



AGENDA

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

JPA: ACCEL CLAIMS COMMITTEE MEETING

DATE/TIME: Thursday, August 29, 2024, at 11:00 AM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/94512984082?pwd=O6OL03X3NE8eIsBpodkJT9Thkp2eU5.1>

Meeting ID: 945 1298 4082

Passcode: 390950

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 Street, 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)

2-4

- 1 1. Approval of Minutes for the May 28, 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

5 1 a) Election of Claims Committee Chair (A)

The Claims Committee annually convenes to elect the Claims Committee Chair. Action may be taken, or direction given.

6-14

1 b) Litigation Update (I)

George Hills will provide the Committee a litigation update.

15-18

1 c) Member Attorney Rates (A)

The Committee will review the disclosed attorney rates for reasonableness and may take action or provide direction.

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**

**Item No. B.1
Claims Committee
August 29, 2024**

Tuesday, May 28, 2024, at 9:30 AM

**LOCATION:
Teleconference**

Link: <https://alliantinsurance.zoom.us/j/99673402691?pwd=VzYzVVhrZlJrcnZEVCTc0eThTd09>

Meeting ID: 996 7340 2691

Passcode: 805258

Dial: (669) 900-6833

MEMBERS PRESENT:

Tracey Matthews, City of Anaheim

Jena Covey, City of Bakersfield

Numeya Williams, City of Ontario

Ross Brandon, City of Santa Cruz (*left at 9:53 AM*)

MEMBERS ABSENT:

Oles Gordeev, City of Santa Monica

GUESTS AND CONSULTANTS:

Ben Oram, George Hills Company

David Trautz, George Hills Company

Rich Santana, George Hills Company

Conor Boughey, Alliant Insurance Services

Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Tracey Matthews called the meeting to order at 9:34 AM.

B. CONSENT CALENDAR

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

A motion was made to approve the consent calendar.



MOTION: Ross Brandon **SECOND:** Jena Covey **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					

C. REPORTS

C1. CLAIMS COMMITTEE’S REPORT

C1a. Litigation Update

Ben Oram, George Hills provided the Committee a quarterly litigation update for informational purposes.

C1b. CLOSED SESSION – Pursuant to Gov’t Code 54956.95

A motion was made to enter into Closed Session at 9:40 AM.

MOTION: Jena Covey **SECOND:** Numeya Williams **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					

A motion was made to come out of Closed Session at 11:11 AM.



MOTION: Numeya Williams **SECOND:** Jena Covey **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	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

Tracey Matthews adjourned the meeting at 11:13 AM.



Item No. C.1.a
Claims Committee
August 29, 2024

Election of Claims Committee Chair

ISSUE: The Claims Committee annually elects a Committee Chair. The Committee Members are:

- Ross Brandon, City of Santa Cruz (*Current President*)
- Jena Covey, City of Bakersfield (*Past President*)
- Marquie Lugo, City of Ontario Alternate
- Lisa Cox, City of Monterey Alternate
- Oles Gordeev, City of Santa Monica (*Past Chair and Current Treasurer*)

RECOMMENDATION: Staff recommends the Committee discuss and take action to elect a new Claims Committee Chair.

FISCAL IMPACT: No financial impact is expected from the recommended action.

BACKGROUND: The Executive Committee annually appoints Members of the Board to serve on Committees in July. Each year the Claims Committee elects a Chair, most recently held by Tracey Matthews. From 2020-21, Oles Gordeev was the Chair. From 2018-20, Betsy McClinton was the Chair. In 2017-18, the Chair was Charlotte Dunn, City of Visalia. Prior to Charlotte, Deb Hossli from the City of Santa Monica served as Committee Chair.

ARTICLE VI COMPOSITION AND DUTIES OF COMMITTEES

The operation of the Authority shall be overseen by four standing committees: Executive, Underwriting, Finance, and Claims. ACCEL Member Alternates may be appointed to serve as members of the Underwriting, Finance and Claims Committees, but not as Chairperson.

