



AGENDA

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

JPA: ACCEL CLAIMS COMMITTEE MEETING

DATE/TIME: Monday, May 12, 2025, at 1:30 PM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/91284747163?pwd=GLGxT4xerllONxxAl20BVo5yQeUpIn.1>

Meeting ID: 912 8474 7163

Passcode: 517204

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 March 4th, 2025, Claims Committee Meeting
The Committee will review these minutes and will take action to approve or give direction.

- C. REPORTS**
- 7-14 1 1. **CLAIMS COMMITTEE'S REPORT**
- a) Litigation Update (I)
George Hills will provide the Committee a litigation update.

- 3 b) **CLOSED SESSION – Pursuant to Gov't Code 54956.95** (A)
Members will review the following Closed Session items and may take action or give direction.
- i. Committee Review – ACCEL Open Loss Run
 - ii. George Hills Estimated Loss Payments
 - iii. Loren and Rochelle Brown v. City of Santa Cruz
 - iv. George Arsenith v. City of Modesto
 - v. City of Bakersfield v. Griffin Resources, LLC
 - vi. Cory Heimlich v. City of Santa Monica

RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS

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



D. PUBLIC COMMENTS

(1)

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
Tuesday, March 4, 2025, at 9 AM**

**Item No. B.1
Claims Committee
May 12, 2025**

**LOCATION:
TELECONFERENCE**

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

Meeting ID: 958 9438 4203

Passcode: 132950

Dial: (669) 900-6833

MEMBERS PRESENT:

Jena Covey, City of Bakersfield
Lisa Cox, City of Monterey Alternate
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica

MEMBERS ABSENT:

Marquie Lugo, City of Ontario Alternate

GUESTS AND CONSULTANTS:

Ben Oram, George Hills Company
David Tratuz, 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 9:00 AM.

B. CONSENT CALENDAR

B1. Approval of Minutes for the December 18, 2024, Claims Committee Meeting

A motion was made to approve the consent calendar.

MOTION: Ross Brandon **SECOND:** Oles Gordeev **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. Clarification of Claims Reporting Requirements - ACCEL Claims Reporting and Handling Policy and Procedure

Lorissa Huey reported that the Claims Committee (CC) was 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). ACCEL adopted an Administrative P&P, the Claims Reporting and Handling P&P to outline of what is expected from Members for claims handling and reporting, unless it is otherwise stated it applies to all claims, all program years. The ACCEL Memorandum of Coverage (MOC) is the document that ultimately governs the coverage and reporting for that specific policy year.

A motion was made to recommend to the Board no change to the ACCEL Claims Reporting and Handling P&P. Direction was given to memorialize this discussion in the agenda cover item and minutes, a new bullet point clarifying that coverage will be determined based on the MOC’s reporting requirements using the Date of Loss of the reported incident. This will be the written record for the direction given to ACCEL’s Claims Administrators.

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

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



C1b. Member Claims Training

Lorissa Huey reminded the Claims Committee that direction was given to the 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 out to the Board of who is interested.

Also, included in the agenda packet was George Hills Claims University for additional claims training.

The Claims Committee discussed and gave direction to report back to the Board to not move forward with this, and at the end of each Board Meeting Agenda Packet under Correspondence and Information to provide a list of training that is already available to the Members. Also, to reiterate that both the Primary and Alternate Board Members can seek reimbursement for training under ACCEL's Travel and Training Policy and Procedure.

C1c. Litigation Update

Ben Oram provided the Claims Committee the quarterly litigation update. The litigation update is posted on the ACCEL Website in the Members' Only Section.

C1d. CLOSED SESSION – Pursuant to Gov't Code 54956.95

C1di. Committee Review – ACCEL Open Loss Run

C1dii. George Hills Estimated Loss Payments

A motion was made to enter into Closed Session at 9:42 AM.

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

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



A motion was made to come out of Closed Session at 10:52 AM.

