evidence of payment properly matched to the bills and settlement documents. Valid evidence of payment can take the form of check copies, data processing runs, Member warrant registers, department payment records, TPA claim payment screen printout, identifying the following:
 - a. Check or warrant number
 - b. Issue date
 - c. Payee
 - d. Paid amount

- 2) A cover letter requesting reimbursement of the net amount after deducting the SIR, must be submitted with the above documentation.
- 3) Once the figures are reconciled, a check request will be made to reimburse the Member in the appropriate amount. When issued this check will be mailed to the Member contact person, with a copy to the claims administrator (if applicable).
- 4) If reimbursement has been approved for an occurrence that remains open, any additional reimbursements for defense costs and fees will be processed when bills exceed \$250,000.
- 5) If a Member requests an advancement on a reimbursement to prefund a large payment, the Claims Committee Chair has the authority to approve the prefunding request. If the claim involves the Chair's own city, the President will have authority to approve. The prefunding request must be in writing from the Member's Finance Director or Risk Manager.
- 6) If special circumstances arise, which require exceptions or interpretation, the Program Administrators will agendaize for Committee or Board consideration.

IX. Claims Audits

All Member Agencies are required to complete an annual claims audit. Such audits will be conducted by a qualified outside audit firm recommended by the Claims Committee and approved by the Authority. The cost of the audits will be shared equally by Member Agencies.

The Claims Auditor will issue a written report summarizing the findings and recommendations for each Member Agency. This report will be presented and approved by the Authority's Board of Directors at a regular Board meeting. The Authority may require a Member Agency to formally respond to an audit finding contained in the report. A Member Agency shall submit its response to the Authority within sixty days of the request.

X. Attachments

- 1) Sample CAR and Budget Form
- 2) Sample Billing Procedures

**APPENDIX 1
CASE ANALYSIS REPORT**

Caption of Lawsuit: _____

Court: _____

Court Case Number: _____

Date Suit Filed: _____

Date of Service: _____

Fast Track? ____ Yes ____ No

Excess TPA Claim Number: _____

Date of Loss: _____

Primary TPA Claim Number: _____

I. PARTIES

A. Plaintiffs:

B. City and City-Related Defendants:

C. Third-Party and Other Defendants:

II. TRIAL DATE AND OTHER IMPORTANT DATES

III. JURISDICTION AND EVALUATION

IV. TRIAL JUDGE AND EVALUATION

V. EVALUATION OF COUNSEL

A. Plaintiff's Attorney's Name and Evaluation:

B. City's Defense Attorney's Name:

C. Co-Defendants' Attorneys' Names and Evaluations:

VI. STATEMENT OF FACTS

VII. INJURIES

VIII. SPECIAL DAMAGES

A. Medical Expenses:

1. Past:

2. Future:

B. Loss of Earnings:

1. Past:

2. Future:

C. Other (specify);

IX. LIABILITY ALLEGATIONS

- A. Plaintiff's Contentions:**
- B. Defenses:**
 - 1. Legal Defenses:**
 - 2. Factual Defenses:**
- C. Plaintiff's Expert Witnesses and Opinions:**
- D. Defense Expert Witnesses and Opinions:**

X. VERDICT EXPOSURE

- A. Chances of Defense Verdict:**
[Note: a percentage number shall be provided.]
- B. Gross Verdict Range as to all Defendants:**
- C. Potential Offsets and Credits:**
- D. Net Verdict Range to City after Offsets, Credits and Allocation of Fault:**
- E. Plaintiff's Attorney's Fees (if applicable):**
- F. Punitive Damages (if applicable):**

XI. SETTLEMENT HISTORY

- A. Last Demand:**
- B. Last Offer:**
- C. History of Settlement Negotiations:**

XII. RECOMMENDATIONS OF COUNSEL

- A. Reasonable Settlement Value:**
- B. Proposed Litigation Strategy:**
- C. Other Recommendations:**

XII. BUDGET

- A. Fees and Costs Invoiced to Client as of the Date of this Report:**
- B. Fees and Costs from this Date to Trial:**
- C. Fees and Costs of Trial:**
- D. Initial Case Budget:**
- E. Experts' Fees and Costs to Date:**