ATTACHMENT: None.



Item No. C.1.b
Claims Committee
August 29, 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.



Authority for California Cities Excess Liability
Litigation Review and Update
August 16, 2024
Benjamin Oram, Esq.

MUNICIPAL ORDINANCES RE HOMELESS

City of Grants Pass v. Johnson

Supreme Court of the United States; Docket: 23-175

Opinion Date: June 28, 2024

Judge: Neil M. Gorsuch

Areas of Law: *Violation of Civil Rights based on City enforcement of anti-public camping ordinance.*

Summary Rules:

Enforcement of anti-camping ordinance by City does not violate Eighth Amendment since the Eighth Amendment focuses on treatment post-criminal conviction, and not institution of a new ordinance criminalizing conduct.

Facts:

The case involves the city of Grants Pass, Oregon, and its laws restricting public camping. The city's laws prohibit activities such as camping on public property or parking overnight in the city's parks. Violations can result in fines and, in the case of multiple violations, imprisonment. A group of homeless individuals filed a class action lawsuit against the city, arguing that these ordinances violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court agreed with the plaintiffs, citing a previous Ninth Circuit decision, *Martin v. Boise*, which held that cities cannot enforce public camping ordinances against homeless individuals when the number of homeless individuals exceeds the number of available shelter beds.

Analysis and Holding:

The Ninth Circuit affirmed the district court's decision, leading to the city's appeal to the Supreme Court. The Supreme Court reversed the Ninth Circuit's decision, holding that the enforcement of laws regulating camping on public property does not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment. The Court reasoned that the Eighth Amendment focuses on the punishment a government may impose after a criminal conviction, not on whether a government may criminalize particular behavior in the first place. The Court also noted that the punishments imposed by the city of Grants Pass, such as fines and temporary bans from public parks, did not qualify as cruel and unusual under the Eighth Amendment. The case was remanded for further proceedings consistent with the Supreme Court's opinion.

POLICE – USE OF FORCE

Calonge v. City of San Jose

Ninth Circuit; Docket: 22-16495

Opinion Date: June 7, 2024

Judge: Friedland

Areas of Law: *Violation of Civil Rights following OIS connected to gun in the waistband.*

Summary Rules:

Officer not entitled to qualified immunity after he shot a man believed to have a gun, because there was no evidence presented a significant threat based on his conduct, e.g. mere possession of a gun, without more, is not enough to justify use of deadly force.

Facts:

The case involves Rosalina Calonge, who sued Officer Edward Carboni and the City of San Jose under 42 U.S.C. § 1983, alleging that Officer Carboni used excessive deadly force when he shot and killed her son, Francis Calonge. The incident occurred when police officers responded to 911 calls reporting a man with a gun. They located Francis Calonge, who had what appeared to be a gun in his waistband. Officer Carboni shot and killed Calonge after following him for about a minute as he walked down a street.

The United States District Court for the Northern District of California granted summary judgment in favor of Officer Carboni, ruling that he was entitled to qualified immunity because the plaintiff had failed to identify specific caselaw clearly establishing that Officer Carboni's conduct violated the Fourth Amendment.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's decision. The appellate court found that, construing the facts in the light most favorable to the plaintiff, a reasonable jury could decide that Officer Carboni violated Calonge's Fourth Amendment right to be free from excessive force. The court also concluded that the relevant law was clearly established at the time, so Officer Carboni was not entitled to qualified immunity. The court resolved three disputed facts in the plaintiff's favor for purposes of the appeal: Calonge was not drawing his gun or making a threatening gesture when Officer Carboni shot him; there were no bystanders in Calonge's vicinity when he was shot; and officers did not instruct Calonge to get on the ground or otherwise stop. The court held that the totality of the circumstances did not justify deadly force.