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

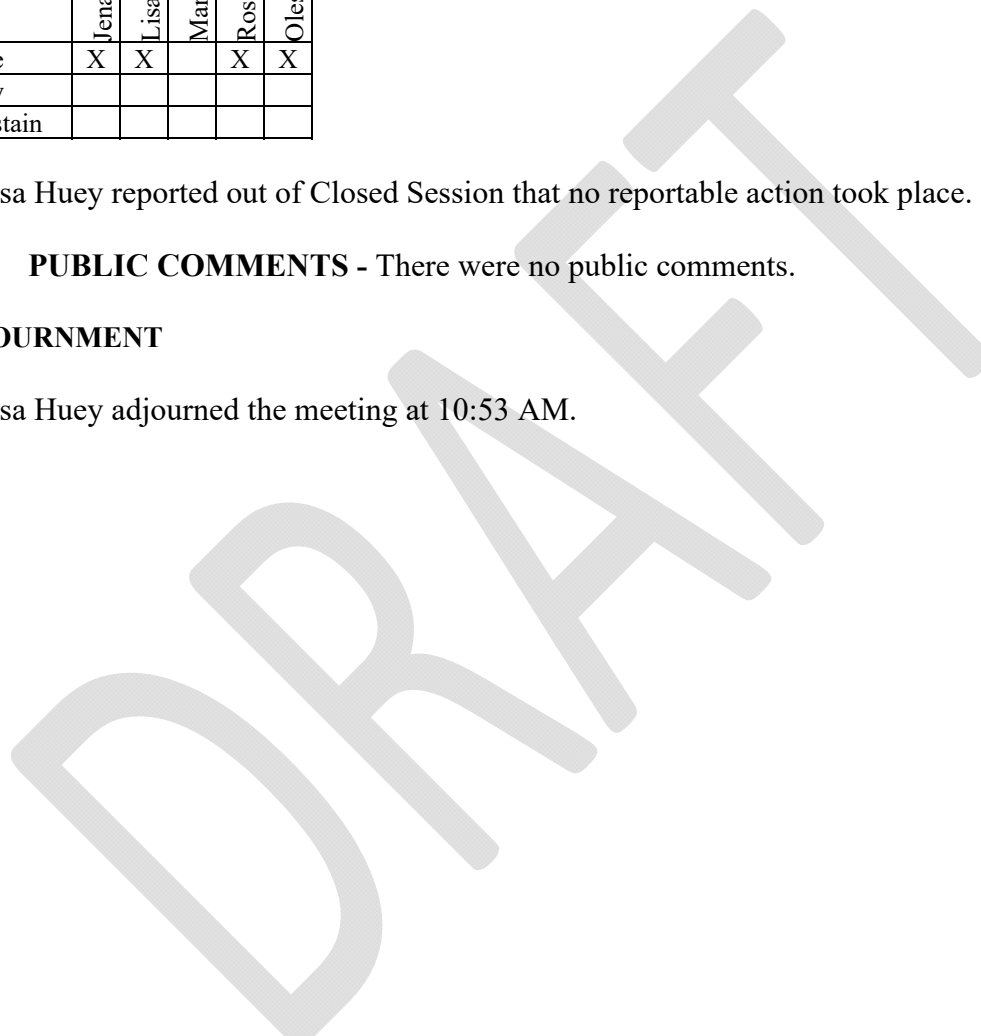
	Jena Covey	Lisa Cox	Marque Lugo	Ross Brandon	Oles Gordeev
Aye	X	X		X	X
Nay					
Abstain					

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

D. PUBLIC COMMENTS - There were no public comments.

ADJOURNMENT

Lorissa Huey adjourned the meeting at 10:53 AM.





**Item No. C.1
Claims Committee
May 12, 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
May 1, 2025
Benjamin Oram, Esq.

LAW ENFORCEMENT – COLOR OF FEDERAL LAW V. STATE LAW

Thai v. County of Los Angeles

Docket: 23-55326 (Ninth Circuit)

Opinion Date: February 12, 2025

Summary Rules:

Local peace officer working on a federal funded and supervised task force, under color of federal law, cannot be held liable for violation of 42 U.S.C. § 1983, which only applies when the officers are acting under color of state law.