F. Experts' Fees and Costs through Trial:

G. Litigation Budget Summary Form (see Attachment 1):

XIII. MISCELLANEOUS

A. Does Complaint Conform to the Tort Claim Filed?

(If not, specify differences)

B. Is Indemnification, Subrogation, or Contribution Available?

(If so, specify by whom, and in what amounts)

Attachment

1 – Litigation Budget Summary Form

ATTACHMENT 1 -- LITIGATION BUDGET SUMMARY FORM

Name of Attorney: _____ Case Name: _____

Est Hrs / Cost

1. **Preliminary Activity**
(Review File, Interview Witnesses, Case Analysis, Litigation Plan, Budget)
2. **Initial Pleadings**
(Answer, Cross-Complaint, Demurrer)
3. **Fact Finding – Information Gathering**
(Document Review, Research, Strategy Development, Sub Rosa, Travel)
4. **Discovery**
(Interrogatories, Depositions [by individual], Other Requests)
5. **Law & Motion and Pre-Trial Activity**
(Motions [specify], Arbitrations, Settlement Conferences, Mediations, Court Hearings, Pre-Trial Reports)
6. **Experts**
(Identify Each Expert [if known] and Area of Expertise)
7. **Documentation – Administrative Support**
(Correspondence, Copies, Faxes, Other Costs)
8. **Trial Activity**
(Trial Preparation, Trial Attendance, Briefings, Exhibits, Post-Trial Report)

TOTAL

BUDGET SUMMARY:

- | | |
|---|----|
| 1. Preliminary Activity | \$ |
| 2. Initial Pleadings | \$ |
| 3. Fact Finding-Information Gathering | \$ |
| 4. Discovery | \$ |
| 5. Law & Motion and Pre-Trial Activity | \$ |
| 6. Experts | \$ |
| 7. Documentation – Administrative Support | \$ |
| 8. Trial Activity | \$ |

TOTAL

\$ _____

SUBMITTED BY:

Defense Counsel:

_____ Date: _____

Signature

Printed Name

SAMPLE DEFENSE COUNSEL GUIDELINES – Billing Procedures

BILLING PROCEDURES

All invoices are to be submitted on a [monthly/quarterly] basis and directed to [name of person or position to whom invoices should be sent]. Billings that do not comply with the billing guidelines will not be paid. Payment of any bill by the [entity name and/or the TPA] does not constitute a waiver of the [entity name's] right to question, dispute, obtain reimbursement, compromise, or request repayment or future credit, for any bill or invoice previously paid.

Invoices for counsel fees and expenses should be submitted [monthly/quarterly], within thirty (30) days of the end of the billing period. Final invoices should be submitted within thirty (30) days from receipt of a filed Dismissal. Defense Counsel is responsible for obtaining all outstanding invoices from outside vendors, including experts, before submitting the final bill. Receipts must be submitted for all travel and other expenses.

Firm staffing on all cases should be as limited as possible. Absent prior approval, the [entity name] will not pay for more than one (1) attorney performing the same task. For example, the [entity name] will not pay for two (2) or more attorneys to attend the same deposition. Work should be assigned to those individuals who are most appropriate for the task in terms of their competency and experience.

There should be no more than two (2) attorneys and one (1) paralegal performing work on a case at any given time. Other firm personnel may occasionally have to work on a case due to job departures, vacations, illnesses, schedule conflicts, etc., but this is the exception, not the rule. [Entity name] will not pay for “training” time for new attorneys or “learning” time or “orientation” time as new billers become involved in a matter and are learning the facts and issues. If a firm has summer associates, their time should not be billed to a case without first being approved by the [entity name and/or TPA]

A. Invoices

Invoices should accurately itemize, in detail, all work performed on a matter. Each invoice must include the following:

- Law firm name and address
- Date of the bill
- Law firm tax identification number
- The TPA and/or entity claim number
- Plaintiff(s) name(s)
- Each billing entry must state the name or initials of the timekeeper who performed the work, the date the work was performed, the hours billed, a detailed description of the services performed, and the total amount billed for that entry
- Attorneys and paralegals should bill actual time spent in increments, no greater than 1/10th of an hour for each entry
- Summarize at the end of the bill, the number of hours for each specific biller

