



**President**  
Mr. Russell Hildebrand  
City of Rocklin

**Treasurer**  
Mr. Tim Sailsbery  
City of Willows

## **NCCSIF CLAIMS COMMITTEE MEETING AGENDA**

**Vice President**  
Mr. Bruce Cline  
City of Folsom

**Secretary**  
Ms. Michelle Pellegrino  
City of Dixon

**Date:** Thursday, September 24, 2015  
**Time:** 10:30 a.m.

**Location:** Rocklin Event Center - Garden Room  
2650 Sunset Blvd.  
Rocklin, CA 95677  
(916) 625-5227

**A – Action**  
**I – Information**

**1 – Attached**  
**2 – Hand Out**  
**3 – Separate Cover**  
**4 – Verbal**  
**5 – Previously Mailed**

### **MISSION STATEMENT**

*The Northern California Cities Self Insurance Fund, or NCCSIF, is an association of municipalities joined to protect member resources by stabilizing risk costs in a reliable, economical and beneficial manner while providing members with broad coverage and quality services in risk management and claims management.*

Page     **A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA AS POSTED**

**A     1**

**D. PUBLIC COMMENTS**

*This time is reserved for members of the public to address the Committee on matters pertaining to NCCSIF that are of interest to them.*

pg. 4     **E. CLOSED SESSION TO DISCUSS PENDING CLAIMS**  
(Per Governmental Code Section 54956.95)  
\*REQUESTING AUTHORITY

**A     2**

**Liability**

1. Hammond vs City of Red Bluff\*
2. Haught vs City of Anderson\*

**Workers' Compensation**

- |                                    |                               |
|------------------------------------|-------------------------------|
| 1. Cummings vs City of Marysville* | 3. Ellefson vs City of Dixon* |
| 2. Jellsey vs City of Yuba City*   | 4. Wood vs City of Elk Grove* |

**F. Report From Closed Session**

**I     4**

*The Committee will announce any reportable action taken in closed session*



pg. 5	<b>G. CONSENT CALENDAR</b>	<b>A</b>	<b>1</b>
	<i>All matters listed under the consent calendar are considered routine with no separate discussion necessary. Any member of the public or the Committee may request any item to be considered separately.</i>		
pg. 6	1. Claims Committee Meeting Minutes – May 21, 2015 (Draft)		
pg. 9	2. Claims Committee Special Meeting Minutes – June 18, 2015 (Draft)		
pg. 12	3. Claims Committee Special Meeting Minutes – August 19, 2015 (Draft)		
pg. 13	<b>H. Revisions to Policy and Procedure A-9: Defense Counsel Selection</b>	<b>A</b>	<b>1</b>
	<i>The Committee will be asked to review and approve the recommended revisions to Policy and Procedure A-9: Defense Counsel Selection.</i>		
pg. 21	<b>I. Revisions to Policy and Procedure L-5: Liability Litigation Management Plan</b>	<b>A</b>	<b>1</b>
	<i>The Committee will be asked to review and approve the recommended revisions to Policy and Procedure L-5: Liability Litigation Management Plan.</i>		
pg. 26	<b>J. Approval of NCCSIF Defense Attorney List for Liability</b>	<b>A</b>	<b>1</b>
	<i>The Committee will be asked to approve revising the NCCSIF Liability Defense Attorney Approved List to include Jonathan P. Hobbs, Christopher Onstott, David W. Tyra and Kristianne T. Seargeant.</i>		
pg. 42	<b>K. Approval of NCCSIF Defense Attorney List for Workers' Compensation</b>	<b>A</b>	<b>1</b>
	<i>The Committee will be asked to approve revising the NCCSIF WC Defense Attorney Approved List to include Kurt M. Petersen.</i>		
	<b>L. Review of Workers' Compensation (WC) Claims Audit as of May 2015</b>		
pg. 49	<b>a. Presentation of WC Claims Audit</b>	<b>A</b>	<b>1</b>
	<i>Marcus Beverly will present the WC Claims Audit conducted by Farley Consulting Services, LLC, for the Committee to review, accept and file.</i>		
pg. 68	<b>b. York Risk Services Response to WC Claims Audit</b>	<b>A</b>	<b>1</b>
	<i>York Risk Services will provide their response to the audit conducted by Farley Consulting.</i>		
pg. 71	<b>M. 2015 Liability Claims Audit</b>	<b>A</b>	<b>1</b>
	<i>The Committee will be asked to approve a proposal from Risk Management Services to conduct the 2015 Liability Claims Audit.</i>		
pg. 81	<b>N. Round Table Discussion</b>	<b>I</b>	<b>4</b>
	<i>The floor will be open to Committee members for any topics or ideas that members would like to address.</i>		



## **O. ADJOURNMENT**

### **UPCOMING MEETINGS**

Risk Management Committee *Strategic Planning* Meeting – October 15, 2015

Board of Directors Meeting – October 15, 2015

Police Risk Management Committee Meeting – November 5, 2015

Executive Committee Meeting – November 19, 2015

Claims Committee Meeting – November 19, 2015

*Per Government Code 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 Raychelle Maranan at Alliant Insurance at (916) 643-2712.*

*The Agenda packet will be posted on the NCCSIF website at [www.nccsif.org](http://www.nccsif.org). Documents and material relating to an open session agenda item that are provided to the NCCSIF Claims Committee less than 72 hours prior to a regular meeting will be available for public inspection and copying at 2180 Harvard Street, Suite 460, Sacramento, CA 95815.*

*Access to some buildings and offices may require routine provisions of identification to building security. However, NCCSIF 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*



[BACK TO AGENDA](#)

**Northern California Cities Self Insurance Fund  
Claims Committee Meeting  
September 24, 2015**

**Agenda Item E.**

**CLOSED SESSION TO DISCUSS PENDING CLAIMS**  
(Per Governmental Code Section 54956.95)

**ACTION ITEM**

**Liability**

1. Hammond vs City of Red Bluff\*
2. Haught vs City of Anderson\*

**Workers' Compensation**

1. Cummings vs City of Marysville\*
2. Jellsey vs City of Yuba City\*
3. Ellefson vs City of Dixon\*
4. Wood vs City of Elk Grove\*

\* REQUESTING AUTHORITY



BACK TO AGENDA

**Northern California Cities Self Insurance Fund  
Claims Committee Meeting  
September 24, 2015**

**Agenda Item G.**

**CONSENT CALENDAR**

**ACTION ITEM**

**ISSUE:** The Claims Committee reviews items on the Consent Calendar, and if any item requires clarification or discussion a Member should ask that it be removed for separate action. The Committee should then consider action to approve the Consent Calendar excluding those items removed. Any items removed from the Consent Calendar will be placed later on the agenda in an order determined by the Chair.

**RECOMMENDATION:** Adoption of the Consent Calendar after review by the Committee.

**FISCAL IMPACT:** None.

**BACKGROUND:** Routine items that generally do not require discussion are regularly placed on the Consent Calendar for approval.

**ATTACHMENT(S):**

1. Claims Committee Meeting Minutes – May 21, 2015 (Draft)
2. Claims Committee Special Meeting Minutes – June 18, 2015 (Draft)
3. Claims Committee Special Meeting Minutes – August 19, 2015 (Draft)

**NORTHERN CALIFORNIA CITIES SELF INSURANCE FUND**  
**MINUTES OF NCCSIF CLAIMS COMMITTEE TELECONFERENCE MEETING**  
**THURSDAY, May 21, 2015**

**MEMBERS PRESENT**

Michelle Pellegrino, City of Dixon  
Bruce Cline, City of Folsom

Michael Daly, City of Jackson  
Russell Hildebrand, City of Rocklin

**MEMBERS ABSENT**

Paula Islas, City of Galt

**GUESTS & CONSULTANTS**

Marcus Beverly, Alliant Insurance Services	Jennifer Nogosek, York Risk Services
Michelle Minnick, Alliant Insurance Services	Ben Burg, York Risk Services
Raychelle Maranan, Alliant Insurance Services	Dori Zumwalt, York Risk Services

**A. Call to Order**

The Claims Committee was called to order at 11:10 a.m.

**B. Public Comments**

No public comments were made.

**C. Approval of Agenda As Posted**

*A motion was made to approve the agenda as posted.*

**MOTION:** Russell Hildebrand      **SECOND:** Michael Daly

**AYES:** Pellegrino, Cline

**NAYS:** None.

**MOTION CARRIED**

**D. NCCSIF Claims Committee Minutes for Approval**

1. Claims Committee Meeting Minutes – March 19, 2015 (Draft)
2. Claims Committee Special Meeting Minutes – March 19, 2015 (Draft)

*A motion was made to approve the minutes as presented.*

**MOTION:** Russell Hildebrand      **SECOND:** Michelle Pellegrino

**AYES:** Cline, Daly

**NAYS:** None.

**MOTION CARRIED**

#### **E. Updated List of Approved Liability Counsel**

Bruce Cline indicated the list of approved legal counsel is being provided as information only and the updated list will be finalized soon. The Claims Committee reviewed the list and made the following revisions:

- Brian Hayden of Donahue Davies LLP was removed from the approved liability legal counsel list.
- Address for Paul E. Lacy of University of the Pacific, McGeorge School of Law needs to be updated.
- Adding Stephanie Quinn of Murphy, Campbell, Alliston & Quinn, PLC to the Employment Practices Investigator list. It was noted Stephanie Quinn is also one of the approved liability legal counsel.
- Vincent Pastorino of University of the Pacific, McGeorge School of Law was removed from the Employment Practices Investigators list as he is no longer with the firm.

#### **F. Closed Session – The Claims Committee went into closed session in accordance with Government Code Section 54956.95 at 11:14 a.m. and discussed the following claims:**

##### **Workers' Compensation**

1. William Spears v. City of Willows
2. Michael Rose v. Yuba City

##### **Liability**

1. Walters & Young v. City of Jackson

#### **G. Report from Closed Session**

At 11:18 a.m. the Committee came out of Closed Session and announcement made that direction was provided to staff for the three claims referenced above.

#### **H. Round Table Discussion**

The Claims Committee discussed what the proper claim's appeal process is. It was noted there is a conflict between the Memorandum of Coverage (MOC) pertaining to the Arbitration of Coverage Disputes: under the Liability MOC, the Claims Committee shall make the initial determination whether to deny coverage on all or part of a claim; whereas, the Workers' Compensation MOC, the Third Party Administrator or JPA Counsel shall make the initial determination whether to deny coverage on all or part of a claim. The Committee is unsure whether it is intentional the way it is written.

Marcus Beverly reported the City of Red Bluff filed a coverage dispute appeal pertaining to the denial of coverage for their claim, Nelson v. City of Red Bluff. Their City Attorney, Richard Crabtree, requested an in-person meeting to discuss this matter and therefore, he will be present at the June 18, 2015, Board of Directors meeting. It was noted that the Claims Committee will have a special meeting prior to the Board of Directors meeting to address this matter accordingly,

and depending on the action taken by the Claims Committee, the matter will be presented to the Board of Directors.

**I. Adjournment** - The meeting was adjourned at 11:26 a.m.

**NEXT MEETING DATE:** June 18, 2015 in Rocklin, CA

Respectfully Submitted,

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Michelle Pellegrino, Secretary

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Date

DRAFT



**NORTHERN CALIFORNIA CITIES SELF INSURANCE FUND**  
**MINUTES OF NCCSIF CLAIMS COMMITTEE SPECIAL MEETING**  
**Thursday, June 18, 2015**

**MEMBERS PRESENT**

Michelle Pellegrino, City of Dixon  
Bruce Cline, City of Folsom  
Paula Islas, City of Galt  
Dalacie Blankenship, City of Jackson  
Russell Hildebrand, City of Rocklin

**MEMBERS ABSENT**

Michael Daly, City of Jackson

**OTHER MEMBERS PRESENT**

Richard Crabtree, City of Red Bluff

**GUESTS & CONSULTANTS**

Marcus Beverly, Alliant Insurance Services	Dori Zumwalt, York Risk Services
Michael Simmons, Alliant Insurance Services	Jennifer Nogosek, York Risk Services
Raychelle Maranan, Alliant Insurance Services	Peter Urhausen, Gibbons & Conley

**A. Call to Order**

The Claims Committee was called to order at 2:03 p.m.

The above mentioned members of the claims committee were present constituting a quorum.

Richard Crabtree, City of Red Bluff, and Jennifer Nogosek, York Risk Services, were present via teleconference.

**B. Public Comments**

No public comments were made.

**D. Coverage Denial Appeal: Nelson v. City of Red Bluff**

The Committee discussed the denial of coverage for the claim, Nelson v. City of Red Bluff, which subsequently resulted in a lawsuit. Bruce Cline indicated the City of Red Bluff is disputing the denial of coverage that NCCSIF Legal Counsel, Byrne Conley, prepared on behalf of NCCSIF.

Mr. Cline reviewed all related documentation received to date pertaining to this matter which was included in the agenda for Committee's review. Richard Crabtree confirmed he is in receipt of all said documents.

Marcus Beverly provided a brief overview of the claim and correspondence with the parties involved during the review and conclusion of the coverage determination. The coverage position is based on the pollution exclusion, and since the denial is based on exclusion, the MOC does allow for use of the city's banking layer for defense cost associated with this claim/lawsuit up to \$50,000. Mr. Beverly indicated the City of Red Bluff was notified of the fact the city is allowed some element of coverage via the banking layer for defense cost.

Richard Crabtree was given the floor to state City of Red Bluff's perspective as to coverage. Mr. Crabtree articulated the city's position in regards to coverage and all actions taken by the city thus far to remedy the situation in response to the alleged complaints and lawsuit. It is an unfortunate circumstance the City is in as it seems the odor is subjective and reveals itself to one person. Mr. Crabtree indicated the city has some reasonable expectation being a member of NCCSIF that there would be some coverage.

Peter Urhausen was present on behalf of Byrne Conley. The complaint contains four causes of action: (1) negligence, (2) private nuisance, (3) public nuisance, and (4) inverse condemnation. The pollution exclusion applies to all four causes of action because offensive odors from the sewer line are pollutants under the definition, which includes smoke, vapor, soot, and fumes as outlined in Byrne Conley's coverage opinion. None of the exclusion exceptions apply to the allegations; therefore, there is no coverage for any of the allegations in the complaint.

The Committee discussed the inverse condemnation exclusion relative to the physical injury and not just property damage. It was discussed whether the inverse exclusion is negated by the allegation of physical discomfort.

Mr. Urhausen explained the pollution exclusion applies to odors which is what the claim is about. The city's response only addresses the inverse condemnation exception to the exclusion. The inverse condemnation applies to physical injury to tangible property and not physical bodily injury. The pollution exclusion is what excludes the entire claim. There is no physical injury to tangible property that has been alleged. The pollution exclusion excludes the entire matter.

The Committee had lengthy discussion on all facets of the inverse condemnation and whether the inverse exclusion language is applicable to this claim or not. The loss of use of property is not physical injury even if the inverse condemnation exclusion did not apply; the pollution exclusion applies to all aspects of the claim. It was noted there are six exceptions to the pollution exclusion, but none of those apply to the case.