Facts:

Vietnamese refugees and residents of San Diego County, Anh Thai and Don Doan, alleged that two law enforcement officers, Dulce Sanchez and William Villasenor, violated their constitutional rights by forcibly entering their homes and interrogating them about their disability benefits. Sanchez and Villasenor were Los Angeles District Attorney's Office investigators assigned full-time to a joint federal-state task force, the Cooperative Disability Investigations (CDI) Unit, which investigates fraud in Social Security disability benefits applications. The plaintiffs claimed that the officers displayed guns and state badges, did not seek consent for the search, and failed to have an interpreter present during the investigations.

The United States District Court for the Southern District of California granted summary judgment in favor of Sanchez and Villasenor, concluding that the officers were acting under color of federal law, not state law, and therefore could not be held liable under 42 U.S.C. § 1983. The district court found that the CDI Unit was implemented under federal authority, and the officers' day-to-day work was supervised by a federal officer, Special Agent Glenn Roberts.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit affirmed the district court's decision. The Ninth Circuit held that because the CDI Unit was created under federal authority and supervised by a federal officer, Sanchez and Villasenor were acting under color of federal law. The court noted that the officers' paychecks were reimbursed by the Social Security Administration, and their investigations took place outside of Los Angeles County, further indicating their federal role. Consequently, the officers were not subject to suit under § 1983, which applies to actions under color of state law. The court affirmed the district court's summary judgment in favor of the defendants.

LAW ENFORCEMENT – EXCESSIVE FORCE

Estate of Aguirre v. County of Riverside

Docket: 23-55718 (Ninth Circuit)

Opinion Date: March 11, 2025

Plaintiff Attorneys: Dale Galipo, Ian Cuthbertson and Christian Pereira

Defense Attorneys: Lann McIntyre and Tony Sain (Lewis Brisbois)

Summary Rules:

Use of deadly force by law enforcement is not justified solely because an individual is holding an item that could be used as a weapon, but poses no immediately threat to the officer or others.

Facts:

Sergeant Dan Ponder of the Riverside County Sheriff's Department responded to a call about someone destroying property with a bat. Upon arrival, he encountered Clemente Najera-Aguirre, who matched the suspect's description. Ponder commanded Najera to drop the bat, but Najera did not comply and approached Ponder. Ponder pepper-sprayed Najera twice, but it was ineffective because the wind blew the spray away. Najera was only 10 feet from Ponder and facing him after the ineffective pepper spray. Ponder's firearm was drawn and pointing at Najera. Without further communication or warning to Najera and within any further action by Najera, Ponder then fired six shots, with the final two bullets, which were fatal, striking Najera in the back as he turned away.

The plaintiffs, Najera's children, sued Ponder and Riverside County under 42 U.S.C. § 1983, alleging excessive force in violation of the Fourth Amendment. The United States District Court for the Central District of California denied Ponder's motion for summary judgment on the Fourth Amendment claim, and the Ninth Circuit affirmed this decision on interlocutory appeal. After a five-day trial, the jury found in favor of the plaintiffs, awarding \$10 million in damages. Ponder's post-trial motion for judgment as a matter of law, including a claim for qualified immunity, was denied by the district court.

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 court held that Ponder did not waive his qualified immunity defense and that the jury's verdict established that Ponder violated Najera's Fourth Amendment rights. The court found that Ponder's use of deadly force was not justified as Najera posed no immediate threat to Ponder or others, and the law clearly established that such force was unlawful. The court emphasized that Ponder's actions, including shooting Najera in the back, did not entitle him to qualified immunity.

Alves v. County of Riverside

Docket: 23-55532 (Ninth Circuit)

Opinion Date: April 29, 2025

Plaintiff Attorneys: John Burton, Dale Galipo, Kennedy Helm

Defense Attorneys: Tony Sain and Abigail McLaughlin (Lewis Brisbois)

Summary Rules:

Liability may result from negligent failure to care for an individual by law enforcement, even where there exists no use of force determined to be excess. The standard for negligence is broad than the standard for a constitutional violation.