- Summarize at the end of the bill the totals for fees, costs, and experts
- Narrative or block/bundled billing is not permitted
- Final bills should be clearly marked
- Invoices must reflect activity for only one (1) case
- Billing entries should be listed chronologically in order of occurrence and not sub-divided by individual or task
- If a number of different tasks are undertaken in one day, each task must be separately identified with a specified time for performing that task, e.g., “telephone conference with John Doe (.30); Attend conference with Jane Doe (1.20), etc.”
- Entries regarding telephone conferences must specify the participants and the subject matter discussed

Vague descriptions such as “work on file,” “telephone call,” “conference,” and “research,” without further explanation, are not acceptable.

Vendor invoices (e.g. experts, mediators, photocopy services, court reporters, and others) in an amount up to [insert amount here] dollars (\$XXXX) per case should be paid by the law firm and included with the monthly attorney billing. Defense Counsel must review and approve all vendor invoices.

B. Maximum Allowable Charges and Travel

The following guidelines are provided regarding maximum allowable charges:

- The [entity name] will only pay the actual cost incurred for reasonable expenses without any markups.
- A firm may conduct necessary and appropriate research up to five (5) hours per case without prior approval by the [entity name and/or its TPA].
- Photocopy costs should not exceed ten cents (\$0.10) per page. Firms are expected to limit the making of photocopies and, wherever cost effective, to use the resources of designated copy services. Billing entries for photocopies must provide the number of copies made, the per page rate, and the total amount billed.
- Mileage should be billed at the applicable Federal rate at the time of travel. The invoice should state the number of miles actually driven.
- Telephone and Fax: Actual long distance charges only. No charges for an incoming fax and no per-page fax charge.
- Air travel is limited to coach or economy rate. Receipts for airfare should allow a reviewer to identify the fare as economy/coach class.
- Rental cars are acceptable only if such vehicles are the most economical means of accomplishing necessary business. Reimbursement is limited to the mid-size class.
- Incidentals, such as movies, alcohol, and entertainment are not allowed.
- Travel time shall be pro-rated if the travel includes time spent on non-[entity name] business.

C. Disallowed Charges

In addition to items listed above in sections A and B, the [entity name] will not reimburse for the following:

- Local telephone calls and all cellular phone charges.
- Routine postage, such as the U.S. Postal Service rates for letters. Any necessary extraordinary postage charges (such as certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge. Any postage charges that are not explained will not be reimbursed.
- File opening, file organization, or other administrative charges.
- Interoffice conferences between members of the firm, including assigning files or tasks to members of the firm.
- Case administration (e.g. reviewing status of assignments given to associates and paralegals; directing associates, paralegals, or secretaries; preparing or reviewing bills).
- Clerical tasks (e.g. transcription, pulling files, photocopying documents, arranging for copying, labeling documents for production, communication with court clerks, updating master case caption, preparing proofs of service, indexing pleadings, faxing).
- Meals, except in conjunction with out-of-town travel (alcohol will not be reimbursed in conjunction with any travel).
- Routine legal research, including issues considered to be common knowledge among reasonably experienced counsel in the local jurisdiction.
- All work customarily performed by secretaries and other administrative personnel including but not limited to, photocopying, date stamping documents, scanning documents, transcription, retrieving files, indexing pleadings, updating case captions, making travel arrangements, calendaring, and preparing bills/invoices.
- Subscription services (e.g. Westlaw, Lexis-Nexis, or other legal database charge).
- Responding to requests from [entity name and/or TPA] and/or their auditors relating to case file management and/or billing issues.



Item No. C.1.b
Claims Committee
March 4, 2025

MEMBER CLAIMS TRAINING

ISSUE: At the January 2025 Board Meeting, ACCEL's Claims Auditor, Rob Powers presented the 2024 Claims Audit and one of the suggestions were additional claims training at the Member Agencies for their claims staff. Jena Covey, City of Bakersfield informed the Board that Rob provides the City of Bakersfield claims staff training in house and welcomed other ACCEL Members' Claims Staff to join. Direction was given to the Claims Committee to discuss with Rob Powers on whether ACCEL sponsors a claims training for its Members or with the individual Members who are interested.