Mr. Crabtree stated the pollution exclusion and inverse condemnation should be addressed separately. He indicated the City of Red Bluff believes there is coverage under the inverse condemnation which triggers an obligation to defend the entire claim.

Mr. Urhausen explained the inverse condemnation does not apply at all on this particular case. In coverage matters, there are often three or four exclusions that may apply but one may apply to whole claim while others address only parts of a claim. The cause of loss is the allegation that

there is a pollution event, whether sudden accidental or gradual, the MOC does not respond to inverse condemnation if there is no coverage to the pollution first.

The Committee discussed the general insurance law issue that was brought up by Richard Crabtree about duty to defend and duty to indemnify.

Mr. Urhausen explained the insurance law is a different matter and the point that was brought up about duty to defend and duty to indemnify is a straight application of the insurance law. The duty to defend is broader than the duty to indemnify, however; potential coverage must exist before the duty to defend can be triggered. As for this particular case, the defense is not triggered as there is no potential coverage. The pool is not subject to the strict rules that apply to the insurance industry.

Mr. Crabtree confirmed he has stated his case and has no further comments and/or questions, therefore, he disconnected from the call at 2:32 p.m.

**E. Closed Session – The Claims Committee went into closed session in accordance with Government Code Section 54956.95 at 2:32 p.m. and discussed the following:**

**Liability**

**1. Arp v. City of Rocklin**

And the deliberation for coverage appeal regarding Nelson v. City of Red Bluff as discussed under agenda item 4.D.

**F. Report from Closed Session**

At 2:38 p.m. the Committee came out of Closed Session and announcement was made that direction was provided to staff for the one claim referenced above.

The Committee also concluded deliberation on the coverage appeal regarding Nelson v. City of Red Bluff. For the record, the committee has declined coverage. It was duly noted the appeal process Red Bluff may exercise. The Committee's determination of coverage is appealable to the Board of Directors. If subsequently denied by the Board, there is an arbitration clause in the MOC.

**G. Adjournment** - The meeting was adjourned at 2:45 p.m.

Respectfully Submitted,

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Michelle Pellegrino, Secretary

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Date

**NORTHERN CALIFORNIA CITIES SELF INSURANCE FUND**  
**MINUTES OF NCCSIF CLAIMS COMMITTEE SPECIAL TELECONFERENCE**  
**MEETING**  
**THURSDAY, AUGUST 19, 2015**

**MEMBERS PRESENT:** Russell Hildebrand, City of Rocklin  
Bruce Cline, City of Folsom  
Michelle Pellegrino, City of Dixon  
Michael Daly, City of Jackson  
Paula Islas, City of Galt

**MEMBERS ABSENT:** None.

**CONSULTANTS:** Marcus Beverly, Alliant Insurance Services  
Michelle Minnick, Alliant Insurance Services  
Jennifer Nogosek, York Risk Services  
Mike Berndt, York Risk Services

**A. Call to Order**

The Claims Committee was called to order at 3:34 p.m.

**B. Roll Call**

**C. Approval of Agenda as Posted**

**D. Public Comments**

No public comments were made.

**E. Closed Session** – The Claims Committee went into closed session in accordance with Government Code Section 54956.95 at 3:37 p.m. and discussed the following claim:

1. Reed vs. City of Folsom\*

**F. Report from Closed Session**

At 3:45 p.m. the Committee came out of Closed Session and announcement made that direction was provided to staff for the claim referenced above.

**G. Adjournment** – The meeting was adjourned at 3:47 p.m.

Respectfully Submitted,

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Michelle Pellegrino, Secretary

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Date



**Agenda Item H.**

**REVISIONS TO POLICY AND PROCEDURE A-9:  
DEFENSE COUNSEL SELECTION**

**ACTION ITEM**

**ISSUE:** NCCSIF's Policy and Procedure (P&P) A-9, regarding selection and use of legal counsel and investigators, has been reviewed by committee members for recommended updates, additions, and revisions. The Chair of the Committee, Bruce Cline, has made most of the recommended changes, the premise of which and a summary are:

1. We should only be using attorneys and investigators on the Approved List. The list should be recommended by the Claims Committee and approved by the Executive Committee, rather than the full Board.
2. A section was added that addresses partners, associates and paralegals working with an attorney on the Approved List. This will clarify a question and a practice that often arises.
3. It identifies the Claims Administrator's Role and the role of the Member City. The client is the City and should control the key decisions and settlement authority.
4. It provides that a City Attorney or Contract City attorney or members of his/her office may not defend claims against the City for whom they are City Attorney but could defend another City.
5. A section was added for use of attorneys prior to litigation and during the pendency of a disputed coverage issue. This section might ultimately belong in the Memorandum of Coverage, but it is couched as an explanation not an expansion of rights under the MOC.

Attached please find a version of the policy with tracked changes and a clean draft, for further review and discussion.

**RECOMMENDATION:** Review and approve changes to P&P A-9, for recommendation to the Executive Committee and approval by the Board, since it delegates some authority from the Board to the Executive Committee.

**FISCAL IMPACT:** None.

**BACKGROUND:** The policy has been in effect since October 4, 1996, with relatively frequent revisions to the Approved List. The policy itself was last updated on April 25, 2008.

**ATTACHMENT(S):**

1. Policy and Procedure A-9 with tracked changes
2. Policy & Procedure A-9 clean draft

## ADMINISTRATIVE POLICY & PROCEDURE #A-9

**SUBJECT:** SELECTION AND USE OF DEFENSE COUNSEL SELECTION  
& EMPLOYMENT PRACTICES RECOMMENDED  
INVESTIGATORS ; AND USE OF DEFENSE COUNSEL ON POTENTIAL CLAIMS AND  
PENDING A COVERAGE DECISION

The following Policy and Procedure is established to govern the selection of defense counsel and employment practices recommended investigators.

### DEFENSE COUNSEL SELECTION

1. The NCCSIF Claims Committee shall recommend and the Executive Committee shall approve all attorneys who are authorized to defend liability and Workers' Compensation cases against a Member City. The Claims Committees shall also recommend and the Executive Committee shall approve employment practice investigators authorized to conduct investigation arising out of employment complaints. Following approval, the attorneys and investigators are identified on the NCCSIF Approved List of Counsel and Investigators (Approved List). The Executive Committee may also remove attorneys and investigators from the Approved List. Any Member City may nominate attorneys or investigators for consideration of placement on the Approved List. The Approved List of Attorneys is attached to this Policy and Procedure as "Attachment A" for Liability defense attorneys, "Attachment B" for Workers' Compensation defense attorneys and "Attachment C" for Employment Practices Investigators.

1.2. Qualificatons of Attorneys and Investigators-qualifications shall be reviewed by the Claims Administrator and the Claims Committee. Approved attorneys and investigators shall have the requisite experience and billing rates generally consistent with other attorneys and investigators on the Approved List. Attorneys and investigators may be approved with The Claims Committee may approve billing rates that are higher than those on the Approved List, but only in cases where specialized knowledge, experience or other factors support the higher billing rate.

3. The Claims Administrator shall recommend and assign, with the concurrenceapproval of the Member City, and direct defense counsel in cases requiring legal representation. Attorneys and investigators must be on the Approved List prior to assignment. If a Member City wishes to use an attorney or investigator who is not on the Approved List, it may request that the case be assigned to another qualified attorney or investigator and may do so provided the Member City shall be responsible for the costs if the attorney or investigator is not subsequently approved as described in this Policy, and may be responsible for any amounts by which the billing rates are higher than those on the Approved List, unless a higher rate is approved by the Claims Committee.

Notwithstanding the above, in specialized cases, defense counsel not on the Approved List may be used where particular expertise is required or where a conflict of interest may arise. Exceptions shall be reviewed and approved on a case-by-case basis by the Executive Committee.

The Member City may make a request a change in the choice of defense attorneysfirms for good cause, provided the matter is assigned to an attorney on the NCCSIF Approved List of counsel or to an attorney who qualifies based on special circumstances as outlined above, as long as it keeps to the defense firms and/or individuals on the approved lists.



The Claims Administrator, with the approval of the Member City and Executive Committee may approve other qualified defense counsel to handle claims on a limited basis to determine if the attorney should be considered for approval on the Approved List. If time does not permit approval by the Executive Committee, the Administrator may authorize assignment of a case(s) and shall report the assignment to the Claims Committee at the next committee meeting.

4. The Claims Administrator shall be responsible for case coordination, direction of counsel and approval of expenditures. The Member City may direct the level of involvement that it wishes to have on its cases and shall be consulted in all key decisions and settlement approvals.

5. City Attorneys, or ~~in the case of~~ a contract City Attorney ~~or~~ and attorneys in his/her firm, shall not be approved to handle cases for cities ~~to~~for whom they act as the City Attorney, however an attorney on the Approved List may provide defense to another City in NCCSIF to whom the attorney or a member of his/her firm is not the City Attorney.

~~2.6.~~ Partners, Associate Attorneys and paralegals working with an attorney on the Approved List may work on a case assigned to the attorney. The Claims Administrator shall notify any attorney assigned to defense of a case for a Member City that NCCSIF will not pay for training time or duplicative work, but other attorneys/paralegal working directly with an attorney from the Approved List may be utilized on a case if such use is necessary and an efficient way to provide legal services. Attorneys assigned cases, shall be notified of their obligation to inform the Claims Administrator of the name of the attorney/paralegal who will be assisting on the case. In no event, shall a case be handled at trial or arbitration by any attorney except the assigned attorney without the written consent of the Claims Administrator and the Member City.

~~3.7.~~ The Claims Administrator shall maintain the list of recommended law firms to which litigation will be assigned. This list of recommended law firms is attached to this Policy and Procedure as "Attachment A" for Liability defense firms, "Attachment B" for Workers' Compensation defense firms and "Attachment C" for Employment Practices Recommended Investigators. It is assumed that the use of legal counsel (including City staff), other than those on the approved list, shall not be approved. In special cases, other defense counsel not on the recommended list may be used for particular expertise or where a conflict of interest may arise. Exceptions shall be reviewed and approved on a case by case basis by the Claims Committee.

~~4.8.~~ Any Member City wishing to recommend a law firm for inclusion on the list of recommended law firms may do so by submitting justification and experience of the individual and/or firm to the JPA staff. The JPA Legal Counsel and the Claims Administrator will review the recommended firm and/or individual, research the firm's and/or individual's qualifications and submit a written recommendation to the Claims Committee for review and approval or disapproval.

~~5.~~ If any Member City or the Claims Administrator wishes to delete a law firm from the list of recommended law firms, this may be done by submitting the request to the JPA staff. The JPA Legal Counsel and the TPA will make written recommendation to the Claims Committee for approval or disapproval of the deletion.

~~9.~~ Once approved by the Claims Committee, any changes to the approved lists of law firms/attorneys for Liability and Workers' Compensation claims shall be brought to the Executive Committee and Board of Directors for review, revision (if needed) and adoption..

### EMPLOYMENT PRACTICE INVESTIGATORS

Employment Practice investigations arise with Member Cities and should be investigated by the City or utilizing outside qualified Employment Practice Investigators. Promptly investigating complaints or employment practice incidents can reduce liability exposure.

1. Where the claim or potential claim may give rise to a claim covered under the NCCSIF Memorandum of Coverage the investigator may be paid through NCCSIF and the Member City's banking layer. Only Employment Practice Investigators on the Approved List may conduct Employment Practice -investigations paid for through NCCSIF.

2. The Claims Administrator shall recommend, but the Member City shall have final approval of outside investigators for Employment Practices claims.

3. Where applicable and in the discretion of the Member City, a written report should be prepared of the Investigation and should be directed to ~~protected by the Attorney Client privilege through the Member City's City Attorney.~~ protected by the attorney-client privilege.

### PAYMENT FOR ATTORNEYS PRE-LITIGATION AND PENDING A COVERAGE DECISION

1. From time to time, incidents will occur where –it is prudent to assign defense counsel to assist the Member City with evaluation of the potential claim, prepare for the later defense of a claim or suit, engage expert witnesses or to assist with early settlement. Member Cities are encouraged to work with the Claims Administrator to engage legal counsel at the earliest possible time to assist the Claims Administrator and the Member City. Legal and other expenses are paid through the Member City's banking layer in the same manner as if the case arose through litigation.

2. In some cases, a claim will arise where coverage under the NCCSIF Memorandum of Coverage is disputed between the Member City and NCCSIF. ~~In such cases,~~ Where the claim seeks damages but may be subject to an exclusion, a Member City may utilize the services of attorneys from the Approved List and legal expenses ~~may~~ shall be paid from the Member City's banking layer. Upon a final determination ~~finding~~ by Coverage Counsel, the Claims Committee or the Board-, as provided in the Memorandum of Coverage, that coverage and/or payment of defense costs does not apply, then no further legal expenses shall be paid by NCCSIF and the Member City shall thereafter pay for and determine if it wishes to continue with the assigned attorney or select other counsel.

In no case shall legal expenses in a disputed coverage case be paid by NCCSIF after the banking layer has been expended. Expenditures in a disputed coverage case after the banking layer is expended are the responsibility of the Member City. See the Underlying Memorandum of Coverage at Section 11(b). If it is determined after the banking layer is expended that 1) defense coverage does apply under the Memorandum of Coverage and 2) the Member City has incurred legal expenses with counsel on the Approved List–qualifying under sections 1-3 above, then NCCSIF will reimburse the Member City for its actual expenditures for counsel, up to the approved rates. A Member City may not be reimbursed for its expenditures for counsel who is not on the Approved List unless approved by the Board of Directors, up to the approved rates.

3. This Policy is intended to explain and set forth procedures as provided herein and does not modify or amend the Memorandum of Coverage. In the event of a conflict between this Policy and Memorandum of Coverage, the Memorandum of Coverage shall control.

**Effective Date:** October 4,

1996December, 10, 2015

**First Revision:** September 18, 1998

**Tenth Revision:** June 23, 2006

**Eleventh Revision:** October 27, 2006

**Twelfth Revision:** April 25, 2008





Second Revision:	August 19, 1999	Thirteenth Revision:	October 16, 2009
Third Revision:	October 26, 2001	Fourteenth Revision:	December 17, 2009
Fourth Revision:	November 9, 2001	Fifteenth Revision:	October 21, 2010
Fifth Revision:	April 12, 2002	Sixteenth Revision:	December 1, 2010
Sixth Revision:	June 21, 2002	Seventeenth Revision:	May 9, 2013
Seventh Revision:	May 16, 2003	Eighteenth Revision:	October 10, 2013
Eighth Revision:	April 22, 2005		
Ninth Revision:	September 16, 2005		

## **ADMINISTRATIVE POLICY & PROCEDURE #A-9**

### **SUBJECT: SELECTION AND USE OF DEFENSE COUNSEL & EMPLOYMENT PRACTICES INVESTIGATORS**

The following Policy and Procedure is established to govern the selection of defense counsel and employment practices recommended investigators.