Cuevas v. City of Tulare

Ninth Circuit; Docket: 23-15953

Opinion Date: July 10, 2024

Judge: Nelson

Areas of Law: *Violation of Civil Rights based on post-pursuit OIS which injured passenger and killed driver.*

Summary Rules:

Officers entitled to qualified immunity where they return fire at a driver, but hit an otherwise "innocent" passenger in the vehicle by accident; it is not clearly excessive force based on case law.

Facts:

Rosa Cuevas was a passenger in a car driven by Quintin Castro, who led police on a high-speed chase. After getting stuck in mud, Castro continued trying to flee. Police officers surrounded the car, broke the window, and sent a police dog inside. Castro shot and killed the dog and injured an officer. The officers returned fire, aiming at Castro but accidentally hitting Cuevas multiple times. Castro was ultimately killed, and Cuevas survived with severe injuries. Cuevas sued the City of Tulare and the involved officers under 42 U.S.C. § 1983 and California law, alleging excessive force.

The United States District Court for the Eastern District of California granted summary judgment in favor of the defendants. The court found that Cuevas was not seized for Fourth Amendment purposes and, alternatively, that even if she were seized, the officers were entitled to qualified immunity because it was not clearly established that their use of force was excessive. The court declined to exercise supplemental jurisdiction over the state law claims and the defendants' counterclaims.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's decision. The appellate court held that Cuevas was indeed seized under clearly established Fourth Amendment law. However, it was not clearly established that the force used by the officers was excessive. The court found that none of the cases cited by Cuevas clearly established that officers violated her rights when they shot her while defensively returning fire during an active shooting. The court also noted that in excessive-force cases where police officers face a threat, the obviousness principle will rarely be available as an end-run to the requirement that law must be clearly established. Therefore, the officers were entitled to qualified immunity.

Rosenbaum v. City of San Jose

Docket: 22-16863

Ninth Circuit; Opinion Date: July 11, 2024

Judge: Sanchez

Areas of Law: *Violation of Civil Rights related to police K-9 bite.*

Summary Rules:

Officers not entitled to qualified immunity where police K-9 continued to bite suspect after he had fully surrendered.

Facts:

Zachary Rosenbaum was arrested by San Jose police officers, during which a police dog allegedly bit him for over twenty seconds after he had surrendered and lay prone on his stomach with his arms outstretched. Rosenbaum sued the City of San Jose and the officers involved under 42 U.S.C. § 1983, claiming excessive force in violation of the Fourth Amendment. He alleged that the prolonged dog bite caused severe lacerations and permanent nerve damage to his arm.

The United States District Court for the Northern District of California denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed, arguing that the bodycam video contradicted Rosenbaum's allegations. However, the district court found that the video did not contradict Rosenbaum's claims and that whether the officers acted reasonably was a triable question for the jury.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's denial of qualified immunity. The Ninth Circuit held that the bodycam video generally

supported Rosenbaum's allegations and that a reasonable jury could find that the officers used excessive force. The court noted that it was clearly established in the Ninth Circuit that officers violate the Fourth Amendment when they allow a police dog to continue biting a suspect who has fully surrendered and is under officer control. Therefore, the court concluded that the officers were not entitled to qualified immunity and affirmed the district court's decision.

Williams v. City of Sparks

Ninth Circuit; Docket: 23-15465

Opinion Date: August 9, 2024

Judge: Milan D. Smith

Areas of Law: *Violation of Civil Rights following OIS post-vehicle pursuit; fleeing felon v. threat to public.*

Summary Rules:

MSJ is appropriate where conduct during vehicle pursuit demonstrated threat to public safety and not just a fleeing suspect.

Facts:

The case involves a non-fatal shooting of Joseph Williams by officers of the Sparks Police Department following a 42-minute car chase. Williams had stolen alcohol and vandalized a vehicle, leading to a police pursuit. During the chase, Williams ran red lights, drove through a fence, and briefly drove on the wrong side of the freeway. The chase ended when officers pinned Williams's truck, but he continued to attempt to flee, leading officers to fire multiple rounds, injuring him.