A survey was sent to the Board prior to today's Claims Committee to gather interest.

Rob has the *Powers Training Academy* available and has proposed adding \$6,000 (regular rate is \$185/hour) to the current contract ACCEL has regarding the Claims Audit services. The Members can use that amount as needed which equates to about 30 hours per year. Training usually lasts about an hour. We could do several Members per session which would spread out and lower the cost.

Craig Schweikhard who is part of Rob's Claims Team would be the trainer of these sessions.

Another option the Committee can consider for Claims Training is the *George Hills Claims University (GHCU)* which is described in the background section and attachments.

RECOMMENDATION: Staff recommends the Committee discuss whether ACCEL should pay for Members Claims Training or the Members to be pay for their own staff's training and take action to provide a recommendation to the Board or provide further direction.

Additional Consideration:

In favor: The Committee may be in favor that ACCEL cover the cost of the Powers Training Academy. This could benefit ACCEL due to the increasing in claims volume and complexity that are penetrating ACCEL's layer. By ensuring claims staff at the Member level are properly trained on timely and accurate claims reporting helps protect ACCEL from being adversely affected by missed reporting deadlines or incorrect handling of claims.

Against: Members may be against ACCEL covering the cost of the training, as ACCEL has traditionally operated with a philosophy of allowing Member Entities to manage their own claims handling and training processes, and the pool is not responsible for turnover at Member Entities. Paying for training at the Member level could be seen as a shift away from that structure and might create the expectation that is ACCEL is responsible for Member level operational expenses, which could be burdensome.



FISCAL IMPACT: Rob Power’s regular rate is \$185/hour. Rob has proposed to add \$6,000 to the existing Claims Auditor contract by way of addendum.

GH has a free training for the abbreviated version of the Public Entity Claims Professional course, and then the full version GH is able to provide discounts and flexibility depending on the number of people. The pricing for the full PECP course is \$995.00 per person, and it is discounted to \$795.00 for current GH clients.

BACKGROUND: At the October 2022 Board Meeting, the Board received information on George Hills’ online training program for tort claims. This benefit City staff by familiarizing them with tort claims, public entity immunities, and creating a networking opportunity for emerging Risk Managers.

George Hills Claims University (GHCU) has resources available to its Members that are virtual. There is free training for the Public Entity Claims Professional – Risk Management (PECP/RM) course (which is an abbreviated version of the full PECP program). It is not the full PECP course work, nor is it access to other courses GH has developed for the Claim University. They offer the full PECP course and other coursework at reduced pricing to their contracted customers.

ATTACHMENT:

1. Powers Training Academy Outline
2. GHCU University Materials
3. Survey from Board on Claims Training

Training Outline

- Genesis of laws for public entitles.
- California public entities liability basics.
- California Government Code claim filing basics.
- Joint Powers Insurance Authorities-Histories/Principles.
- How ACCEL works-relationships with other Members.
- Dangerous Condition of Public Property.
- Reserving and Financial Basics.
- Civil Rights and Public Safety liabilities.
- Claim documentation principles.
- Any other topics you believe will enhance the Analysts Position.

CLAIMS UNIVERSITY

Our effective training program

GEORGE HILLS CLAIMS UNIVERSITY

It is George Hills' philosophy to develop, implement, and maintain a comprehensive and effective training program for our Claims Administration Division (CAD) that aligns with the Vision, Values, and Goals of the Company.

GH CLAIMS UNIVERSITY

GHCUC provides access to online resources and training via George Hills Learning Management System. This Learning Management System is a robust resource/reference library with a wide variety of claims and risk management technical topics as well as structured training courses ranging from entry-level to advanced.

As part of our commitment to our clients and our staff, all adjusting staff are required to complete the Public Entity Claims Professional (PECP) designation. Upon successful completion of the program, individuals will be awarded a certificate and PECP

designation. This ensures that our clients receive best in class claims support and that our staff is well versed in the nuances of the public entity sector.

