



Social Inflation: ***Public Agency Liability Trends and Perspectives***





Kristin Smolek

Vice President, Pool Administration, Sedgwick

Kristin graduated in 1992 from Albion College, earning her B.A. She earned her law degree from the University of Detroit Mercy School of Law in May 1995 and subsequently passed the Michigan bar. She worked for the law firm of Garan, Lucow and Miller, P.C., handling civil litigation matters prior to joining York Risk, which was later acquired by Sedgwick. Kristin has been with the Sedgwick organization for over 19 years, beginning her career with its litigation management team. She began managing high-level litigation claims involving general liability, police professional, employment, public official and zoning cases for six municipal risk pools in Ohio, Illinois, Iowa and Pennsylvania. During her 15-year tenure with this team, she worked directly managing the claims of the local claims offices, overseeing defense counsel throughout the litigation process. In her current role with Sedgwick, Kristin oversees the management of the litigation, risk control, underwriting and marketing teams for Sedgwick's Michigan pooling office.





William Portello

Director, Litigated Claims, Sedgwick

Will Portello graduated from the University of California, Davis in 1989. He received his law degree from the University of Oregon School of Law in 1993. He subsequently passed the bar in both California and Oregon. After several years with the Sacramento-based insurance defense law firm of Thompson, Meade, & Nielsen, in 1997 he joined a San Francisco Bay Area firm, Guichard, Teng & Portello, where he practiced until joining Sedgwick in 2017. As the director for litigated claims, Will provides oversight and management of the defense of litigated cases on behalf of seven self-insured joint powers authorities throughout California (including transit districts, special districts, and municipalities), overseeing defense counsel and third-party administrators.



What is “social inflation”?

Rising costs of claims that are a result of societal trends and views towards increased litigation, broader contract interpretations, plaintiff-friendly legal decisions and larger jury awards.



Warren Buffett

Social Inflation: Fact or Fiction?

✓ Fact

Public Attitudes

- View of police officers
- Reptile theory
- “Kardashian” thought process

Personal/Childhood Experience

- Child abuse
- Sexual abuse
- Prior employment issues



What is causing social inflation?

Six major factors:

1. Third-party litigation funding
2. Attorney advertising
3. Erosion of tort reform
4. Legislative actions expanding liability
5. Negative public sentiment
6. Desensitization to large jury awards



What claim trends are on the rise for public entities?

Police Liability

- Employment/officer incidents
- Auto liability incidents
- Excessive force incidents/constitutional rights violations
- Jail and inmate cases
- Officer responding to mental health emergencies, drug-related incidents
- Plaintiffs' firms targeting specific cases



POOLING

TODAY

PRESENTED BY AGRIP/CAJUP/NLC-RISC

What claim trends are on the rise for public entities?

Employment Practices Litigation

- Limited exposure by public agencies to overall trends
- Continued exposure by public agencies to harassment and retaliation claims

Verdicts and Settlements Examples

- Rodriguez v. County of Los Angeles (verdict: \$8,115,000)
- Dooros v. City of Los Angeles (settlement: \$6,700,000)
- Villegas v. City of Los Angeles (settlement: \$1,500,000)



What claim trends are on the rise for public entities?

Sexual Abuse and Molestation

- Elimination of Statute of Limitations
 - Since 2018, 15 states have either greatly expanded or eliminated entirely the statute of limitations for a civil action for childhood sexual abuse
- Exposure
 - Municipalities are not seeing a large influx of cases, due to limited areas of exposure
 - Schools are seeing a rise in case numbers due to the special duties owed to students
 - Average SAM settlement in the school context is \$855,000 per claimant, with over \$100,000 in defense costs
 - SAM cases can result in seven- and eight-figure settlements



POOLING

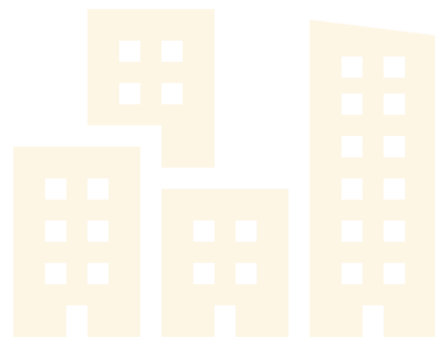
TODAY

PRESENTED BY AGRIP/CAUPA/NLC-RISC

What claim trends are on the rise for public entities?

Dangerous Condition of Public Property

- Highest risk of a “nuclear verdict”
- Continued cases involving pedestrians struck in crosswalks or intersection collisions
 - Minimum liability limit is \$15,000 in California; we see our municipalities being repeatedly drawn into cases as the “deep pockets” in actions involving negligent vehicle operation by a third party
 - Medical treatment cost increases have outpaced the minimum limits
 - A catastrophic injury to a young person can easily result in an eight-figure case



POOLING

TODAY
PRESENTED BY AGRIP-CALIPA/NLC-RISC

Examples of “Nuclear” Settlements

- Zachery Rowe v. San Mateo County (June 2018) \$30,000,000 (DCPP)
- Tierney Darden v. City of Chicago (January 2018) \$115,000,000 (DCPP)
- University of Southern California/George Tyndall (June 2019) \$215,000,000 (SAM)
- A.G. v. Lamont School District (2019) \$10,000,000 (SAM)



POOLING

TODAY
PRESENTED BY AGRIP/CAJPS/NLC-RISC

Examples of “Nuclear” Jury Verdicts

- Kyle Anderson v. State of California (July 2019)
\$56,500,000 (DCPP)
- Estate of Pream v. The City of Long Beach (March 2019)
\$9,000,000 (Excessive Force)
- De La Cruz et al. v. Town of Apple Valley (2019)
\$60,000,000 (DCPP)
- Estate of Valenzuela v. City of Anaheim et al. (2019)
\$13,200,000 (Excessive Force)
- Estate of Michal Duda v. Justice Park District et al.
(December 2018) \$21,500,000 (DCPP)



POOLING

TODAY

PRESENTED BY AGRIP/CAJPS/NLC-RISC

How do public entities avoid social inflation?



Step One: Assign the right team of specialists

- Risk control team members to educate and train members
- Risk control collaborating on mental health issues with EMTs and police
- Seasoned adjusters investigating facts early on
- Specialized litigation team members utilizing standardized litigation tools
- Retention of defense counsel specializing in litigation
- Collaboration of team members



POOLING

TODAY
PRESENTED BY AGRIP-CAUPA/NLC-RISC

How do public entities avoid social inflation?



Step Two: Apply a proactive litigation strategy

- Early liability analysis
- Early fact analysis
- Well-reasoned MSJ practice
- Rule 68: offer of judgment
- Mediation/arbitration
- High-low agreements
- Mock jury trials (with millennials on panels)
- Focus groups
- Motion in limine



POOLING

TODAY
PRESENTED BY AGRIP/CAUPA/NLC-RISC

How do public entities contain social inflation?

- **Prospective:** Risk transfer
- **Prospective:** Risk control
- **Retrospective:** Early assessment, intervention and loss management



POOLING

TODAY
PRESENTED BY AGRIP-CAUPA/NLC-RISC

Concluding Thoughts: COVID-19 and Social Inflation

Impacts:

- Courts closed and/or partially operational
- Trial dates adjourned often into late 2021
- Remote depositions
- Remote settlement conferences and mediations
- Creates difficulty for counsel to clearly evaluate value of case
- Jury boxes not conducive to “social distancing”
- Prior offers being accepted

POOLING

TODAY
PRESENTED BY AGRIP/CAUPA/NLC-RISC



Questions?

Thank You!