#### **DEFENSE COUNSEL SELECTION**

1. The NCCSIF Claims Committee shall recommend and the Executive Committee shall approve all attorneys who are authorized to defend liability and Workers' Compensation cases against a Member City. The Claims Committee shall also recommend and the Executive Committee shall approve employment practice investigators authorized to conduct investigation arising out of employment complaints. Following approval, the attorneys and investigators are identified on the NCCSIF Approved List of Counsel and Investigators (Approved List). The Executive Committee may also remove attorneys and investigators from the Approved List. Any Member City may nominate attorneys or investigators for consideration of placement on the Approved List. The Approved List of Attorneys is attached to this Policy and Procedure as "Attachment A" for Liability defense attorneys, "Attachment B" for Workers' Compensation defense attorneys and "Attachment C" for Employment Practices Investigators.

2. Qualifications of Attorneys and Investigators shall be reviewed by the Claims Administrator and the Claims Committee. Approved attorneys and investigators shall have the requisite experience and billing rates generally consistent with other attorneys and investigators on the Approved List. The Claims Committee may approve billing rates that are higher than those on the Approved List, but only in cases where specialized knowledge, experience or other factors support the higher billing rate.

3. The Claims Administrator shall recommend and assign, with the concurrence of the Member City, defense counsel in cases requiring legal representation. Attorneys and investigators must be on the Approved List prior to assignment. If a Member City wishes to use an attorney or investigator who is not on the Approved List, it may request that the case be assigned to another qualified attorney or investigator provided the Member City shall be responsible for the costs if the attorney or investigator is not subsequently approved as described in this Policy, and may be responsible for any amounts by which the billing rates are higher than those on the Approved List, unless a higher rate is approved by the Claims Committee.

Notwithstanding the above, in specialized cases, defense counsel not on the Approved List may be used where particular expertise is required or where a conflict of interest may arise. Exceptions shall be reviewed and approved on a case-by-case basis by the Executive Committee.

The Member City may request a change of defense attorneys for good cause, provided the matter is assigned to an attorney on the NCCSIF Approved List of counsel, or to an attorney who qualifies based on special circumstances as outlined above.

The Claims Administrator, with the approval of the Member City and Executive Committee, may approve other qualified defense counsel to handle claims on a limited basis to determine if the attorney should be considered for approval on the Approved List. If time does not permit approval by the Executive Committee, the Administrator may authorize assignment of a case(s) and shall report the assignment to the Claims Committee at the next committee meeting.

4. The Claims Administrator shall be responsible for case coordination, direction of counsel and approval of expenditures. The Member City may direct the level of involvement that it wishes to have on its cases and shall be consulted in all key decisions and settlement approvals.

5. City Attorneys, or a contract City Attorney and attorneys in his/her firm, shall not be approved to handle cases for cities for whom they act as the City Attorney, however an attorney on the Approved List may provide defense to another City in NCCSIF for whom the attorney or a member of his/her firm is not the City Attorney.

6. Partners, Associate Attorneys and paralegals working with an attorney on the Approved List may work on a case assigned to the attorney. The Claims Administrator shall notify any attorney assigned to defense of a case for a Member City that NCCSIF will not pay for training time or duplicative work, but other attorneys/paralegal working directly with an attorney from the Approved List may be utilized on a case if such use is necessary and an efficient way to provide legal services. Attorneys assigned cases shall be notified of their obligation to inform the Claims Administrator of the name of the attorney/paralegal who will be assisting on the case. In no event shall a case be handled at trial or arbitration by any attorney except the assigned attorney without the written consent of the Claims Administrator and the Member City.

## EMPLOYMENT PRACTICE INVESTIGATORS

Employment Practice investigations arise with Member Cities and should be investigated by the City or utilizing outside qualified Employment Practice Investigators. Promptly investigating complaints or employment practice incidents can reduce liability exposure.

1. Where the claim or potential claim may give rise to a claim covered under the NCCSIF Memorandum of Coverage the investigator may be paid through NCCSIF and the Member City's banking layer. Only Employment Practice Investigators on the Approved List may conduct Employment Practice investigations paid for through NCCSIF.

2. The Claims Administrator shall recommend, but the Member City shall have final approval of outside investigators for Employment Practices claims.

3. Where applicable and in the discretion of the Member City, a written report should be prepared of the Investigation and should be directed to the Member's City Attorney, protected by the attorney-client privilege.

## PAYMENT FOR ATTORNEYS PRE-LITIGATION AND PENDING A COVERAGE DECISION

1. From time to time, incidents will occur where it is prudent to assign defense counsel to assist the Member City with evaluation of the potential claim, prepare for the later defense of a claim or suit, engage expert witnesses or to assist with early settlement. Member Cities are encouraged to work with the Claims Administrator to engage legal counsel at the earliest possible time to assist the Claims Administrator and the Member City. Legal and other expenses are paid through the Member City's banking layer in the same manner as if the case arose through litigation.

2. In some cases, a claim will arise where coverage under the NCCSIF Memorandum of Coverage is disputed between the Member City and NCCSIF. Where the claim seeks damages but may be subject to an exclusion, a Member City may utilize the services of attorneys from the Approved List and legal expenses shall be paid from the Member City's banking layer. Upon a final determination by Coverage Counsel, the Claims Committee or the Board, as provided in the Memorandum of Coverage, that coverage and/or payment of defense costs do not apply, then no further legal expenses shall be paid by NCCSIF and the Member City shall thereafter pay for and determine if it wishes to continue with the assigned attorney or select other counsel.



In no case shall legal expenses in a disputed coverage case be paid by NCCSIF after the banking layer has been expended. Expenditures in a disputed coverage case after the banking layer is expended are the responsibility of the Member City. See the Underlying Memorandum of Coverage at Section 11(b). If it is determined after the banking layer is expended that 1) defense coverage does apply under the Memorandum of Coverage and 2) the Member City has incurred legal expenses with counsel qualifying under sections 1-3 above, then NCCSIF will reimburse the Member City for its actual expenditures for counsel, up to the approved rates. A Member City may not be reimbursed for its expenditures for counsel who is not on the Approved List unless approved by the Board of Directors, up to the approved rates.

3. This Policy is intended to explain and set forth procedures as provided herein and does not modify or amend the Memorandum of Coverage. In the event of a conflict between this Policy and Memorandum of Coverage, the Memorandum of Coverage shall control.

**Effective Date:** December, 10, 2015



**Agenda Item I.**

**REVISIONS TO POLICY AND PROCEDURE L-5:  
LIABILITY LITIGATION MANAGEMENT PLAN**

**ACTION ITEM**

**ISSUE:** Changes being recommended to Policy & Procedure A-9, Defense Counsel Selection, have prompted the Program Administrators to review Liability Policy and Procedure L-5, Liability Litigation Management Plan. If the changes to P&P A-9 are approved, then similar changes to P&P L-5 are recommended for consistency in specifying who approves changes to the Approved List of counsel and investigators. Currently, P&P L-5 references approval by the Claims Committee only, not the Executive Committee as indicated in the revised P&P A-9 (or Board as in the existing policy).

In addition, since the Liability Litigation Management Plan is meant to provide assigned counsel the guidelines for managing NCCSIF claims, a recommendation is made to include the proposed guidelines for use of partners, associates, and paralegals in P&P L-5.

Similar changes to Workers' Compensation Policy & Procedure, WC-2, Claims Administration General Guidelines and Standards, are not recommended since that policy is directed toward the Claims Administrator and not legal counsel.

**RECOMMENDATION:** Approve changes to P&P L-5 to be consistent with changes to P&P A-9.

**FISCAL IMPACT:** None.

**BACKGROUND:** P&P L-5 has been in effect since 9/15/2000 with no previous revisions. It is a companion policy to P&P A-9 that provides litigation management guidelines for liability defense counsel and claims administrators.

**ATTACHMENT(S):** P&P L-5, with tracked changes and in final draft form.

## **LIABILITY POLICY AND PROCEDURE #L - 5**

### **SUBJECT: LIABILITY LITIGATION MANAGEMENT PLAN**

#### **Policy Statement:**

##### **A. Panel**

In accordance with Policy and Procedure A- 9 Defense Counsel Selection, an Approved List of recommended law firms is periodically reviewed and approved by the Claims Committee and Executive Committee with recommendations ~~off from~~ the Claims Administrator.

As per P&P A-9, it is assumed that the use of legal counsel (including city staff), other than those on the ~~panel of recommended law firms~~ Approved List, shall not be approved. In special cases, other defense counsel not on the ~~panel of recommended law firms~~ Approved List may be used for their particular expertise, or where a conflict of interest may arise. Exceptions shall be reviewed and approved on a case-by-case basis by the ~~Claims Executive~~ Committee.

Adding or deleting an attorney to or from the defense panel will require recommendation by ~~the~~ a Member City. The JPA Legal Counsel and/or the Claims Administrator will review the recommended firm and/or individual per P & P A-9 and submit a written recommendation to the Claims Committee and subsequently the Executive Committee for approval.

##### **B. Assignment**

After consultation and approval from the Member City, the Claims Administrator shall assign and direct defense counsel from the ~~panel of recommended law firms~~ Approved List. ~~Defense counsel shall obtain prior approval from the Claims Administrator for use of other attorneys from the firm on the case.~~ The counsel selected must agree to abide by these policies and procedures.

Partners, Associate Attorneys and paralegals working with an attorney on the Approved List may work on a case assigned to the attorney. NCCSIF will not pay for training time or duplicative work, but other attorneys/paralegal working directly with an attorney from the Approved List may be utilized on a case if such use is necessary and an efficient way to provide legal services. Attorneys assigned cases shall notify the Claims Administrator of the name of the attorney/paralegal who will be assisting on the case. In no event, shall a case be handled at trial or arbitration by any attorney except the assigned attorney without the written consent of the Claims Administrator and the Member City.

The defense counsel assigned shall send an acknowledgement of assignment letter to the Claims Administrator within seven (7) calendar days of receiving the case assignment.

##### **C. Conflicts**

The defense counsel selected and the law firm to which he/she belongs must disclose any ethical or legal conflicts which would in general disqualify them from representing any of the Member City defendants.

Finally, they shall agree to disclose any special facts which would or could potentially disqualify them from representation of a particular Member City, commensurate with, or shortly after the case assignment, or immediately upon discovery.

#### **D. Communication**

Copies of all correspondence, pleadings and notice of depositions, trials, arbitrations and hearings shall be provided to the Claims Administrator and others as designated by the Claims Administrator. Copies of all status reports shall be provided to the Member City.

Defense counsel will promptly respond to all letters or phone calls from the Claims Administrator, and keep him or her fully advised as to the progress of each case. Defense counsel will cooperate with the Claims Administrator in all other aspects of this Litigation Management Program including providing copies of all motions and pleadings on electronic media, and completing expert witness and plaintiff counsel evaluations as requested by the Claims Administrator.

#### **E. Case Analysis and Litigation Budget**

Within 30 days of retention in each case, selected defense counsel shall complete and return a case evaluation and analysis as requested in the case assignment letter from the Claims Administrator.

Defense counsel shall obtain written approval from the Claims Administrator prior to retaining experts or making changes in the litigation plan set forth in their initial case evaluation and analysis. Defense counsel shall obtain written approval from the Claims Administrator prior to incurring any costs or fees in excess of the approved litigation budget.

#### **MANDATORY STATUS REPORTS**

Status reports are mandatory every 90 days or as soon as possible following any significant event in the case. Defense counsel shall report **only** on new developments since the last report. The reporting diary can be extended if the Claims Administrator is notified of defense counsel's intention to put the file on an extended diary.

The attorney handling the case should prepare the status reports. Status reports should include the following:

- The ongoing strategy for defense or resolution of the case, including a factual analysis of issues related to liability and damages;
- A description of planned discovery with a time table for completion;
- A brief synopsis of the discovery completed since the last report;
- Court dates including, but not necessarily limited to, mandatory settlement conferences, trial setting conferences, arbitration and trial dates, hearings on discovery, etc.;
- New settlement demands; and
- Any anticipated changes in the litigation budget.



Furthermore, no later than 30 days prior to trial (or binding arbitration) or as requested by the Claims Administrator, the defense trial attorney will provide a trial/binding arbitration report, which shall include:

## **TRIAL/ARBITRATION REPORTS**

No later than 30 days prior to trial (or binding arbitration), the defense trial attorney will provide a report, which shall include:

1. an assessment of the City's liability;
2. an assessment of plaintiff's injuries or damages;
3. an assessment of legal defenses (and probability or prevailing);
4. an assessment of the chances of prevailing at trial;
5. the verdict value assuming full liability
6. as assessment of any other factors affecting the items above, including demeanor or credibility of important witnesses, evidentiary disputes, tendencies or local juries, the judge or opposing counsel, liability and solvency/coverage of co-defendants, or similar important issues;
7. an appraisal of settlement value, considering verdict value and chances of prevailing
8. the status of settlement discussions
9. estimated future fees and costs through trial (since last billing)

A daily oral report is expected during trial, unless the City is present. The City will keep the excess carrier/excess pool advised of status, where applicable. Immediately following any trial/arbitration, a brief trial report should be sent to the City outlining the results.

## **G. Settlements**

Defense counsel shall not settle any litigation by way of any monetary offering without the prior approval of the Member City, the Claims Administrator and the Claims Committee or the Board of Directors if the proposed settlement is in excess of the Member City's Self Insured Retention. All settlement demands shall be communicated to the Claims Administrator and the Member City immediately.

## **H. Fees and Billings**

All bills for legal services and related costs shall be submitted to the Claims Administrator every sixty (60) days. All bills submitted shall describe the services and costs provided during the previous billing period. Bills shall include the following information to which such services or costs pertain:

- The name of the matter;
- A brief description of services performed;
- The date the services were performed ;
- The number of hours, or fraction thereof, spent for each service and by whom;
- The hourly or project rate for the services;
- A brief description of any costs incurred; and



- Copies of invoices for all advanced costs.

The following expenses are to be approved by the Claims Administrator prior to being incurred:

- Experts - whether investigative (consulting) or testimonial;
- Independent medical examinations (IMEs);
- Outside investigators;
- More than one attorney at meetings, interviews, depositions, hearings, appearances or other like engagements;
- Travel out-of-town or outside designated area for investigation - e.g., for depositions, meetings with expert witnesses, etc.;
- Filing of cross-complaint, counter-claims; and
- Co-defendant cost sharing agreements.

Defense counsel assigned to the case is responsible for the content of the bill and will work directly with the Claims Administrator in resolving any problems or answering any questions related to such billing.

## **I. Performance Evaluation**

The Claims Administrator shall review the performance of the panel members with the Claims Committee annually.