The United States District Court for the District of Nevada denied summary judgment on Williams's claims of excessive force, municipal liability, and battery, except for the negligence claim. The court found genuine factual disputes about the threat Williams posed and whether he was attempting to flee when officers fired. The court also denied summary judgment on the *Monell* claims and the battery claim, citing unresolved factual issues.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's denial of summary judgment. The appellate court found that video evidence clearly showed Williams attempting to accelerate, contradicting his claim. The court held that the officers' use of deadly force was objectively reasonable, given the threat Williams posed to public safety. The court also exercised pendent jurisdiction over the *Monell* and battery claims, finding no constitutional violation in the officers' use of force and ruling that the battery claim failed because the force used was not unreasonable. The court reversed and remanded the case for further proceedings consistent with its opinion.

Chinaryan v. City of Los Angeles

Ninth Circuit; Docket: 21-56237

Opinion Date: August 14, 2024

Judge: Nguyen

Areas of Law: *Violation of Civil Rights based on felony traffic stop following mistaken information.*

Summary Rules:

Officers are not entitled to qualified immunity after conducting a high-risk felony vehicle stop justified by suspicion alone that vehicle was stolen.

Facts:

Hasmik Chinarian was driving home with her daughter and a friend when Los Angeles Police Department (LAPD) officers mistakenly suspected her vehicle was stolen due to a DMV error with the license plates. Despite driving normally, officers conducted a high-risk felony stop, ordering Chinarian and her passengers out of the vehicle at gunpoint, handcuffing them, and making them lie on the street while they investigated.

The plaintiffs sued the officers, the LAPD, and the City of Los Angeles under 42 U.S.C. § 1983 and California's Bane Act, alleging illegal seizures, excessive force, and failure to properly train the officers. The United States District Court for the Central District of California granted partial summary judgment in favor of the officers, ruling they were entitled to qualified immunity on the § 1983 claims and that there was no evidence of specific intent to violate plaintiffs' rights under the Bane Act. A jury later found in favor of the City and the LAPD on the *Monell* claims.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's summary judgment in favor of the individual officers on the Fourth Amendment and Bane Act claims. The appellate court held that it was clearly established in *Washington v. Lambert* and *Green v. City & County of San Francisco* that officers cannot conduct a high-risk vehicle stop based solely on reasonable suspicion that a vehicle is stolen. The court found that the officers were not entitled to qualified immunity and that there was sufficient evidence for a jury to find that the officers acted with reckless disregard for plaintiffs' rights. The court affirmed the judgment in favor of the City and the LAPD, ruling that the district court did not abuse its discretion in declining plaintiffs' requested jury instructions. The case was remanded for a new trial on all claims against the individual officers.

SEXUAL ABUSE AND MOLESTATION CLAIMS - CONSTITUTIONALITY OF AB 218

West Contra Costa Unified School District v. Superior Court

Docket: A169314(First Appellate District)

Opinion Date: July 31, 2024

Judge: SIMONS

Areas of Law: *Personal injury and constitutionality of AB 218's revival of expired SAM claims.*

Summary Rules:

AB 218's revival of expired SAM claims does not constitute an unconstitutional gift of public funds since the no new liability was created; only the SOL barrier to those claims was removed.

Facts:

In 2019, the California Legislature enacted Assembly Bill No. 218 (AB 218), which allowed plaintiffs to bring childhood sexual assault claims against public entities within a three-year window, even if those claims were previously barred by statutes of limitations or claim presentation requirements. A.M.M. filed a complaint against the West Contra Costa Unified School District, alleging sexual assaults by a District employee from 1979 to 1983. The District argued that reviving such claims constituted an unconstitutional gift of public funds under the California Constitution. The trial court overruled the District's demurrer, leading the District to seek writ review.