Facts:

Kevin Niedzialek died after being restrained by Riverside County Sheriff's Department deputies. The deputies responded to a 911 call reporting a man having a psychotic episode. Upon arrival, they found Niedzialek bleeding from the head and acting erratically. After he advanced towards one of the deputies, they used a taser to subdue him and handcuffed him while he was prone. Niedzialek continued to struggle but eventually became unresponsive. The deputies did not move him into a recovery position or perform CPR before paramedics arrived. Niedzialek died the next day. In the United States District Court for the Central District of California, a civil jury found that the deputies did not use excessive force under the Fourth Amendment but acted negligently under California law. The jury awarded \$1.5 million to Niedzialek's successor-in-interest, Tracy Alves. The defendants moved for judgment as a matter of law, arguing that the jury's mixed verdicts were irreconcilable because the legal standard for reasonableness was the same for both claims. The district court denied the motion, stating that California's negligence standard is broader than the Fourth Amendment's reasonableness standard.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's judgment. The court held that the jury's verdicts were reconcilable because California's "reasonable care" standard considers the totality of circumstances more broadly than the Fourth Amendment's reasonableness standard. The jury could have found that the deputies did not use excessive force but still breached their duty of care by failing to monitor Niedzialek's condition or place him in a recovery position. The court concluded that it was possible to reconcile the jury's verdicts based on the evidence and theories presented at trial.

WRIT OF MANDATE – NECESSARY ELEMENT

Siskiyou Hospital v. County of Siskiyou

Docket: C097671(Third Appellate District)

Opinion Date: February 25, 2025

Summary Rules:

A plaintiff has no grounds to file a petition for writ of mandamus unless they can identify a mandatory and ministerial duty that the public entity violated.

Facts:

A hospital in Siskiyou County, California, filed a lawsuit against the County of Siskiyou and other defendants, challenging the practice of bringing individuals with psychiatric emergencies to its emergency department under the Lanterman-Petris-Short (LPS) Act. The hospital argued that it was not equipped or licensed to provide the necessary psychiatric care and sought to prevent the county from bringing such patients to its facility unless they had a physical emergency condition. The hospital also sought reimbursement for the costs associated with holding these patients.

The Siskiyou County Superior Court denied the hospital's motion for a preliminary injunction, which sought to stop the county from bringing psychiatric patients to its emergency department. The court found that the hospital had not demonstrated a likelihood of success on the merits and that the burden on the county and the potential harm to the patients outweighed the hospital's concerns.

The hospital's complaint included several causes of action, including violations of Medicaid laws, disability discrimination laws, mental health parity laws, and section 17000 of the Welfare and

Institutions Code. The hospital also alleged breach of an implied-in-fact contract for the costs incurred in providing post-stabilization services to psychiatric patients. The trial court sustained demurrers to the complaint without leave to amend, finding that the hospital failed to identify any clear legal mandate that the county or the Department of Health Care Services had violated.

Analysis and Holding:

The California Court of Appeal, Third Appellate District, affirmed the trial court's judgment of dismissal. The appellate court concluded that the hospital had not identified any mandatory and ministerial duty that the county or the department had violated, which is necessary to obtain a writ of mandate. The court also found that the hospital's breach of contract claim failed because there were no allegations of mutual consent to an implied contract. Consequently, the hospital's appeal from the denial of its motion for a preliminary injunction was dismissed as moot.

SEXUAL ABUSE AND MOLESTATION - DISCRETIONARY IMMUNITY

K.C. v. County of Merced

Docket: F087088 (Fifth Appellate District)

Opinion Date: March 11, 2025

Summary Rules:

Where the decision by a public employee requires the exercise of discretion, immunity applies even where that decision is wrong, based on insufficient information arising from neglect, or simply based on lousy judgment.