**Effective Date:** September 15, 2000

**Draft Revision:** **September 24, 2015**



## **APPROVAL OF NCCSIF DEFENSE ATTORNEY LIST FOR LIABILITY**

### **ACTION ITEM**

**ISSUE:** The City of Folsom is recommending the addition of the following partners in the law firm of Kronick, Moskovitz, Tiedemann and Girard to the Liability Counsel Approved List: Jonathan P. Hobbs, Christopher Onstott, David W. Tyra and Kristianne T. Seargeant.

**RECOMMENDATION:** Approve as requested and recommend to the Executive Committee.

**FISCAL IMPACT:** None.

**BACKGROUND:** The Claims Committee regularly reviews and recommends changes to the Approved List of attorneys based on feedback from members and the claims administrator.

David Tyra and Kristi Seargeant are highly recommended for employment practices litigation. John Hobbs, Ron Scholar (already on the list) and Chris Onstatt are recommended for more specialized cases involving potential coverage issues such as inverse or other land use disputes.

Hourly rates for the firm are: Shareholders \$220; Associates, \$190; and paralegals \$115. These rates are higher than those offered by other firms that handle more routine claims.

### **ATTACHMENT(S):**

1. Jonathan P. Hobbs Resume
2. Christopher Onstott Resume
3. David W. Tyra Resume
4. Kristianne T. Seargeant Resume
5. Policy and Procedure A-9: Attachment A Defense Attorney List for Liability



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## Jonathan P. Hobbs

Mr. Hobbs is a shareholder and member of both the public agency and litigation practice groups. His practice focuses on representing municipalities and other local government agencies in a variety of transactional and litigation matters, primarily associated with land use and planning.

### Legal Experience

Mr. Hobbs' practice focuses upon representation of local government agencies in a variety of capacities. He is experienced in transactional and litigation matters in a host of areas including:

- Planning, zoning, and land use
- Conflicts of interest laws
- Open meetings law (The Brown Act)
- Public records
- Contract drafting, analysis, review, negotiation, and dispute resolution
- Code enforcement
- California Environmental Quality Act ("CEQA")/Environmental law
- Direct and inverse condemnation
- Housing laws, including affordable housing
- Redevelopment law
- Unlawful detainer/Landlord-tenant
- Public works bidding, contracting and construction
- Development impact fees
- Police personnel/"Pitchess" motions
- Municipal claims and litigation defense
- Proposition 218 rate and fee setting

Mr. Hobbs also has experience in commercial law, creditors' rights, bankruptcy, business, employment, and related litigation matters.

### Practice Examples

- City Attorney to the City of Lincoln
- City Attorney to the City of Elk Grove
- Special Counsel to the City of Rio Vista (former City Attorney)
- Legal counsel to the City of Folsom
- Legal counsel to the City of Galt
- Special and litigation counsel to the City of Lodi, particularly in areas related to land use and environmental law
- Legal counsel to the City of Roseville

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- Authored an amicus curiae (“Friend of the Court”) brief on behalf of the League of California Cities and the California State Association of Counties in the case of *State of California v. Superior Court (Bodde)*, 32 Cal. 4th 1234 (2004), concerning the proper interpretation of the governmental claim statutes. The Supreme Court ruled in favor of the position asserted by Mr. Hobbs
- Represents other governmental agencies, including special districts and school districts, in areas such as land use, environmental law and compliance, and development impact fees

## Professional Activities & Affiliations

Mr. Hobbs’ professional and community activities and affiliations include:

- Editorial Board Member and Chapter Chair, League of California Cities’ Municipal Law Handbook Revisions Committee
- League Partner Policy Committee Liaison, League of California Cities’ Housing and Community Development Committee
- Member, League of California Cities’ Medical Marijuana Ad Hoc Committee
- Member, Sacramento County Bar Association
- Member, California State Bar Association
- Author, “Review of Selected 1994 Legislation (Selected Topics),” 26 *Pacific Law Journal* 202, 1995
- Former Volunteer Zookeeper Aide, Folsom City Zoo; Member, Friends of the Folsom Zoo

## Admitted to Practice

- All California State Courts
- United States District Court, Eastern District of California

## Academic Background

J.D. University of the Pacific, McGeorge School of Law, 1996

- Member, *Order of the Coif*
- Member, *Traynor Honor Society*
- Member, *Phi Alpha Delta*
- Chief Legislation Editor of Board of Editors, *Pacific Law Journal*
- Legislative Review Staff Writer & Comment Staff Writer, *Pacific Law Journal*

B.A. Washington State University, 1993

- Graduated *Summa Cum Laude*
- Member, *Golden Key National Honor Society*



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## Christopher Onstott

Mr. Onstott is a shareholder and a member of the firm's labor and employment and litigation practice groups. His areas of emphasis include employment litigation and commercial litigation. He has defended employers in employment litigation, including defending against race, sex, and disability discrimination and harassment claims, as well as wage and hour violations. He also has litigated numerous commercial cases, including cases involving misappropriation of trade secrets, product liability, insurance bad faith, and breach of contract claims.

Prior to joining KMTG, Mr. Onstott worked in the Sacramento office of a statewide labor and employment law firm representing California employers. His previous work experience also includes working in the litigation department of O'Melveny & Myers. Mr. Onstott also completed a clerkship on the United States Court of Appeals, Third Circuit for Judge Walter K. Stapleton.

Mr. Onstott previously lived in Argentina for two years and is fluent in Spanish.

### Employment Litigation

- Represented Safelite Group, Inc. in successful defense of discrimination claims brought against company by former employee.
- Represented Governor Arnold Schwarzenegger, the Department of Personnel Administration, the California Board of Unemployment Insurance Appeals, and the Employment Development Department in writ of mandate action. Received total defense judgment on behalf of all respondents.
- Obtained summary judgment and judgment on the pleadings in favor of client city in civil rights action brought by police officer alleging various constitutional violations. The district court's ruling was affirmed by the United States Court of Appeals for the Ninth Circuit.
- Obtained summary judgment against an employee alleging disability discrimination, wrongful termination and constructive discharge against an employer.
- Successfully mediated numerous employment and business disputes, including employment discrimination claims and wage-and-hour class actions.
- Represented California employers on how to protect trade secrets and on compliance with California wage-and-hour laws, including meal and rest breaks, expense reimbursement, leaves of absence and other California employment laws.
- Successful defense of class action alleging improper payment of wages and reimbursement of expenses.
- Conducted numerous Spanish language witness interviews and investigations.

### Commercial Litigation

- Represented Arco Arena, Inc. and Maloof Sports & Entertainment, Inc. in defense of disability discrimination claims.

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- Represented Nor-Cal Beverage Co., in defense of trade dress claims brought against Go Girl Energy drink.
- Represented California-based joint powers insurance authority in insurance bad faith action.
- Successfully opposed an application for temporary restraining order and preliminary injunction in a “bet-the-company” action alleging misappropriation of trade secrets.
- Represented municipalities in several lawsuits against bus manufacturers.
- Part of trial team that litigated a five-week trial on behalf of a Sacramento business who alleged misappropriation of trade secrets, breach of joint venture agreement, and interference with contract against two national corporations.
- Participated in drafting both amicus and writ of certiorari petition briefs before the United States Supreme Court. Mr. Onstott was part of a team in amicus briefing for *Defenders of Wildlife v. EPA*, which was heard by the Supreme Court in April 2007. The amicus position was adopted by the Supreme Court.

### Professional Activities & Affiliations

Mr. Onstott is a frequent presenter on labor and employment law matters for various educational and professional organizations, including the National Business Institute (NBI), the National Association of Retail Collection Attorneys and the California Creditors Bar Association. His other professional activities & affiliations include:

- *Northern California Rising Star* (2014, 2015)
- Chair, Executive Committee, Sacramento County Bar Association, Labor & Employment Section
- Membership Committee, Sacramento Hispanic Chamber of Commerce
- Board Member, Sacramento Chapter of the J. Reuben Clark Law Society
- Member, Roseville Economic Development Advisory Committee
- Member, California State Bar Association
- Graduate, Roseville Leadership program, 2012
- Author, “Judicial Notice and the Law’s Scientific Search for Truth,” *Akron Law Review*, 2007

### Admitted to Practice

- All California State Courts
- United States District Courts, Southern, Northern, Central and Eastern Districts of California
- United States Court of Appeals, Third and Ninth Circuits
- United States Supreme Court



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## **Academic Background**

### **J.D. University of Texas, 2002**

- Graduated with High Honors
- Member, Order of the Coif
- Notes Editor, Texas Law Review
- Recipient, Dean's Award in Evidence
- Law Clerk, Judge Walter K. Stapleton, United States Court of Appeals, Third Circuit, 2002-2003

### **B.A. Brigham Young University, 1999**

- Graduated magna cum laude
- Chief Online Editor, NewsNet@BYU.edu
- Received Editor & Publisher EPPY Award as nation's best online college newspaper





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## David W. Tyra

A shareholder with the firm, Mr. Tyra's practice emphasizes representation of private and public sector employers in labor and employment law actions as well as providing advice and counsel on labor and employment issues. His practice covers all aspects of labor and employment law, including wage-hour actions, employee leave matters, workplace discrimination and harassment, work place privacy, and unfair labor practice claims. His litigation experience includes representing employers in federal and state courts at the trial and appellate levels and before numerous federal and state agencies. He is an active public speaker on employment topics, having presented numerous times before civic and commercial groups.

### Legal Experience

Mr. Tyra has been practicing for more than 30 years in the field of labor and employment law. His practice covers a broad range of labor- and employment-related matters. He also represents clients in business and commercial litigation on matters involving contract and construction-related disputes.

His clients include the State of California, numerous media, real estate, utility, and other private sector companies, along with counties, municipalities, and special districts throughout the State.

Mr. Tyra's practice addresses the spectrum of labor and employment law issues facing employers, including:

- Wage-hour class actions
- Employee leave and compliance with regulations, including:
  - California Family Rights Act (CFRA)
  - Family Medical Leave Act (FMLA)
  - Pregnancy Disability Leave Act (PDL)
  - Americans with Disabilities Act (ADA)
- Work place privacy matters, including identify theft
- Employee benefits, including compliance with the Employee Retirement Income Security Act (ERISA)
- Employee handbooks and other personnel policies
- Disciplinary actions
- Employee terminations
- Discrimination and harassment claims
- Employment contracts and arbitration agreements
- Compliance with other state and federal laws, such as:
  - Fair Employment and Housing Act (FEHA)
  - Fair Labor Standards Act (FLSA)
- Labor Law
  - Collective bargaining
  - Defend against Unfair Labor Practice claims
  - Defend MOU/CBA grievance arbitrations



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Mr. Tyra has been with KMTG since April 2005. Prior to joining KMTG, Mr. Tyra was a shareholder in both national and Northern California regional law firms.

## Practice Examples

- As lead trial counsel, obtained a defense judgment for the State of California, California Department of Corrections and Rehabilitation, California Department of State Hospitals, and California Department of Human Resources in a wage and hour class action brought by a class consisting of approximately 40,000 current and former unionized correctional officers and supervisors. The plaintiff class alleged they were not being paid for compensable time spent waiting in security lines and walking to and from their posts in California's correctional institutions. Mr. Tyra and his trial team convinced the San Francisco Superior Court that the "walk time" at issue was not compensable under the terms of several Memoranda of Understanding negotiated between the state and the union representing the correctional employees.
- Served as lead counsel for Governor Arnold Schwarzenegger and the State of California in 38 cases filed by public employee unions challenging Governor Schwarzenegger's executive orders furloughing California state employees. Mr. Tyra successfully represented the Governor and the State at the trial court and appellate court levels, including appearing on behalf of the Governor and the State before the California Supreme Court in *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, in which the Court validated the furloughs of state employees based on the Legislature's ratification of Governor Schwarzenegger's furlough plan.
- Represented the State of California in a class action brought by the State's prison guard union alleging its members were being denied meal and rest breaks. In a published decision, the California First District Court of Appeal ruled that the meal and rest period statutes contained in the California Labor Code, as well as the corresponding provisions contained in the Industrial Welfare Commission's Wage Orders, were inapplicable to public employers. (*California Correctional Peace Officers Association v. State of California* (2010) 188 Cal.App.4th 646.)
- In a second class action brought by California's prison guard unions, the California First District Court of Appeal ruled in a published decision that the State of California was permitted to use alternative work schedules for its prison guards authorized under the federal Fair Labor Standards Act without incurring overtime liability. (*California Correctional Peace Officers Association v. State of California* (2010) 189 Cal.App.4th 849.)
- Served as lead counsel for a Northern California electrical utility in a sexual harassment claim. The case, which was heard by a Placer County civil jury, resulted in a unanimous verdict in favor of the defense.
- Served as lead attorney in a federal age discrimination case tried in the United States District Court, Eastern District of California. The case resulted in a non-suit for Mr. Tyra's client with the judge ruling that the plaintiff had not presented sufficient evidence to support the discrimination claim.

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- In a wage-hour class action suit brought against a national health care provider, Mr. Tyra was successful in getting the class action dismissed and negotiating an a nominal settlement of the individual plaintiff's claim.
- Defended a large media company in a suit alleging fraud and breach of employment contract. Obtained unanimous defense verdict after a 3 week trial.

## Professional Activities & Affiliations

Mr. Tyra frequently speaks on employment and human resources topics such as wage and hour issues, employee leave matters and pending employment and labor-related legislation. He has presented before local civic groups and several human resources continuing education providers including the Council on Education in Management, Lorman Education Services, Sterling Global Human Resources Consulting, and the National Business Institute. Mr. Tyra has spoken at the annual conferences of the California Public Employers Labor Relations Association, the Association of California Water Agencies, and the California State Bar, Labor and Employment Section.

He is well-practiced in moderating conferences and forums and has coordinated and presented numerous in-house law firm seminars and briefings on employment and labor-related matters. His experience includes moderating more than 30 multi-day conferences and forums for different groups including the South Placer and Foothill Employer Advisory Councils. He has also written and published several articles on employment-related matters such as constructive termination, employee leaves and employment arbitration agreements.

Mr. Tyra's professional activities and affiliations include:

- *Northern California Super Lawyer* (2010-2015)
- *Top 25 Sacramento Super Lawyer* (2013, 2014)
- Voted "Best of the Bar," *Sacramento Business Journal* (2013)
- Chair of Legislative Committee, South Placer Employer Advisory Council
- Chair of Legislative Committee, Foothill Employer Advisory Council
- Co-Author, "Religious Practices In The Workplace - Legal or Not?" *Sacramento Lawyer* (Sept/Oct 2006)
- Author, "Judicial Hostility," *San Francisco Daily Journal* (2001)
- Member, California State Bar Association, Labor and Employment Section
- Member, Sacramento County Bar Association, Labor and Employment Section
- Member, American Bar Association

## Admitted to Practice

- All California State Courts
- United States District Court, Eastern, Northern, Central and Southern Districts of California
- United States Court of Appeals, Third and Ninth Circuits
- United States Supreme Court



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Bakersfield  
Roseville  
San Luis Obispo

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## **Academic Background**

B.A. University of California, Santa Barbara, 1981  
— *Graduated with High Honors*

J.D. University of the Pacific, McGeorge School of Law, 1984  
— *Member, Order of the Coif*





**Kristianne T. Seargeant**  
Shareholder

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## Kristianne T. Seargeant

Ms. Seargeant is a shareholder who practices in the firm's labor and employment and litigation practice groups. She represents both public and private sector clients with such matters as employment litigation, collective bargaining, arbitrations and administrative agency appeals. She also performs workplace investigations and provides in-house training and general advice and counsel.