The trial court sustained the demurrer for the first three causes of action but overruled it regarding the gift clause argument. The District then petitioned the California Court of Appeal, First Appellate District, for a writ of mandate to sustain the demurrer in its entirety. The appellate court

issued an order to show cause, and both parties filed responses, including amicus curiae briefs from various entities.

Analysis and Holding:

The California Court of Appeal, First Appellate District, held that AB 218's retroactive waiver of the claim presentation requirement did not constitute an unconstitutional gift of public funds. The court reasoned that the waiver did not create new substantive liability but merely removed a procedural barrier to existing claims. The court also found that AB 218 served a valid public purpose by providing relief to victims of childhood sexual assault, aligning with the state's interest in public welfare. Additionally, the court ruled that the District lacked standing to assert due process claims under both the federal and California Constitutions. The petition for writ of mandate was denied.

EMPLOYMENT CLAIM BASED ON FEHA

Bailey v. San Francisco District Attorney's Office

Cal. Supreme Court; Docket: S265223

Opinion Date: July 29, 2024

Judge: Evans

Areas of Law: *Labor & Employment Law arising out of racial slur; standard for severe and pervasive.*

Summary Rules:

MSJ is not appropriate where the use of a racial slur even in one instance could be the subject of a dispute which is material.

Facts:

Twanda Bailey, an African-American employee, sued the San Francisco District Attorney's Office, former District Attorney George Gascon, and the City and County of San Francisco for racial harassment and retaliation under the California Fair Employment and Housing Act (FEHA). Bailey alleged that a coworker called her the N-word, and after reporting the incident, the human resources manager obstructed her complaint, engaged in intimidating conduct, and threatened her.

The San Francisco City and County Superior Court granted summary judgment for the City, finding that Bailey failed to make a prima facie case for her FEHA claims. The trial court concluded that a single racial slur by a coworker did not constitute severe or pervasive harassment and that Bailey did not suffer an adverse employment action. The Court of Appeal affirmed the trial court's decision.

Analysis and Holding:

The Supreme Court of California reviewed the case and held that an isolated act of harassment, such as the use of an unambiguous racial epithet like the N-word, can be actionable if it is sufficiently severe under the totality of the circumstances. The Court emphasized that the severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position. The Court also held that a course of conduct that effectively withdraws an employee's means of reporting and addressing racial harassment can constitute an adverse employment action. The Court found that there were triable issues of fact regarding both Bailey's harassment and retaliation claims and reversed the judgment of the Court of Appeal, remanding the case for further proceedings.

Ruelas v. County of Alameda

Ninth Circuit; Docket: 21-16528

Opinion Date: July 26, 2024

Judge: Thomas

Areas of Law: *Labor & Employment Law arising out of wages paid to inmates.*

Summary Rules:

Jail inmates are not entitled to minimum wages and overtime pursuant to the Labor Code when they work for a private company operating for-profit inside a jail. The Penal Code controls wages for inmates, not the Labor Code.

Facts:

A group of non-convicted individuals detained in Alameda County's Santa Rita Jail filed a lawsuit against Aramark Correctional Services, LLC, Alameda County, and Sheriff Gregory J. Ahern. The plaintiffs claimed they were entitled to minimum wage and overtime pay under California's Labor Code for work performed without pay for Aramark while detained. The defendants moved to dismiss these claims, arguing that the plaintiffs' compensation was governed by the California Penal Code, which allows counties to pay prisoners at rates below minimum wage.

The United States District Court for the Northern District of California denied the defendants' motion to dismiss the minimum wage and overtime claims, holding that the California Penal Code did not preclude non-convicted detainees working for a private company from the protections of the Labor Code. The district court allowed the plaintiffs' claims to proceed, leading the defendants to file an interlocutory appeal.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and certified a question to the California Supreme Court regarding whether non-convicted detainees working for a private company in county jails have a claim for minimum wages and overtime under the California Labor Code. The California Supreme Court responded that such detainees do not have a claim for minimum wages and overtime under Section 1194 of the California Labor Code. The court clarified that section 4019.3 of the California Penal Code applies broadly to all county inmates, including pretrial detainees, and does not depend on the identity of the employer.