Facts:

Plaintiff K.C. alleged that she was sexually abused while in foster care under the custody of the County of Merced. The abuse occurred in two separate foster homes between 1971 and 1977. K.C. claimed that she reported the abuse to her social worker, but no corrective action was taken, resulting in continued abuse. She filed a complaint citing negligent acts and omissions by the County and its employees, which she argued proximately caused her injuries.

The Superior Court of Merced County sustained the County's demurrer without leave to amend, leading to the dismissal of K.C.'s complaint with prejudice. The court found that the County and its employees were protected by discretionary immunity under Government Code sections 815.2 and 820.2, which shield public employees and entities from liability for discretionary acts.

Analysis and Holding:

The Court of Appeal of the State of California, Fifth Appellate District, reviewed the case and affirmed the lower court's judgment. The appellate court held that the social workers' decisions regarding the investigation of child abuse and the continuation of foster home placements were discretionary acts protected by immunity. The court emphasized that these decisions involved the exercise of judgment and policy considerations, which are shielded from liability to ensure that public employees can perform their duties without fear of civil suits. Consequently, the County was also immune from liability under the derivative immunity provided by Government Code section 815.2, subdivision (b).

WORKERS COMPENSATION – EXCLUSIVE REMEDY

Kuo v. Dublin Unified School Dist.

Docket: A169912 (First Appellate District)

Opinion Date: March 12, 2025

Summary Rules:

Where a volunteer is injured in the performance of their volunteer work, their only recourse is the workers compensation system.

Facts:

Catherine Kuo was killed while volunteering at a food distribution event organized by the Dublin Unified School District (DUSD). Her family and estate sued DUSD for negligence and premises liability, alleging failure to implement and communicate safety protocols. DUSD moved for summary judgment, arguing that Labor Code section 3364.5, which deems school volunteers as employees entitled to workers' compensation benefits, barred the plaintiffs' claims.

The Superior Court of California, County of Alameda, granted DUSD's motion for summary judgment. The court concluded that section 3364.5 applied, providing that workers' compensation was the sole remedy for any injury, including death, sustained by volunteers while performing their duties. The court found that the statute's plain language and legislative history supported this interpretation, and thus, it lacked jurisdiction to grant relief.

Analysis and Holding:

The California Court of Appeal, First Appellate District, Division Four, reviewed the case. The court affirmed the lower court's decision, holding that the term "any injury" in section 3364.5 unambiguously includes fatal injuries. The court also determined that DUSD's resolution, which declared volunteers entitled to workers' compensation benefits, satisfied the statutory requirement, even though it did not explicitly use the word "deemed." The court rejected the plaintiffs' arguments that the statute did not apply because DUSD did not treat its volunteers as employees in practice, noting that the statute did not require such conduct.

The appellate court concluded that the trial court correctly granted summary judgment in favor of DUSD, affirming that workers' compensation was the exclusive remedy for the plaintiffs' claims.

EMPLOYMENT – ATTORNEY CLIENT COMMUNICATION PRIVILEGE

Johnson v. Dept. of Transportation

Docket: C099319 (Third Appellate District)

Opinion Date: March 17, 2025

Summary Rules:

An attorney may be disqualified where he does not comply with a court's order regarding the use of attorney-client communications from opposing counsel by allowing experts to review and consider the protected information after the court ordered that the information could not be used in any manner.

Facts:

Plaintiff Christian L. Johnson sued his employer, the California Department of Transportation (Caltrans), alleging discrimination, harassment, and retaliation. During the litigation, Caltrans attorney Paul Brown sent an email to Johnson's supervisor, Nicolas Duncan, which Duncan then shared with Johnson. Johnson forwarded the email to his attorney, John Shepardson, who further disseminated it to several experts and individuals. Caltrans sought a protective order, claiming the email was covered by attorney-client privilege. The trial court granted the order and later disqualified Shepardson and three experts for non-compliance with the order.