### Legal Experience

Ms. Seargeant provides her legal services to a diverse mix of private sector employers, local and state agencies and school districts. Her areas of emphasis include:

- Advice and counsel on personnel issues, employee handbooks and policies, wage and hour matters, bargaining and disciplinary actions
- Compliance with state and federal employment laws:
  - Fair Labor and Standards Act (FLSA)
  - Family Medical Leave Act (FMLA)
  - California Family Rights Act (CFRA)
  - Pregnancy Disability Leave (PDL)
  - Americans with Disabilities Act (ADA)
  - Fair Employment and Housing Act (FEHA)
- Advice and counsel on Cal-OSHA enforcement and unemployment insurance matters
- Drafting employment agreements, memoranda of understanding, employer-employee relations policies and other contracts
- Investigating and responding to Equal Employment and Opportunity Commission (EEOC) and Department of Fair Employment and Housing (DFEH) complaints
- Negotiations with labor unions

Ms. Seargeant also has a successful litigation practice defending public and private sector clients in labor and employment related lawsuits in both federal and state courts and in administrative hearings. Her specific experience includes:

- Wage and hour violations
- Wrongful terminations
- Discrimination claims, including age, gender and disability
- Harassment claims, including sexual harassment, hostile work environment and retaliation claims
- Defending local entities in grievance arbitrations
- Responding to unfair labor practice charges

### Prior Work Experience

Prior to and while attending law school, Ms. Seargeant worked for the Sacramento Fire Department, where she climbed the ranks from Firefighter to Fire Captain to Battalion Chief. Over the course of her 12-year career with the Sacramento Fire Department, Ms. Seargeant was a 2-term Regional Fire Academy Drill Instructor, In-Service Training Officer, and a decorated member of FEMA's Urban Search and Rescue Team and the California Office of Emergency Services' Water Rescue Team.

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## Practice Examples

- Ms. Seargeant assisted in obtaining a defense judgment for the State of California, California Department of Corrections and Rehabilitation, California Department of State Hospitals, and California Department of Human Resources in a wage and hour class action brought by a class consisting of approximately 40,000 current and former unionized correctional officers and supervisors. The plaintiff class alleged they were not being paid for compensable time spent waiting in security lines and walking to and from their posts in California's correctional institutions. Ms. Seargeant assisted lead trial counsel, David W. Tyra since the beginning of the case more than 6 years ago. Ms. Seargeant was an integral team member, overseeing all aspects of discovery before trial and seated as second chair during the trial. The trial team convinced the San Francisco Superior Court that the "walk time" at issue was not compensable under the terms of several Memoranda of Understanding negotiated between the state and the union representing the correctional employees, saving the State potentially hundreds of millions of dollars.
- Ms. Seargeant assisted David W. Tyra, lead counsel for Governor Arnold Schwarzenegger and the State of California, in 38 cases filed by public employee unions challenging Governor Schwarzenegger's executive orders furloughing California state employees, which ultimately culminated in a California Supreme Court decision that validated the furloughs of state employees based on the Legislature's ratification of Governor Schwarzenegger's furlough plan (*Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989).
- Ms. Seargeant and David W. Tyra successfully defended the State of California in a meal period lawsuit that sought damages in the millions of dollars (*California Correctional Peace Officers Association v. State of California* (2010) 188 Cal. App.4th 646).
- Ms. Seargeant and David W. Tyra successfully defended the State of California in a suit brought by prison guards upholding the State's right to implement alternative work schedules under the Fair Labor Standards Act without incurring overtime liability (*California Correctional Peace Officers Association v. State of California* (2010) 189 Cal.App.4th 849).
- Ms. Seargeant and Bruce A. Scheidt successfully appealed a 750K punitive damages award stemming from a wrongful termination suit (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702).
- Ms. Seargeant has performed numerous independent investigations of harassment and discrimination complaints, providing timely and thorough analysis and conclusions, to the benefit of the employer and employee.

## Representative Decisions

- *Brown v. Superior Court*, 132 Cal.Rptr.3d 448 (Cal.App. 1 Dist. October 03, 2011)
- *Brown v. Chiang*, 132 Cal.Rptr.3d 48 (Cal.App. 3 Dist. August 30, 2011)
- *Service Employees Intern. Union, Local 1000 v. Brown*, 128 Cal.Rptr.3d 711 (Cal. App. 1 Dist. July 08, 2011)
- *Union of American Physicians and Dentists v. Brown*, 124 Cal.Rptr.3d 704 (Cal. App. 1 Dist. May 16, 2011)

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- California Attorneys v. Brown, 125 Cal.Rptr.3d 463 (Cal.App. 1 Dist. May 05, 2011)
- California Correctional Peace Officers' Ass'n v. State, 117 Cal.Rptr.3d 109 (Cal. App. 1 Dist. October 29, 2010)
- Professional Engineers in Cal. Government v. Schwarzenegger, 116 Cal.Rptr.3d 480 (Cal. October 04, 2010)
- California Correctional Peace Officers' Ass'n v. State, 115 Cal.Rptr.3d 361 (Cal. App. 1 Dist. August 18, 2010)
- Service Employees Intern. Union, Local 1000 v. Schwarzenegger, 112 Cal.Rptr.3d 52 (Cal.App. 1 Dist. June 11, 2010)
- California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Schwarzenegger, 106 Cal.Rptr.3d 702 (Cal.App. 1 Dist. March 19, 2010)
- Scott v. Phoenix Schools, Inc., 96 Cal.Rptr.3d 159 (Cal.App. 3 Dist. June 30, 2009)

## Professional Activities & Affiliations

Ms. Seargeant's professional activities and affiliations include:

- *Northern California Super Lawyer* (2013, 2014, 2015)
- *Northern California Rising Star* (2009, 2010, 2011, 2012)
- Member, Executive Committee, State Bar of California, Labor and Employment Law Section
- Member, Education Committee, California Special Districts Association
- Member, Sacramento County Bar Association, Labor and Employment Law Section (Past Chair, Executive Committee, 2010/2011; Vice-Chair 2009/2010; Secretary 2008/2009)
- Member, Labor & Employment Policy Committee, CalChamber
- Adjunct Professor, Employment Law Practicum, University of the Pacific, McGeorge School of Law
- Member, American Bar Association
- Member, California State Bar Association
- Vice President, River City Rowing Club (2009-2010)

## Admitted to Practice

- All California State Courts
- United States District Court, Eastern and Northern Districts of California

## Academic Background

B.A. University of California, Davis, 1994

J.D. University of the Pacific, McGeorge School of Law, 2006

- *Dean's List, 2004-2005*
- *Earned Specialized Certificate Degree in Advocacy (completing coursework in negotiations, mediation and litigation)*
- *Received State Bar of California Public Service Award, 2004*
- *Externship - Board Agent, Public Employment Relations Board (PERB)*

**ADMINISTRATIVE POLICY & PROCEDURE #A-9**

**ATTACHMENT A**

**LIABILITY  
Approved Law Firms**

Name of Law Firm	Attorneys	Areas of Expertise
Angelo, Kilday & Kilduff 601 University Avenue, Suite 150 Sacramento, CA 95825 (916) 564-6100	Bruce A. Kilday Carolee Kilduff Larry Angelo Serena Sanders Carrie Frederickson Corri Sarno Alex Hughes	Police Liability, General Liability, Auto, Personnel, Heavy Trial Experience
Ayers & Associates 930 Executive Way Suite 200 Redding, CA 96002 (530) 229-1340	William Ayers	Dangerous Condition, Auto, General Liability, Environmental Liability
Bertrand, Fox, Elliott et al 2749 Hyde Street San Francisco, CA 94109 (415) 353-0999	Eugene Elliott	
Caulfield Law Firm, 1101 Investment Blvd Ste 120 El Dorado Hills, CA 95762 (916) 933-3200	Rich Caulfield Andrew Caulfield	Same as above, with Construction Defect, Heavy to Medium Trial Experience
Donahue Davies LLP 1 Natoma Street Folsom, CA 95630 (916) 817-2900	Robert E Davies Brian Hayden	
Gregory P. Einhorn 48 Hanover Lane, Suite 2 Chico, CA 95973 (530) 898-0228	Gregory P. Einhorn  Use for Willows as needed	Employment Law, General Liability, Municipal
Dennis Halsey, Esq. Attorney at Law 9 Highland Circle Chico, CA 95926 (530) 345-1976 Fax: (530) 894-7783	Dennis Halsey	Dangerous Condition, Police Liability, Auto, General Liability, Medium Train Experience

## **ADMINISTRATIVE POLICY & PROCEDURE #A-9**

<b>Name of Law Firm</b>	<b>Attorneys</b>	<b>Areas of Expertise</b>
Kronick, Moskowitz Tiedemann & Girard 400 Capitol Mall, 27 <sup>th</sup> Floor Sacramento, CA 95814	Ronald Scholar  Bruce A. Scheidt *	Civil Rights, California Fair Employment and Housing, Tort Claims, California Public Records
Peters, Rush, Habib & McKenna P.O. Box 3509 Chico, CA 95927 (530) 342-3593	Dave Rush Mark Habib Jim McKenna	Dangerous Condition, Police Liability, General Liability, Auto, Good Trial Experience
Porter Scott P.O. Box 255428 Sacramento, CA 95865 (916) 929-1481 Fax: (916) 927-3706	Nancy Sheehan John Whitefleet Kevin Kreutz Terry Cassidy Carl L. Fessenden Steve Horan Russell Porter	Police, Civil Rights, Dangerous Condition, Inverse Condemnation, Auto, General Liability, Heavy to Light Trial Experience
Matheny Sears Linkert & Jaime, LLP 3638 American River Drive Sacramento, CA 95864 (916) 978-3434 Fax: (916) 978-3430	Matthew Jaime Douglas Sears Richard Linkert Michael Bishop	
Justin N. Tierney 1006 Fourth Street, Suite 212 Sacramento, CA 95814	Justin N. Tierney	Dangerous Condition, Auto, Medium Trial Experience
The Law Office of James A. Wyatt 2130 Eureka Way Redding, CA 96001 (530) 244-6060 P.O. Box 992338 Redding, CA 96099-2338	James A. Wyatt	Dangerous Condition, Civil Rights, Police, Wrongful Termination, Auto Liability, Labor Law, Heavy Trial Experience
Murphy, Campbell, Alliston & Quinn, PLC. 8801 Folsom Boulevard, Suite 230 Sacramento, CA 95826 (916) 400-2300	Stephanie L. Quinn	Auto, Wrongful Deaths, Slip and falls, Fire and Trespassing Experience
Cota Cole LLP 2261 Lava Ridge Court Roseville, CA 95661 916-780-9009	Dennis Cota Derek Cole Daniel King	Land Use, civil rights, environmental issues.
Allen, Glaessner, Hazelwood, Werth 180 Montgomery Street, Ste. 1200 San Francisco, CA 94104 415-697-2000	Dale Allen Mark Hazelwood Steve Werth	Police liability, ADA, sidewalk, employment practices, general municipal liability



## **ADMINISTRATIVE POLICY & PROCEDURE #A-9**

<b>Name of Law Firm</b>	<b>Attorneys</b>	<b>Areas of Expertise</b>
Arthofer & Tonkin Law Offices 1314 Oregon Street Redding, CA 96001 (530) 722-9002	Kenneth Arthofer Griffith Tonkin	Public entity, injury, real estate,
Randall Harr 44282 Highway 299 East McArthur, CA 96056 (530) 336-5656 <a href="mailto:rlh@randallharrlaw.com">rlh@randallharrlaw.com</a>	Randall Harr	
Law Office of Douglas Thorn 7601 Watson Way Citrus Heights, CA 95610 (916) 735-9910 drthorn@surewest.net	Douglas Thorn	EPL – Paradise Only

*\* Bruce A. Scheidt will be used only as respects the Eaton vs. Rocklin litigation.*

**Revised July 27, 2015**



**Agenda Item K.**

**APPROVAL OF NCCSIF DEFENSE ATTORNEY LIST  
FOR WORKERS' COMPENSATION**

**ACTION ITEM**

**ISSUE:** York Risk Services is recommending the addition of Kurt M. Petersen from D'Andre, Peterson Bobus & Rosenberg to the NCCSIF Defense Attorney Approved List for Workers' Compensation.

**RECOMMENDATION:** Approve as requested and recommend to the Executive Committee.

**FISCAL IMPACT:** None.

**BACKGROUND:** The Claims Committee regularly reviews and recommends changes to the Approved List of attorneys based on feedback from members and the claims administrator.

**ATTACHMENT(S):**

1. Kurt M. Petersen - D'Andre, Peterson Bobus & Rosenberg Curriculum Vitae
2. Policy and Procedure A-9: Attachment A Defense Attorney List for Workers' Compensation



MARK R. PETERSON · JEFFREY E. D'ANDRE · STEVEN G. BOBUS · JOHN S. ROSENBERG · BERNARD J. FINNEGAN  
GERALD A. FOSTER · KURT M. PETERSEN · MARK L. RIGGENBACH · ANDREA J. SMITH · EMMANUEL S. BAGNAS JR.  
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ANTHONY NGUYEN · JONATHAN T. TAYLOR · RORY W. HODGSON · CONNIE L. JONES

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## FIRM INTRODUCTION

Founded in 1970 as the Law Offices of Joseph J. D'Andre, the partnership of D'Andre, Peterson, Bobus & Rosenberg provides a full range of litigation services to clients throughout Northern and Southern California, from offices located in Oakland, San Jose, Sacramento, Los Angeles and Irvine. The partnership specializes in the defense of employers and insurance companies in workers' compensation cases. In addition to handling all aspects of workers' compensation defense and related matters, the firm offers services in subrogation, discrimination, public agency retirement law, workers' compensation fraud and compliance with the Americans With Disabilities Act.

The attorneys with D'Andre, Peterson, Bobus & Rosenberg have more than forty years of successful litigation in workers' compensation issues and are sensitive to the differing needs of self-insured and privately insured companies. Our philosophy is to vigorously represent the interests of our client with emphasis on an expedient, cost-effective resolution and file closures. We believe this is best achieved through interactive dialogue with both the insurer and employer. Recognizing that each case is unique, we work with our client to assess whether a quick resolution or an aggressive defense through trial and post-trial proceedings are appropriate.

Please contact us if we may provide you with further information about our firm and we also welcome you to our website at [www.dandrelaw.com](http://www.dandrelaw.com). We look forward to working with you.