Based on the California Supreme Court's response, the Ninth Circuit reversed the district court's order denying the motion to dismiss the plaintiffs' minimum wage and overtime claims. The court held that the plaintiffs' claims failed under the current law and reversed the district court's decision.

DANGEROUS CONDITION OF PUBLIC PROPERTY

Downey v. City of Riverside

Supreme Court of California; Docket: S280322

Opinion Date: July 22, 2024

Judge: Kruger

Areas of Law: Personal Injury

Summary Rules:

Bystander liability only requires contemporaneous awareness of the injury causing incident, not awareness of the causal connection of the at-fault defendant.

Facts:

Jayde Downey was on the phone with her daughter, Malyah Jane Vance, giving driving directions when Vance was severely injured in a car crash. Downey heard the collision and its immediate aftermath but could not see what caused it. She claims the crash was partly due to the condition of the roadway and sued the City of Riverside and the owners of adjacent private property for negligent infliction of emotional distress.

The Riverside County Superior Court sustained the defendants' demurrers without leave to amend, agreeing that Downey could not claim emotional distress damages because she was not aware of the defendants' role in causing the crash at the time it occurred. The Court of Appeal affirmed, holding that Downey needed to show contemporaneous awareness of the causal connection between the defendants' negligence and her daughter's injuries.

Analysis and Holding:

The Supreme Court of California reviewed the case and concluded that the Court of Appeal erred. The court held that for purposes of emotional distress recovery, it is sufficient for a plaintiff to be aware of an event that is injuring the victim, not necessarily the defendant's role in causing the injury. The court emphasized that the requirement is awareness of the injury-producing event, not the specific negligent conduct of the defendant. The judgment of the Court of Appeal was reversed, and the case was remanded for further proceedings.



Item No. C.1.c
Claims Committee
August 29, 2024

Member Attorney Rates

ISSUE: ACCEL revised the Claims Handling Policy and Procedure to include a Member requirement to notify the Claims Committee (CC) when defense fees are in excess of \$400 per hour.

There are two Members that have provided a letter to ACCEL for the CC review for approval:

1. City of Bakersfield
 - This is the Fourth year that the City has submitted a letter regarding its contract with Marderosian and Cohen to the CC for its review and consideration. ACCEL has requested the city to submit a letter annually.
1. City of Burbank
 - This is the second year the City has requested a CC review.
 - The City provided its contract with Nielsen Merksamer Parrinello Gross & Leoni. The rates for the Committee's review are \$720 per hour and \$670 per hour.

RECOMMENDATION: Staff recommends the Claims Committee review the disclosed defense attorney rates for reasonableness and take action or provide direction.

Additional Consideration

In favor: The proposed acceptance of the letter indicates that the Committee has reviewed for reasonableness and may request the City to file a letter annually for ACCEL's consideration.

Against: The Committee may vote against accepting these rates as reasonable defense costs. This would lead to further discussions between the Member and ACCEL. This has never occurred, and next steps would be discussed on a case by case basis.

FISCAL IMPACT: No financial impact is expected from the recommended action. The policy and procedure asks members to disclose rates in excess of \$400 per hour. Rates at this level or higher will quickly erode a member's self-insured retention, but Bakersfield has agreed not to seek reimbursement from ACCEL for defense costs. If claims penetrate the excess insurance layers, there could be issues with excess carriers regarding appropriate defense fees.

BACKGROUND: ACCEL's Claims Reporting and Handling Policy and Procedure, VIII. Claims Reimbursement Requests states:

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



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.

The City of Bakersfield is the first Member to request a Claims Committee review. The first time this was reviewed was at the August 31, 2021 Claims Committee Meeting. As a result of that meeting, ACCEL sent a letter to the City of Bakersfield, signed by the Program Administrators, with the Claims Committee Chair carbon copied stating ACCEL accepts the letter and requests the City to file a letter annually for ACCEL's consideration.