The Superior Court of San Joaquin County issued the protective order, finding the email privileged. Johnson and Shepardson were ordered to destroy all copies and cease further dissemination. Caltrans later filed a motion to enforce the order and subsequently a motion to disqualify Shepardson and the experts, arguing continued non-compliance and misuse of the privileged email. The trial court granted the disqualification, citing Shepardson's breach of ethical duties and the potential prejudice to Caltrans.

Analysis and Holding:

The California Court of Appeal, Third Appellate District, reviewed the case. The court affirmed the trial court's decision, holding that the Brown email was protected by attorney-client privilege. The court found no merit in Johnson's arguments that the privilege was waived or that the crime-fraud exception applied. The court also upheld the disqualification of Shepardson and the experts, concluding that Shepardson's actions violated ethical obligations and posed a risk of unfair advantage and harm to the integrity of the judicial process. The court emphasized the importance of maintaining public trust in the administration of justice.

INFORMATIVE VERDICTS

Gonzalez v. County of Los Angeles, Sheriff's Dept.

Docket: 20STCV15846 (LA Superior)

Verdict Date: December 18, 2024

Verdict Amount:

\$17,854,093.94 total

\$1,000,000 to Magie Gonzalez

\$16,854,093.94 to Melanie Gonzalez

Future Medical Costs for Melanie - \$6,854,093.94

Past Non-economic to Magie: \$1,000,000

Past Non-economic to Melanie: \$5,000,000

Future Non-economic to Melanie: \$6,000,000

Facts and Background:

At issue was whether the Sheriff's negligently mismanaged traffic arising from spontaneous street celebrations when Mexico beat the U.S. in soccer on July 7, 2019. At a pivotal intersection (Whittier & Arizona) thousands of fans congregated after the match, prompting sheriff deputies to take over control from the traffic lights. 10-15 minutes after they did, when plaintiffs used the north crosswalk, a car drove forward against a red light and ran into them.

Plaintiff's Contentions:

Plaintiffs contended the Los Angeles County sheriffs were negligent when they failed to incorporate lessons from prior, similar operations; developed an operational plan last minute (despite having several days' notice) and did a poor job of briefing its personnel; that defendant's deputies arranged vehicles in the intersection in a way that blocked lines of sight instead of protecting pedestrians; that the deputies actively gave hand signals that contradicted the still-operational traffic lights.

Defendant's Contentions:

The Sheriff's department claimed they were doing the best they could given the challenging and unpredictable situation. Furthermore, one of their deputies testified that the car drove forward despite being directed to conduct a U-turn. (The driver of the vehicle died during COVID and before he was deposed, so his statements at the scene that law enforcement waved him forward against the red light were never admitted for the jury.)

The defendant also contended that Melanie did not hit her head against the ground with enough force to cause a concussion, and that any post-crash issues she had were from issues she had that pre-dated the crash. The Superior Court of San Joaquin County issued the protective order, finding the email privileged. Johnson and Shepardson were ordered to destroy all copies and cease further dissemination. Caltrans later filed a motion to enforce the order and subsequently a motion to disqualify Shepardson and the experts, arguing continued non-compliance and misuse of the privileged email. The trial court granted the disqualification, citing Shepardson's breach of ethical duties and the potential prejudice to Caltrans.

Injuries and Other Damages

- **Physical Injuries claimed by Plaintiff:**

Magie suffered a mild sprain on her right knee. Magie's sprain largely resolved after six physical therapy sessions.

Melanie's right tibia was fractured, and she was concussed when she hit the ground. The tibia needed emergency surgery in the ER, but all concussion-related diagnosis and treatment were facilitated through lien treatment.

Traumatic brain injury: Melanie's migraines, mental fatigue, emotional volatility and difficulty multitasking continue to plague her to this day. Her standard MRI had minimal findings supporting a brain injury, but corroborative evidence was found in advanced imaging, specifically arterial spin labeling (decreased blood flow), diffusion tensor imaging (axonal shearing damage), and fractional anisotropy (volumetric loss) to Melanie's frontal lobes.