The PECP certification is designed with three levels.

Level 1: Entry level Adjustor or claims processor desiring to become an adjuster in the Public Entity sector. All George Hills adjusters are required to complete this level.

Levels 2-3: More advanced and detailed topics designed for Senior adjusters, Supervisors, and Management.

We have expanded this certification to support our clients, and the public, as well. We have created

the Public Entity Claims Professional- Risk Management (PECP-RM) designation that focuses on those in the public sector that may interface with the claim process, and have additional versions in development for other areas as well. If you have an interest in any of these programs, please let us know.



Public Entity Claims Professional Certificate

Public Entity Claims
Professional (PECP)
Certification Program™

COURSE DESCRIPTIONS

THE PUBLIC ENTITY CLAIMS PROFESSIONAL CERTIFICATION PROGRAM (PECP)

The PECP is designed to acclimate claims professionals to the public entity environment and to provide the legal background and practical tools for them to successfully handle the majority of liability claims encountered by public entities in California. This program is offered through the George Hills Claims University (GHCU) and delivered through our Learning Management System (LMS) portal.



PECP COURSE 1:

Public Entity Basics

This course introduces the learner to public entity basics, including defining a Public Entity, how Public Entities differ from other entities, and what immunities are available.

PECP COURSE 2:

Common vs Statutory

In this course you will learn the difference between common law and statutory law, and how that impacts the handling of Public Entity claims.

PECP COURSE 3:

California Tort Claims Act

In this course we look at the California Tort Claims Act, including its purpose, filing requirements, insufficient claims, untimely claims, and claim exception types.

PECP COURSE 4:

Recognizing Coverage

This course walks through the coverage review process.

PECP COURSE 5:

Liabilities, Immunities, and Defenses

This course explores the immunities and defenses available for public entities for various types of claims, including common scenarios such as dangerous conditions (sidewalks, bike paths, etc.), act of employees, auto liability, transit operations, tenders, punitive damages, employment practices liability, sexual assault, inverse condemnation, ADA, and police. Note: These courses are highlighted in more detail in advanced course (PECP2 and PECP3)

PECP COURSE 6:

The Settlement Process

As with many aspects of public entity claims, the settlement process also has important differences. This module reviews the steps in that settlement process.

PECP COURSE 7:

Unique Exposures

This course delves further into some of the exposures you were introduced to in Course 1.

PECP COURSE 8:

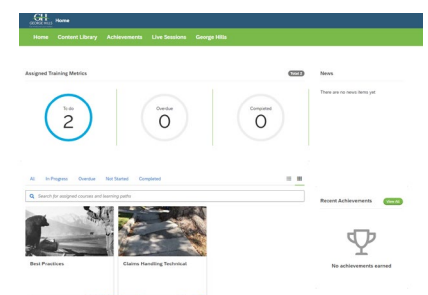
Joint Powers Authorities/ Pools

This course discusses JPAs and pool, their function, and how they are utilized in the public entity sector.

PECP COURSE 9:

Certification

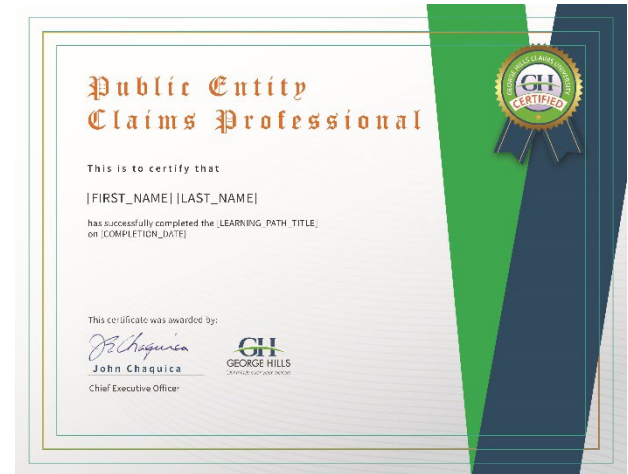
Successful completion of all 8 courses and this assessment will earn the participant the certification of Public Entity Claims Professional, or PECP.