The City of Bakersfield provided another letter in September 2022 outlining the rates for Marderosian and Cohen, which exceed this hourly rate. The City of Bakersfield also provided its contract with Marderosian and Cohen, which includes the defense of all law enforcement cases (up to 30 annually) for a flat annual fee. The rates for Committee review are \$600 per hour for Mick Marderosian and \$500 per hour for Heather Cohen.

These costs will erode the City of Bakersfield's retention with ACCEL, but the City does not intend to recover costs from ACCEL, in essence this caps the defense costs at \$1,000,000 regardless of the expenses associated to the claim.

In August 2023, the City of Burbank submitted a request to review rates for the firm, Hanson Bridgett. The Committee took action to accept the letter from Burbank for the FY 23-24. ACCEL has requested the city to submit a letter annually.

ATTACHMENT:

1. 2021 ACCEL Claims Committee letter to City of Bakersfield
2. 2023 ACCEL Claims Committee letter to City of Burbank

SEPARATE:

1. City of Bakersfield's 2024 letter to ACCEL with current outside counsel rates
2. City of Burbank's 2024 letter to ACCEL with current outside counsel rates



www.accelpool.org

PROGRAM ADMINISTRATORS

September 21, 2021

Daniel J. Howell
Conor L. Boughey
Marcus Beverly
(415) 403-1400

Jena Covey, Risk Manager
City of Bakersfield, 5th Floor
1600 Truxtun Avenue
Bakersfield, CA 93301

MEMBERS

Anaheim
Bakersfield
Burbank
Modesto
Monterey
Mountain View
Ontario
Palo Alto
Salinas
Santa Barbara
Santa Cruz
Santa Monica
Visalia

Dear Jena,

This letter is in response to the City of Bakersfield letter to ACCEL on July 8, 2021 regarding the disclosure of defense fees to comply with ACCEL's Claims Handling Policy and Procedure.

At the August 31, 2021 Claims Committee Meeting, the Committee reviewed and took action to accept the City's letter for FY 21-22 for the firm Marderosian & Cohen. The Committee requests the City file this request annually for ACCEL's consideration.

If you have any questions or concerns, please contact Conor Boughey at Alliant or ACCEL's Claims Committee Chair Tracey Matthews.

Sincerely,

A handwritten signature in blue ink that reads "Conor Boughey".

Conor Boughey, ARM
Program Administrator for Authority for California Cities Excess Liability
cboughey@alliant.com

cc: Tracey Matthews, Claims Committee Chair



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PROGRAM ADMINISTRATORS

September 7, 2023

Daniel J. Howell
Conor L. Boughey
Marcus Beverly
(415) 403-1400

Betsy McClinton, Management Services Director
City of Burbank
275 East Olive Avenue
Burbank, CA 91502

MEMBERS

Anaheim
Bakersfield
Burbank
Modesto
Monterey
Mountain View
Ontario
Palo Alto
Salinas
Santa Barbara
Santa Cruz
Santa Monica
Visalia

Dear Betsy,

This letter is in response to the City of Burbank letter to ACCEL on August 14, 2023 regarding the disclosure of defense fees to comply with ACCEL's Claims Handling Policy and Procedure.

At the August 30, 2023 Claims Committee Meeting, the Committee reviewed and took action to accept the City's letter for FY 23-24 for the firm Hanson Bridgett. The Committee requests the City file this request annually for ACCEL's consideration.

If you have any questions or concerns, please contact Conor Boughey at Alliant or ACCEL's Claims Committee Chair, Tracey Matthews.

Sincerely,

A handwritten signature in blue ink that reads "Conor Boughey".

Conor Boughey, ARM
Program Administrator for Authority for California Cities Excess Liability
cboughey@alliant.com

cc: Tracey Matthews, Claims Committee Chair