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ANTHONY NGUYEN · JONATHAN T. TAYLOR · RORY W. HODGSON · CONNIE L. JONES

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### **FIRM CASE-HANDLING PRINCIPLES**

At D'Andre, Peterson, Bobus & Rosenberg, we believe that our clients are best served with an environment of expediency, close cooperation and ongoing communication in our relationship with the claims examiner throughout the litigation process. To achieve this, our attorneys adhere to the following principles of conduct:

- Opening File Review and Detailed Analysis are completed within fifteen days of receipt from the client.
- The completed Opening File Review and Detailed Analysis will incorporate a litigation plan that includes the expected discovery necessary to litigate. Revisions of this litigation plan will take place during the discovery process, usually following depositions and medical/legal evaluations.
- All hearing and deposition reports are completed within three days of appearance.
- All client phone calls are returned on the same day when possible, but no later than 24 hours after receipt of the call.
- Contact is made with claims examiner as far as possible before hearings regarding settlement strategies and authority.
- An active diary system is maintained to ensure progress of the client's file.
- Transfer of files between attorneys is kept to an absolute minimum and only with prior examiner approval.

Unless otherwise instructed, we expect that the claims examiner will perform the following:

- Subpoena records.
- Set up medical evaluations and send out appropriate notices.
- Make assignments to investigator following discussions with attorney regarding merits for same.

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## **D'ANDRE, PETERSON, BOBUS & ROSENBERG, LLP**

### **FEE SCHEDULE**

**EFFECTIVE JANUARY 1, 2013**

SENIOR PARTNERS/WORKERS' COMPENSATION.....	\$175.00
ASSOCIATES/WORKERS' COMPENSATION .....	\$160.00
ALL SUBROGATION, 132a, S & W .....	\$225.00
PROFESSIONAL CONSULTATION .....	\$250.00
PARALEGALS.....	\$95.00

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A LIMITED LIABILITY PARTNERSHIP

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## CLIENTELE

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AETNA CASUALTY & SURETY COMPANY (Walnut Creek/Sacramento)  
ALEXIS RISK MANAGEMENT SERVICES (San Francisco/Burbank)  
AM TRUST NORTH AMERICA  
APPLIED RISK MANAGEMENT (ARM) (San Francisco/Oakland)  
ASSOCIATION OF BAY AREA GOVERNMENTS  
ATHENS ADMINISTRATORS  
ATLANTIC MUTUAL INSURANCE COMPANY  
AT & T  
B.A.R.T.  
BROADSPIRE  
CALIFORNIA INDEMNITY INSURANCE COMPANY  
CALIFORNIA LIVERY  
CALIFORNIA STATE AUTOMOBILE ASSOCIATION  
CANNON COCHRAN MANAGEMENT  
C.H.A.I.S.  
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COMMERCIAL UNION INSURANCE COMPANY  
COMPETENT ADJUSTING  
CONSTITUTION STATES INSURANCE COMPANY  
CONTRA COSTA COUNTY RISK MANAGEMENT  
CONTRA COSTA COUNTY SCHOOLS INSURANCE GROUP  
CORVEL CORPORATION  
COUNTY OF ALAMEDA  
COUNTY OF LAKE  
COUNTY OF MENDOCINO  
COUNTY OF NAPA  
COUNTY OF SAN MATEO  
CRAWFORD & COMPANY  
CRUM & FORSTER  
DILLINGHAM CONSTRUCTION  
EMPLOYERS COMPENSATION INSURANCE COMPANY  
ESIS  
FARMERS INSURANCE COMPANY  
FEDERAL EXPRESS  
FIREMAN'S FUND INSURANCE COMPANIES  
FIRM SOLUTIONS, INC. (Walnut Creek/Orange/Oakland)  
FIRSTCOMP INSURANCE AGENCY  
FREMONT COMPENSATION INSURANCE COMPANY  
GAB BUSINESS SERVICES, INC.  
GATES McDONALD  
GALLAGHER BASSETT COMPANY  
GREAT AMERICAN INSURANCE COMPANIES (Fremont/Orange)  
GTA-ASSOCIATED CLAIMS MANAGEMENT (Pleasanton)  
HAYWARD UNIFIED SCHOOL DISTRICT  
HERTZ CLAIM MANAGEMENT (Pasadena/San Francisco)  
ICW GROUP  
INNOVATIVE CLAIM SOLUTIONS  
INTERCARE  
JT2 INTEGRATED RESOURCES  
KAISER FOUNDATION HOSPITAL  
KEENAN & ASSOCIATES (Campbell, Redwood City)  
KEMPER RISK MANAGEMENT SERVICES (WCK/San Francisco/Fair Oaks/Denver)

LIBERTY MUTUAL GROUP  
LUCKY STORES, INC.  
LWP CLAIMS ADMINISTRATORS  
MAJESTIC INSURANCE  
MATRIX ABSENCE MANAGEMENT, INC.  
MENDOCINO SCHOOLS  
MIDWEST INSURANCE  
MONTGOMERY WARDS  
NEW UNITED MOTOR MANUFACTURING, INC. (NUMMI)  
NOB HILL FOODS  
NOETICS GROUP  
NORTHERN CLAIMS MANAGEMENT  
OAKLAND ATHLETICS  
OAKLAND UNIFIED SCHOOL DISTRICT  
OWENS-ILLINOIS, INC.  
PACIFIC STATES CASUALTY  
PEGASUS RISK MANAGEMENT  
PERMANENTE MEDICAL GROUP  
PORT OF OAKLAND  
PREFERRED WORKS, INC.  
PRESIDIUM INC.  
PROFESSIONAL RISK MANAGEMENT INC.  
RALEY'S SUPERMARKET  
REPUBLIC INDEMNITY COMPANY OF AMERICA  
RISK ADMINISTRATORS, INC.  
RISK ENTERPRISE MANAGEMENT, INC.  
SAFEWAY STORES, INC.  
SAN FRANCISCO GIANTS  
SAN MATEO COUNTY SCHOOL DISTRICT  
SAN LUIS OBISPO UNIFIED SCHOOL DISTRICT  
SCHOOLS INSURANCE AUTHORITY  
SCOTT WETZEL SERVICES, INC.  
SEDGWICK  
STATE FARM INSURANCE COMPANY  
ST. PAUL FIRE & MARINE INSURANCE COMPANY  
SUMMIT MEDICAL CENTER  
SUPERIOR NATIONAL INSURANCE COMPANY  
SUTTER HEALTH  
THE MAY COMPANY  
THE MEN'S WEARHOUSE  
THE TRAVELERS COMPANIES  
THE VONS COMPANIES, INC.  
TOWER GROUP  
TRANSAMERICA INSURANCE COMPANY  
TRISTAR RISK MANAGEMENT  
TRI-VALLEY GROWERS  
ULICO  
UNICARE INSURANCE COMPANY  
UNISYS, INC.  
UNITED AIRLINES, INC.  
UNITED STATES FIDELITY & GUARANTY COMPANY (San Jose/Fullerton/Sacramento)  
UNIVERSITY OF CALIFORNIA  
U.S. RENTALS, INC.  
WAUSAU INSURANCE COMPANY  
WELLS FARGO  
WILLIS CORROON (San Jose/Stockton)  
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## Kurt M. Petersen

Attorney

### PROFESSIONAL ASSOCIATIONS

- State Bar of California
- U.S. Federal Court Eastern District
- Sacramento County Bar Association

### ADMISSIONS

State Bar of California – 2000

### EDUCATION

Lincoln Law School of Sacramento, CA, J.D., 1999

California State University of Sacramento, B.A., 1995

Mr. Petersen began his career in the insurance/legal industry as a claims adjuster in 1995. Prior to becoming an attorney, Mr. Petersen was employed by the Sacramento County District Attorney's Office where he conducted misdemeanor prosecution. He was also employed with the Sacramento County Unified School District where he was a substitute and a long-term college preparation teacher.

Since passing the bar in 1999, Mr. Petersen started his career as a civil defense litigation which soon led into workers' compensation defense. Throughout the years, Mr. Petersen has not only become an expert in the field of workers' compensation, but also subrogation issues as well. Since 2003, Mr. Petersen's practice has solely consisted of workers' compensation defense litigation.

Mr. Petersen is a skilled litigator who brings his knowledge of California State Law to bear in order to represent his clients' interests fully. He has obtained many successful outcomes throughout his career.

Since 2009 Mr. Petersen has acted as the managing attorney of the Sacramento branch of the D'Andre firm and has been a Partner with the firm since 2010.

### Professional Activities:

Mr. Petersen is an experienced lecturer and has given speeches at a variety of seminars in regard to the California Labor Code and the California Code of Regulations. He has been providing clients with Continuing Education certification, while educating clients on the changes to California's workers' compensation law.

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**ADMINISTRATIVE POLICY & PROCEDURE #A-9**

**ATTACHMENT B**

**WORKERS' COMPENSATION  
Approved Law Firms**

<b>Name of Law Firm</b>	<b>Attorneys</b>
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## **PRESENTATION OF WC CLAIMS AUDIT**

### **ACTION ITEM**

**ISSUE:** A Workers' Compensation Claims Audit was conducted by Farley Consulting Services, LLC, in April 2015, with the attached report issued in May 2015. The results meet or exceed the standards for most of the categories, including the critical areas of staffing, reserving, payment accuracy, medical management, and litigation management.

Two areas were cited for improvement: initial employee contact and diary follow up. The diary issue was mainly confined to mid-2012 to late 2013, and, with the possible exception of a subrogation recovery, did not create observable delays in claims management. The initial employee contact continues to be an issue that is likely a combination of need for better documentation and time management upon receiving a first report.

**RECOMMENDATION:** Review, accept and file.

**FISCAL IMPACT:** None, but will increase budget for future years. Budgeted \$7,350 cost of \$10,500.

**BACKGROUND:** Every even year NCCSIF conducts an audit of member Workers' Compensation claims to ensure they are being managed according to NCCSIF and CSAC-EIA standards and best practices. This year the audit was delayed until early 2015 since CSAC-EIA conducted their bi-annual audit in October 2014. Farley Consulting was selected based on their response to a Request For Proposals. The last three audits were conducted by North Bay Associates through CSAC-EIA.

**ATTACHMENT(S):** Draft NCCSIF Workers' Compensation Claims Audit Report as of May 2015



May 5, 2015

Mr. Marcus Beverly  
Northern California Cities Self-Insurance Fund  
c/o Alliant Insurance Services  
1792 Tribute Road, Suite 450  
Sacramento, CA 95815

*by e-mail: mbeverly@alliant.com*

**Northern California Cities Self-Insurance Fund (NCCSIF)  
Workers' Compensation Claims Audit – 2015**

Dear Mr. Beverly:

Enclosed is the draft report of the recent audit of workers' compensation claims for the Northern California Cities Self-Insurance Fund (NCCSIF). Please review this document and contact me to discuss any changes NCCSIF or you feel are necessary prior to submission of the final report.

Thank you for allowing FCS to assist NCCSIF with this important project.

Sincerely,

A handwritten signature in black ink that reads "Tim Farley". The signature is fluid and cursive.

Timothy P. Farley, CPCU  
President

Encl.

# **Workers' Compensation Claims Audit 2015**

for

## **Northern California Cities Self-Insurance Fund (NCCSIF)**



**May 5, 2015**



**F A R L E Y  
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[farleyconsulting@cox.net](mailto:farleyconsulting@cox.net)

**An Independent Claims Management  
Consulting Firm**



May 5, 2015

Alliant Insurance Services  
1792 Tribute Road, Suite 450  
Sacramento, CA 95815

Attn: Mr. Marcus Beverly  
by email: [mbeverly@alliant.com](mailto:mbeverly@alliant.com)

## **Northern California Cities Self-Insurance Fund (NCCSIF) Workers' Compensation Claims Audit – 2015**

This report summarizes the results of an audit of workers' compensation claims for the Northern California Cities Self-Insurance Fund (NCCSIF). Farley Consulting Services (FCS) reviewed 125 claims via access to the claims management information system of York Risk Services Group (York) in Roseville, California. The audit sample breakdown is:

- 90 open indemnity claims
- 10 closed indemnity claims
- 25 medical only claims

The review was conducted April 8 through April 23, 2015. FCS's primary contact at York throughout the audit process was Mr. Ben Burg. An exit discussion of audit findings was conducted via teleconference with Mr. Burg, Ms. Dorianne Zumwalt, and Mr. Jeff Ponta of York on April 24, 2015.

York provided written responses to the exit meeting on April 24 and April 27. York's comments were considered when preparing this report.

FCS appreciates the opportunity to complete this important project for NCCSIF.

Respectfully submitted,

**FARLEY CONSULTING SERVICES**

by \_\_\_\_\_  
Timothy P. Farley, CPCU  
President

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## Appendix

File Audit Lists

## I. Executive Summary

FCS's review of 125 workers' compensation claims for NCCSIF finds that York is providing competent claims administration services. Notable deficiencies are identified in the areas of diary maintenance and timely initial contact of the employee, but York's overall performance meets or exceeds industry standards for the administration of municipal pooling entities.

FCS makes the following observations and recommendations based on the review:

1. York is adequately staffed to handle NCCSIF claims. Five indemnity examiners and two medical only/future medical only examiners are assigned to the NCCSIF account. Caseloads for all but one of the York personnel are below the recommended maximum. Exhibit 1 on page 4 displays the organizational structure of York staff assigned to the NCCSIF account.
2. Case reserves are accurate. Two claims require reserve adjustment. Those claims are discussed in Exhibit 2 on page 6.
3. The audit identified no inaccurately calculated disability benefit rates. No payment accuracy deficiencies are identified.  
Many member employees qualify for *Labor Code 4850* benefits. Those benefits are consistently calculated accurately and were disbursed timely.
4. Investigation is thorough on all the claims reviewed, but the initial contact of the employee was absent or late on seven of the claims reviewed. Those claims are listed on page 7.
5. Fourteen claims reviewed involve subrogation pursuit. York is aggressively pursuing the responsible party on all but two of these claims. The deficient claims are discussed on page 7.
6. Cost containment is effective. Medical bill review efforts by WellComp resulted in a net savings of 65.5% of the original amount billed for the one-year period 4/1/14-3/31/15. Other similar entities experience average net savings of 62%. A breakdown of these figures is charted on page 8.
7. Medical management is effective. York retains nurse case manager vendors and utilization review (UR) vendors only when these mitigating activities cannot be provided by the York examiner. The audit confirms that these key components of medical management are competently performed.
8. Thirty-six (36%) of the 100 indemnity claims reviewed involve some element of litigation. Litigation management is effective. Status updates from defense counsel are timely. Referrals to defense counsel are also timely. One claim, discussed on page 9, exhibits deficiencies.

9. York is not consistently maintaining timely diary. Six of the claims reviewed exhibit excessive gaps in daily claims administration activity. Those claims are listed and discussed in Exhibit 3 on page 10.
10. All material reviewed for this audit was obtained via access to York's Claims Connect information system. That system is accurately recording daily claim administration information, including financial data, daily examiner activity notes, medical documentation, and legal correspondence on all but four claims. Those claims are discussed in Exhibit 4 on page 11.
11. Supervisory activity is consistently documented to the information system. No claim administration supervision deficiencies are identified.
12. Seventeen of the claims reviewed qualify for reporting to excess insurers. All of these qualifying claims were reported to the excess provider timely. No deficiencies are identified.