GEORGE HILLS CLAIMS UNIVERSITY

George Hills' Goal: To sustain public entity claims adjusting by developing a learning platform

- *GHCU was launched through a Learning Management System (LMS) to provide continuous matriculation for our current and future employees.*
- *Courses developed by industry experts that lead to certifications for claims professionals including the Public Entity Claims Professional (PECP).*
- *We have also developed the Public Entity Claims Professional - Risk Management (PECP-RM) designation that focuses on those in the public sector that may interface with the claim process.*
- *George Hills offers to develop customized programs for our clients.*



City	Should ACCEL fund this claim training?	If yes, how many employees from your City would participate?	If no, would the City be interested in this training for their Entity? How many employees would participate?
City of Anaheim	Yes	2	2
City of Bakersfield	I think it is a great idea and I would have 2 people attend.		
City of Burbank	Yes	ACCEL should fund this claim training. Total employees from Burbank that would participate is three.	
City of Modesto	Yes	2	
City of Monterey	No		No, I would not be interested in this training as GH provided free claims training for their members (I believe we have 3 or 4 members who use GH as their Claims TPA). I began the free training provided by GH and it is excellent. Unfortunately, I haven't completed the training as other deliverables have taken precedence however, I would highly recommend it to those members who currently have GH as a TPA.
City of Mountain View	Yes	2-4 employees	
City of Ontario	Yes	(3-4)	Yes, and it would be 3-4 employees
City of Palo Alto	Yes	This year, 2-3	If ACCEL did not pay for this training, the City would still be interested in this training. The \$185. per participant fee is very reasonable cost less than many webinars. We would have 2-4 participants.
City of Salinas	Training seems valuable. However, as a member with contracted third-party adjusters and no in-house claims staff, except me looking at claims and am comfortable as is with my knowledge-based, I'd prefer that this not be ACCEL-funded but funded by those entities that wish to take advantage of it. Numerous associations, especially PARMA, PRIMA and PRISM, provide trainings that is/could be helpful in this regard; though it is not as specific to liability claims handling, it does seem that ACCEL is really stretching to accommodate the interests of a few larger-staffed members.		
City of Santa Barbara	Yes	approximately 2 employees would participate	YES: approximately 2-4 employees would participate
City of Santa Cruz	ACCEL should not pay for individual trainings at a City level. ACCEL does not control the management and turnover of staff at an individual agency. I see that this could benefit ACCEL as a whole, but the burden should not be on ACCEL to pay for the training of an individual entity's staff. Historically has the training budget of ACCEL been intended for board members (both primary and alternate)?		
City of Santa Monica	Yes	Up to 3	
City of Visalia	Yes	0-1	n/a



Item No. C.1.c
Claims Committee
March 4, 2025

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.



Authority for California Cities Excess Liability
Litigation Review and Update
February 18, 2025
Benjamin Oram, Esq.

EMPLOYMENT – NEW ATTORNEY FEE PROVISION

Winston v. County of Los Angeles

Docket: B323392 (Second Appellate District)

Opinion Date: December 13, 2024

Summary Rules:

A plaintiff may now recover attorney fees in a whistleblower retaliation case filed pursuant to Labor Code §1102.5. This new provision applies to currently pending litigation cases, not just cases filed after the amendment to this section.

Facts:

Harold Winston, an African-American male with over 30 years of service, sued his employer, the County of Los Angeles, alleging race-based discrimination, retaliation, and failure to maintain a discrimination-free environment under the California Fair Employment and Housing Act (FEHA) and whistleblower retaliation in violation of Labor Code section 1102.5. While the case was pending, section 1102.5 was amended to allow courts to award reasonable attorney fees to prevailing whistleblower plaintiffs. After the jury found in Winston's favor on his retaliation claim under section 1102.5, he filed a motion for attorney fees based on the new provision.

The Superior Court of Los Angeles County denied Winston's motion for attorney fees, ruling that the fee provision did not apply retroactively to his case, which was filed in 2019 before the amendment took effect. The court found no legislative intent supporting retroactive application and noted that Winston did not prevail on his FEHA claims, which could have provided a basis for attorney fees.