These and other elements of the study are discussed in more detail in the remainder of this report.

## **II. Audit Results**

### **A. Background**

NCCSIF seeks a comprehensive audit of its workers' compensation claims currently administered by York to ensure effective claims administration and adherence to California workers' compensation statutory guidelines.

FCS reviewed 125 claims remotely via access to the York Claims Connect information system.

York provided a list of all open and closed claims in Excel format. FCS chose the audit sample from that list.

An exit discussion of audit findings was conducted with York staff on 4/24/15. York issued written responses to those findings on 4/24/15 and 4/27/15. Those responses were considered when preparing this report.

### **B. Claims Handling Analysis**

This section of the report discusses specific elements of workers' compensation claims handling. Recommendations for improvement are incorporated into the discussion of each element.

#### **1. Staffing/Caseloads**

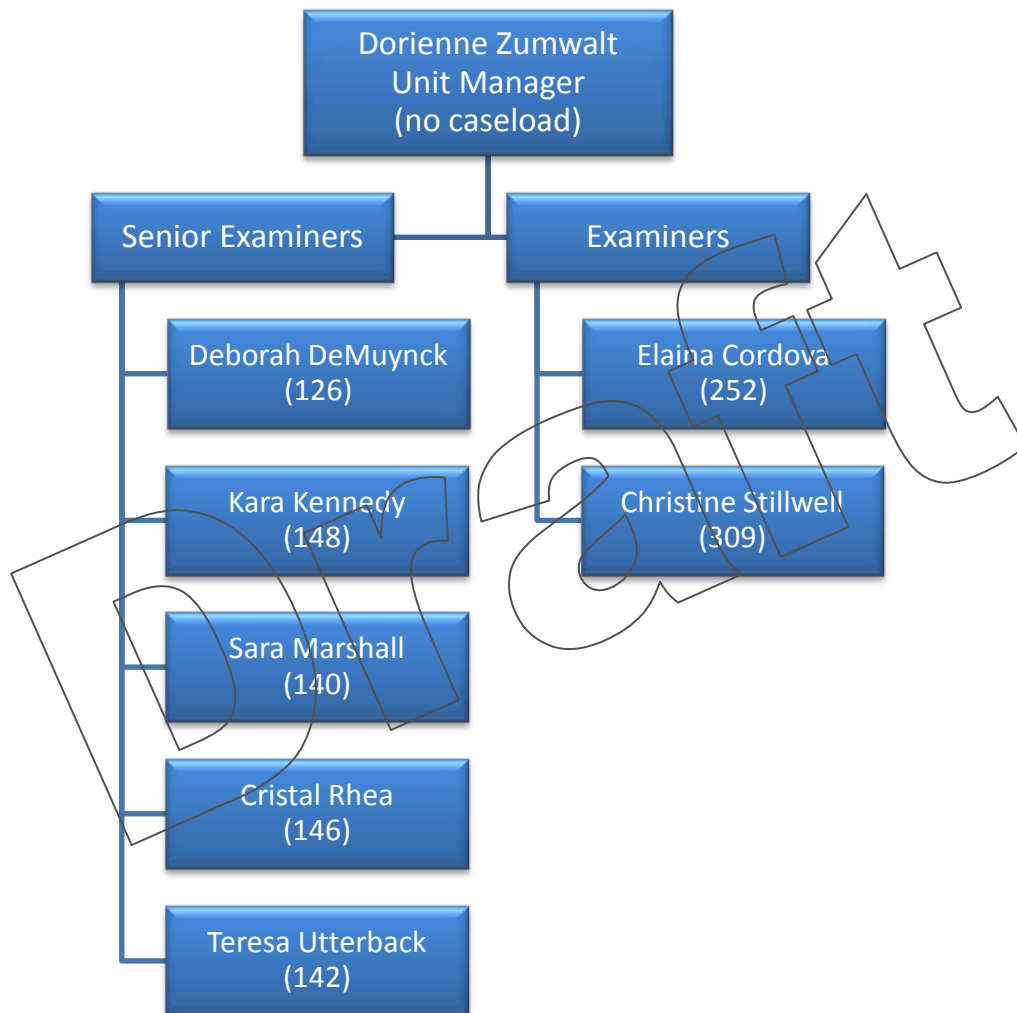
York is adequately staffed to administer NCCSIF claims. Exhibit 1 displays the current organizational structure of York claims handling staff assigned to the NCCSIF account.

Total open caseloads are listed below the name.

Exhibit 1 reflects that all but one of the examiners have caseloads below the recommended maximum of 175 for indemnity and 300 for future medical/medical only. Ms. Christine Stillwell's future medical/medical only caseload of 309 slightly exceeds the recommended maximum.



## Exhibit 1 – Claims Handling Personnel/Caseloads Analysis, York



## 2. Accuracy of Case Reserves

NCCSIF claim reserves should anticipate the ultimate probable cost and should be based on:

- Information contained in Form 5020 (Employer's Report of Occupational Injury or Illness)
- Information contained in Form 5021 (Physician's First Report of Injury or Illness)
- Anticipated temporary disability (TD) benefits
- Anticipated medical costs
- Employee's wage information
- Anticipated vocational rehabilitation (VR)/Supplemental Job Displacement Benefits (SJDB)
- Anticipated permanent disability (PD) benefits
- Consideration of *Labor Code* 4850 benefits
- Life expectancy and average annual medical costs for future medical claims

York is considering these and other factors and is accurately establishing reserves on most claims. Two claims requiring adjustment are discussed in Exhibit 2.

## 3. Payments/Benefit Calculation Accuracy

The audit evaluated the following key elements of claim payments activity:

- The accuracy of York's calculation of permanent disability and temporary disability rates.
- The timeliness of the distribution of temporary disability and permanent disability payments.
- Confirmation that payments and settlements did not exceed the individual examiner's or York's settlement authority levels.
- The identification and timely payment of penalties.
- The identification and accurate application of vocational rehabilitation voucher/payment benefits.

York is accurately calculating temporary disability and permanent disability benefit rates on all claims reviewed. No payment calculation or distribution deficiencies are identified.

## Exhibit 2 – Reserve Analysis, NCCSIF

Claim No.	Current Outstanding Reserve	Recommended Outstanding Reserve*	Comments
NCWA-556487 Elk Grove	\$70,470 (permanent disability)	\$40,000 (permanent disability)	The employee, a police officer, sustained back and leg injuries. The most recent claims management review (CMR) indicates that 21% permanent disability is anticipated. That anticipated amount is reasonable. The current reserve seems excessive given the anticipated rating.
NCWA-356527 Elk Grove	\$0 (indemnity) \$2,402 (medical)	\$5,000 (indemnity) \$5,000 (medical)	The employee is represented by counsel, and an application for adjudication of claim has been presented.

\* Reserve recommendations are based on the review of files for similar municipal pooling entities in California.

#### 4. Quality of Investigation

Proper investigation for NCCSIF workers' compensation claims includes:

- Making prompt contact with the injured employee, the treating physician, and the employee's direct supervisor (3-point contact).
- Verifying the injury is work related.
- Securing injury history (indexing) to determine potential for apportionment.
- Canvassing for possible witnesses to the industrial accident.
- Obtaining recorded or written statements regarding the incident from injured employees or witnesses when possible.
- Follow-up contact with medical providers to gain a clear understanding of the severity of the injury and the anticipated duration of disability.
- Obtaining accurate, wage information from the employer.
- Obtaining police accident reports when the industrial injury is the result of a traffic accident.
- Obtaining updated wage information to accurately calculate benefits.
- Identifying claims with rehabilitation potential and effectively monitoring rehabilitation progress.

York is conducting thorough investigation on NCCSIF claims, but the initial contact of the employee is late or absent on seven claims. Those claims are:

- NCWA-556357
- NCWA-556434
- NCWA-556477
- NCWA-556138
- NCWA-556429
- NCWA-556543
- NCWA-556323

#### 5. Subrogation

Fourteen of the claims reviewed involve situations where the NCCSIF member may recover funds expended for benefits from another responsible party. Two of these claims lack aggressive pursuit of the responsible party. Those claims are:

- NCWA-556398; This City of Folsom employee was injured in a motor vehicle accident. The responsible party was identified in October 2014. No attempt to notify the responsible party is evident until 4/14/15.
- NCWA-556295; This City of Oroville employee, a police officer, was involved in a motor vehicle accident. Subrogation counsel was retained for assistance. Claim documentation reveals no status reports from counsel on subrogation activities.

## 6. Cost Containment

Thorough scrutiny of all medical bills to identify charges not in compliance with California's fee schedule and charges or treatments that are not work related is a vital element of a fiscally responsible workers' compensation program. A complacent cost containment policy can result in thousands of dollars in unnecessary payments on a single claim. Multiplied by a substantial claim volume, this faulty policy can change a cost-effective program into a matter of great fiscal concern.

Bill review activity is performed by WellComp, a York affiliate. The table below documents the results of WellComp's fee schedule compliance efforts. NCCSIF's annual 65.5% net savings is comparable to the 62% net savings experienced by similar entities.

### NCCSIF Fee Schedule Savings – WellComp 4/1/14-3/31/15

A	Number of bills processed	8,450
B	Original amount billed	\$6,429,942
C	Amount paid	\$2,127,944
D	Gross savings (B) – (C)	\$4,301,998
E	Cost saving fees	\$93,318
F	Net savings (D) – (E)	\$4,208,680 or 65.5% of original amount billed (B)

## 7. Return-to-Work Policy

Any success in implementing a return-to-work program relies significantly on the individual member's ability to accommodate work restrictions.

Claim administration material consistently documents York's attempt to communicate work restrictions to the member site representative. The material also consistently document job analyses instrumental in assisting in the evaluation of the injured employee's ability to perform specific tasks.

## 8. Medical Management

York is complying with industry standards for medical management. WellComp also facilitates this cost mitigating service. Medical management review confirms the following:

- Outside nurse case management vendors were utilized at appropriate times. The fees charged by these vendors are similar to fees for nurse case management vendors for similar programs.
- The timeliness of payments/objections to medical bills is evident in all of the claims where medical bill processing is an issue.
- Utilization Review is evident when necessary.

## **9. Litigation Management**

This category seeks to verify:

- That defense attorneys and the employee's attorney are responded to timely.
- That defense counsel fees are within industry averages.
- That claim examiners are performing routine activities and not assigning defense counsel to perform tasks that the examiner should be performing.

Thirty-six of the 100 indemnity claims (36%) reviewed involve some degree of litigation. York is effectively managing litigation on the files reviewed. This is based on the following key findings:

- Referrals to defense counsel are timely in all instances. NCCSIF is bound by statutory requirements for filing answers to applications for adjudication of claims. The referrals also clearly set forth the facts of the claim and communicate the expectation of counsel. These expectations include submission of a proposed budget and plan of action.
- Communication between the York examiner and the assigned defense counsel is timely and thorough.
- Litigation expense rates are within the industry average for the handling of public entity claims.

One claim exhibits deficiencies:

- NCWA-556295 (City of Oroville). This claim was also discussed under the Subrogation section of this report. Subrogation counsel has not provided timely updated status reports.

## **10. Diary/Case Closure**

Active, unresolved claims require some adjusting activity every 45 days. Resolved claims for which the only remaining issue is the processing of medical benefits should be reviewed at least every 180 days. York is not consistently complying with these standards. Six claims exhibit deficiencies. The audit notes that nearly all of these deficiencies occurred during the same period (mid-2012 to late 2013 with a few gaps extending as late as early 2015). Exhibit 3 lists and discusses those claims.

## **11. Documentation and Risk Management Information System (RMIS) Clarity**

All material reviewed for this project was accessed remotely using the York Claims Connect system. That system is efficiently recording routine claims administration activity such as reserve/payment data, daily examiner activity notes, medical documentation, and state-required form documentation on most claims. Still, five claims exhibit deficiencies. Exhibit 4 discusses those claims.

### Exhibit 3 – NCCSIF Diary Maintenance Analysis

Claim Number	Discussion
NCWA-294889 (City of Folsom)	Claim documentation reveals no claims handling activity between 4/28/12 and 2/13/15.
NCWA-77901 (City of Marysville)	Claim documentation reveals no claims handling activity between 4/28/12 and 11/7/13.
NCWA-481333 (City of Paradise)	Claim documentation reveals no claims handling activity between 4/28/12 and 11/8/13.
NCWA-554872 (City of Folsom)	Claim activity notes indicate this claim was resolved by compromise and release (C&R) in November 2014. It is unclear why the claim is still listed as open.
NCWA-555983 (City of Rio Vista)	Claim documentation reveals no claims handling activity between 11/7/13 and 2/9/15.
NCWA-556408 (City of Rocklin)	No updated claims management review (CMR) has been completed since 9/22/14

DRAFT

#### Exhibit 4 – NCCSIF Claim Documentation Analysis

Claim No.	Comments
NCWA-556357 (City of Willows)	Claim documentation establishes the date of York's receipt of the claim as 8/7/14, but claim activity notes document receipt of the 5021 report on 5/19/14.
NCWA-41165 (City of Corning)	The most recent CMR lists an incorrect age for the claimant.
NCWA-556432 (City of Yuba City)	This claim is on the indemnity list. The claim is a medical only claim.
NCWA-556422 (City of Elk Grove)	This claim is listed as indemnity. There is no indication that indemnity benefits was ever a concern. The claim was closed in November. \$222 in medical costs was incurred.
NCWA-556221 (City of Dixon)	This claim was closed in November. There is no documentation confirming the rationale for claim closure.

Draft



## **12. Supervision**

All claims reviewed exhibit timely, instructive input from the York supervisor. No supervisory deficiencies are identified.

## **13. Excess Notification**

Seventeen of the claims reviewed meet excess reporting requirements. Notification to NCCSIF's excess provider was made timely in all instances. Follow-up reports are also timely.