Analysis and Holding:

The California Court of Appeal, Second Appellate District, Division Eight, reviewed the case. The court held that a new statute authorizing an award of attorney fees applies to actions pending on the statute's effective date. The court cited case precedent establishing that newly enacted attorney fee provisions are procedural and apply to pending litigation. The court reversed the trial court's decision and remanded the case with directions for the trial court to determine the appropriateness and reasonableness of Winston's fee request. The judgment was reversed, and the case was remanded for further proceedings.

DANGEROUS CONDITION – DESIGN IMMUNITY

Kabat v. Department of Transportation

Docket: G063082 (Fourth Appellate District)

Opinion Date: December 19, 2024

Summary Rules:

Design Immunity upheld where configuration was as demonstrated in plans. Additional features that could have been added were not relevant since the condition was not a concealed trap.

Facts:

A bicyclist was struck by a vehicle while crossing a marked, non-signalized crosswalk on an onramp from Jeffrey Road in Irvine, leading to the I-405 freeway northbound. The bicyclist's parents sued the Department of Transportation (Caltrans) and the City of Irvine, claiming the crosswalk was dangerous due to the lack of a signal, inadequate signage, and a high speed limit. They alleged these factors contributed to their daughter's death and that the public entities failed to warn of the dangerous condition.

The Superior Court of Orange County granted summary judgment in favor of Caltrans and the City. The court found no triable issue of material fact regarding design immunity, which shields public entities from liability for creating a dangerous condition if the design was approved by a discretionary authority. The court also ruled that the lack of a traffic control signal did not constitute a dangerous condition as a matter of law. Additionally, the court found that the plaintiffs failed to show the alleged dangerous condition was a concealed trap or that there was a failure to warn.

Analysis and Holding:

The California Court of Appeal, Fourth Appellate District, Division Three, reviewed the case. The court affirmed the lower court's decision, agreeing that Caltrans had established design immunity and that the plaintiffs did not raise a triable issue of material fact. The appellate court also found that Caltrans had no notice of the alleged dangerous condition, as there were no similar accidents in the area in the decade prior. The court concluded that the plaintiffs failed to prove that Caltrans had actual or constructive notice of the dangerous condition, which is necessary for a failure-to-warn claim.

ADMINISTRATIVE FEES AND PENALTIES – CANNABIS FEES

Thomas v. County of Humboldt

Docket: 23-15847

Opinion Date: December 30, 2024

Summary Rules:

Cannabis penalties class action case may proceed where plaintiffs had been assessed a penalty and/or fee regardless of whether they had actually paid the fees.

Facts:

Residents of Humboldt County filed a putative class action under 42 U.S.C. § 1983, alleging that the County's system of administrative penalties and fees for cannabis abatement violates the Eighth Amendment's Excessive Fines Clause. The County Code imposes daily fines of \$6,000 to \$10,000 for

illegal cannabis cultivation. Plaintiffs claimed that the County charges landowners based on imprecise data or previous owners' conduct, causing emotional distress and financial burdens due to ongoing penalties and abatement costs.

The United States District Court for the Northern District of California dismissed the case, concluding that plaintiffs lacked standing as they had not paid any fines, rendering the Eighth Amendment claim unripe. The court also found both facial and as-applied challenges untimely, reasoning that the statute of limitations began when the ordinance was enacted.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case. It held that plaintiffs' claim under the Excessive Fines Clause was constitutionally ripe and that they had standing due to the imposition of penalties causing concrete injuries, including emotional distress and financial expenses. The court also found that prudential ripeness considerations supported allowing the litigation to proceed. The court determined that the statute of limitations for facial challenges begins when plaintiffs know of the actual injury, not when the ordinance is enacted. Thus, some plaintiffs' facial challenges were timely. The court also found that several plaintiffs had timely as-applied challenges, except for Cyro Glad, whose claim was untimely.

On the merits, the Ninth Circuit held that plaintiffs plausibly alleged a violation of the Excessive Fines Clause, as the penalties and demolition orders were punitive and potentially excessive. The court reversed the district court's dismissal of the Eighth Amendment claim and remanded for further proceedings, affirming the dismissal only for Cyro Glad's as-applied claim.