Draft

## Appendix

### File Audit Lists

Draft

### Open Claims Files

Claim No.	Claim No.	Claim No.	Claim No.
1. NCWA-138421	24. NCWA-550445	47. NCWA-556323	70. NCWA-556525
2. NCWA-13869	25. NCWA-550504	48. NCWA-556331	71. NCWA-556526
3. NCWA-140139	26. NCWA-550647	49. NCWA-556335	72. NCWA-556527
4. NCWA-14294	27. NCWA-551810	50. NCWA-556336	73. NCWA-556529
5. NCWA-159055	28. NCWA-551919	51. NCWA-556354	74. NCWA-556535
6. NCWA-232193	29. NCWA-554687	52. NCWA-556357	75. NCWA-556536
7. NCWA-294889	30. NCWA-554872	53. NCWA-556373	76. NCWA-556538
8. NCWA-31330	31. NCWA-554947	54. NCWA-556379	77. NCWA-556539
9. NCWA-357187	32. NCWA-555495	55. NCWA-556380	78. NCWA-556543
10. NCWA-374501	33. NCWA-555636	56. NCWA-556398	79. NCWA-556547
11. NCWA-387542	34. NCWA-555646	57. NCWA-556408	80. NCWA-57892
12. NCWA-41165	35. NCWA-555833	58. NCWA-556424	81. NCWA-58026
13. NCWA-41379	36. NCWA-555954	59. NCWA-556429	82. NCWA-60665
14. NCWA-481067	37. NCWA-555971	60. NCWA-556432	83. NCWA-60737
15. NCWA-481333	38. NCWA-555983	61. NCWA-556434	84. NCWA-61954
16. NCWA-49092	39. NCWA-555987	62. NCWA-556436	85. NCWA-62128
17. NCWA-503312	40. NCWA-556000	63. NCWA-556442	86. NCWA-69944
18. NCWA-52541	41. NCWA-556138	64. NCWA-556453	87. NCWA-72566
19. NCWA-526971	42. NCWA-556234	65. NCWA-556477	88. NCWA-77901
20. NCWA-527637	43. NCWA-556243	66. NCWA-556486	89. NCWA-79871
21. NCWA-533053	44. NCWA-556254	67. NCWA-556487	90. NCWA-83133
22. NCWA-538076	45. NCWA-556295	68. NCWA-556490	
23. NCWA-550411	46. NCWA-556310	69. NCWA-556521	

### Closed Indemnity Claims Files

Claim No.	Claim No.	Claim No.
1. NCWA-555569	5. NCWA-556297	9. NCWA-556404
2. NCWA-555686	6. NCWA-556308	10. NCWA-556525
3. NCWA-556009	7. NCWA-556352	
4. NCWA-556221	8. NCWA-556368	

### Medical Only Claims Files

Claim No.	Claim No.	Claim No.
1. NCWA-556478	10. NCWA-556532	19. NCWA-556557
2. NCWA-556489	11. NCWA-556534	20. NCWA-556558
3. NCWA-556505	12. NCWA-556540	21. NCWA-556560
4. NCWA-556506	13. NCWA-556544	22. NCWA-556562
5. NCWA-556512	14. NCWA-556549	23. NCWA-556564
6. NCWA-556518	15. NCWA-556551	24. NCWA-556566
7. NCWA-556524	16. NCWA-556552	25. NCWA-556569
8. NCWA-556528	17. NCWA-556553	
9. NCWA-556531	18. NCWA-556555	



BACK TO AGENDA

**Northern California Cities Self Insurance Fund  
Claims Committee Meeting  
September 24, 2015**

**Agenda Item L.b.**

**YORK RISK SERVICES RESPONSE TO WC CLAIMS AUDIT**

**ACTION ITEM**

**ISSUE:** York Risk Services provides the attached response to the 2015 Workers' Compensation Claims Audit conducted by Tim Farley and will be present at the meeting to discuss the results with the Committee. Overall York is in agreement with the findings and notes improvement in key areas since the audit performed by CSCA-EIA in October 2014.

**RECOMMENDATION:** Review, accept and file response.

**FISCAL IMPACT:** None.

**BACKGROUND:** Every even year NCCSIF conducts an audit of member Workers' Compensation claims to ensure they are being managed according to NCCSIF and CSAC-EIA standards and best practices. The auditor provides feedback to the claims administrator, York Risk Services, throughout the process and York provides a response to any areas that may need improvement.

**ATTACHMENT(S):** York Risk Services Letter dated June 19, 2015



June 19, 2015

Marcus Beverly  
Alliant Insurance Services Inc  
1792 Tribute Rd., #450  
Sacramento, CA 95815

Re: Response to Audit Results for NCCSIF – Farley Consulting Services

Dear Mr. Beverly,

This letter is in response to Tim Farley's audit report dated May 5, 2015 for NCCSIF. Mr. Farley did not provide a traditional "score", however largely his comments were positive and overall, we are pleased with the audit.

Mr. Farley recommended improvement in a two areas and our response to those recommendations are outlined below.

#### **Prompt Contact with Employee**

We are in agreement that prompt contact with employees is critical. We abide by the CSAC-EIA guidelines for NCCSIF claims wherein contact is to be made within 3 days of receipt of the claim. As this was also identified in the CSAC audit at the end of last year, I have to believe we still need to make improvements, which I think we have. Roughly, by my calculations, on the CSAC audit we were at about 67% for timely contacts whereas on this audit, we were in the 90 percentile. However, we continue to work on improving. We have solidified our staff and currently have highly experienced examiners. Additionally, I am focusing on initial contacts when doing supervisor reviews. We continue to stress the importance of timely contacts at staff meetings and on individual basis.

#### **Diary**

Similar to the first issue, the issue of Diary was brought up in both this audit and the previous one. Even though identified as an area in need of improvement, there is definite improvement in this audit as compared to earlier audits. We continue to work on improving our use of the diaries. With the stabilization of the staff and clients, we will be able to greatly improve in this category.

Those were the two issues that I took away as being in need of improvement and we are committed to continue to improve in these categories.

Along with the areas for improvement, Mr. Farley pointed out many areas wherein we are achieving positive results:

- Case Reserving: Finding of “accurate” with only 2 files in need of reserve adjustment.
- Benefits provided at correct rate: No errors found
- Subrogation recovery: The auditor felt we are aggressively pursuing recovery on all but 2 files
- Medical Cost Containment: He found our cost containment reflecting a greater savings than other agencies.
- Excess: All excess reportable and/or recoverable have been handled timely and appropriately.

During this audit process Tim Farley reviewed a total of 125 files on the NCCSIF program. We are pleased that of the 12 categories discussed in his audit findings, only 2 of those categories were identified as in need of improvement. We have recently added two strong returning examiners to the NCCSIF account to insure ongoing improvement and NCCSIF’s satisfaction with the services being provided. We continue to be excited to be your partner, administering the workers compensation benefits for your injured employees.

Please let us know if you need additional information or further clarification.

Sincerely,

Ben Burg  
Unit Manager

cc: Jeff Ponta  
Dori Zumwalt



BACK TO AGENDA

**Northern California Cities Self Insurance Fund  
Claims Committee Meeting  
September 24, 2015**

**Agenda Item M.**

**2015 LIABILITY CLAIMS AUDIT**

**ACTION ITEM**

**ISSUE:** This year NCCSIF is scheduled to conduct a liability claims audit. The Program Administrators have requested a proposal from Risk Management Services, the firm that has conducted the last three audits, for consistency and due to lack of competing firms.

**RECOMMENDATION:** Approve Ken Maiolini from Risk Management Services as the 2015 Liability Claims Auditor.

**FISCAL IMPACT:** None, but will increase budget for future years. Budgeted \$5,000 and proposal is for \$5,950.

**BACKGROUND:** Every odd year NCCSIF has a Liability Claims Audit completed. The prior Liability Claims Audits were conducted by Risk Management Services in November of 2009, January 2012, and November 2013.

**ATTACHMENT(S):** Proposal from Risk Management Services

**NORTHERN CALIFORNIA CITIES SELF  
INSURANCE FUND  
(NCCSIF)**

**REQUEST FOR PROPOSAL LIABILITY AND  
PROPERTY PROGRAM CLAIMS AUDIT**

Submitted by:  
Kenneth R. Maiolini, ARM-P  
Risk Management Services  
8000 Old Redwood Highway  
Cotati, CA 94931  
Email: [claims@rmscotati.com](mailto:claims@rmscotati.com)  
(707) 792-4980 ph  
(707) 792-4988 fax  
September 1, 2015



## CLAIMS AUDITING PHILOSOPHY

RMS takes a diverse approach to claims audits because of its background and experience, and its belief that such an approach provides the most meaningful results for its clients.

In addition to reviewing files according to Generally Accepted Claims Handling Standards (GACHS) for addressing file management, timely investigation, adequacy of reserves, liability and damage analysis, litigation management, compliance to excess requirements and timely settlement negotiations, RMS attempts to also focus on other areas that are both helpful to the client and, if applicable, the insuring entity. RMS additionally addresses CAJPA credentialing criteria.

Because of its “hands on” claims activities, risk and loss consulting efforts, and role as a primary/excess TPA, RMS brings some unique perspectives to a claims audit. We are sensitive to the client’s need to get more out of an audit than having someone upset their files for a few days. With that in mind, we examine, in the course of the audit, areas that can improve the client’s claims handling system, trends that raise risk management issues, areas of risk transfer as it pertains to contractors, effectiveness of the insured’s TPA or in-house claims unit, comparisons of how client’s settlements compare to similar entities, suggestions on experts that may provide benefit to the defense, and assistance with politically sensitive situations.

In addition to the hard copy audit, RMS tries to do more than the traditional exit interview with the client. As logistics will allow, we attempt to speak with the client prior to the audit to check on any unusual situations or problems, and to generally discover what the client would like to accomplish in the audit.

In determining the claims sample to be audited, RMS pays close attention to the obvious indicators such as claim type, high reserves, high defense costs, etc. However, to get a feel for how claims are analyzed and handled, we also focus on recently filed claims, selected claims with no reserve, claims settling for low resolution value and claims with similar allegations having valid values. This allows us to determine trends in the claims handling that may be a positive or adverse factor to our client.

Overall, we approach audits with a constructive and friendly attitude and provide an individualized report on each entity; we do not utilize boilerplate reporting formats. Lastly, we feel a client should finish the process with a positive feeling, having obtained new knowledge that will assist in effective handling of their claims.

## PERSONNEL INFORMATION

### **Kenneth R. Maiolini, ARM-P**

Mr. Maiolini has over 30 years experience in handling of claims for both public and private clients. The last 25 years have been devoted to working with public entities in the area of claims administration, auditing and loss consulting. Mr. Maiolini has served as principle auditor in over 200 public entity claims audits.

### **Jerry Bowen, AIC**

Mr. Bowen has over 15 years of experience in handling the administration and setup of audits. Mr. Bowen is very experienced in working with claims databases and reviewing of loss information in preparation of the audit.

## SCOPE OF WORK

- Review of a maximum of 65 open claims (this would include all 20 open claims with a total incurred of \$50K or greater) and 20 closed claims files. The review will evaluate areas of investigation, reserving, litigation management, attorney handling, liability and damage evaluation, file management and negotiation practices.
- Review of the overall claims process to include, but not limited to, internal controls, electronic data systems, payment and approval procedures and Member reporting.

RMS will require a current open and closed loss run of claims. Unless otherwise instructed by NCCSIF, claims to be reviewed would be selected from those loss runs.

Files for review will be selected by a cross-section of case type, severity, reserves/payments and department.

The selected files will be reviewed and documented on RMS's Profile Audit Review Form (**EXHIBIT A**).

## REFERENCES

Giovanna Pratt  
Keenan and Associates  
(310) 212 – 0363 ext. 3755  
(4 years – Auditing)

Martin Brady  
Executive Director  
Schools Insurance Authority  
(916) 364-1281 ext. 224  
(10 years – Auditing, Claims Consulting)

Michael Fleming  
Chief Executive Officer  
CSAC-Excess Insurance Authority  
(916) 631-7363  
(20 years – Claims Administrator, Auditing and Risk Management)

Jim Sessions  
Risk Manager  
County of Riverside  
(951) 955-3511  
(16 years – Claims Administrator, Auditing)

## INSURANCE INFORMATION

Professional Liability E&O \$2M limit/\$5K deductible	U.S. Risk Underwriters, Inc.
General Liability \$1M limit	Farmers Insurance Co.
Non-Owned and Hired Auto \$1M limit	Farmers Insurance Co.
Workers' Compensation Complies with statutory requirements	Farmers Insurance Co.

Evidence of Coverage will be provided upon request.

## **TIME SCHEDULE AND COST OF SERVICES**

The audit of the NCCSIF claim files would be set for two and a half (2 1/2) days. The timeline set in the Request for Proposal will be met, with completion of a draft audit reprint on or before December 23, 2015.

**Additionally, a pre-audit interview with NCCSIF and a presentation, if requested, to the appropriate NCCSIF Committee or Board would be included.**

**COSTS – The cost of services is all inclusive of the audit, presentation and expenses. The fee to perform the audit is proposed at \$5,945.00**

# **EXHIBIT A**

# RMS

RISK MANAGEMENT SERVICES

## PROFILE AUDIT REVIEW FORM

ENTITY REVIEWED

REVIEW DATE

REVIEWED BY

FILE NAME

FILE NUMBER

FILE STATUS

DATE OF LOSS

CLAIM DATE

REJECTION DATE

LAWSUIT DATE

CLOSED DATE

TYPE OF LOSS

LIMITS(X1000)/POLICY YEAR

### CASE DESCRIPTION

### LIABILITY

Liability review attempts to determine, through file information, degree of liability. If no information in file, the undetermined box is checked indicating a deficiency in this area.

☐ CLEAR ☐ PROBABLE ☐ QUESTIONABLE ☐ DOUBTFUL ☐ UNDETERMINED ☐ N/A

Audit reviews the current reserves and paid amounts - if adjustments are needed, they are indicated in the recommended reserves section. Additional comments would be noted in the "Reserving" section below.

#### CURRENT RESERVES

#### PAID TO DATE

#### RECOMMENDED RESERVES

LOSS

LOSS

LOSS

EXPENSE

EXPENSE

EXPENSE

RATING GUIDE 1 = BELOW STANDARDS 2 = MEETS STANDARDS 3 = EXCEEDS STANDARDS

RATING

#### INVESTIGATION

Review examines the investigation process - request for information, interviews, photos, obtaining and preserving evidence, timeliness, pro-active approach, and thoroughness of the investigation are evaluated.

RATING

#### RESERVING

Review examines the timeliness and basis for file reserves. The areas of indemnity and expense are examined as to past and future costs. Litigation expenses are evaluated in respect to other factors (liability, damages, etc.).

RATING

#### LITIGATION MANAGEMENT/ATTORNEY HANDLING

Review examines the management of defense counsel and individual attorney performance. Areas such as timely assignment, reporting, case handling, and litigation strategy are reviewed.

RATING

#### LIABILITY/DAMAGE EVALUATION

Review examines basis for determining if liability exists and to what degree. Also file information on damages is reviewed, as well as, the analysis of the damage components.

RATING

#### FILE MANAGEMENT

This area includes physical file management, statutory management, risk transfer, diary, excess reporting, and overall file coordination/handling.

RATING

#### TIMELY NEGOTIATIONS

Review examines settlement practices and file resolution through the use of negotiations. Proactive use of informal negotiations and voluntary mediations are examined.

#### COMMENTS

N/A = NOT APPLICABLE WHEN INDICATED





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**Northern California Cities Self Insurance Fund  
Claims Committee Meeting  
September 24, 2015**

**Agenda Item N.**

**ROUND TABLE DISCUSSION**

**INFORMATION ITEM**

**ISSUE:** The floor will be open to the Committee for discussion.

**RECOMMENDATION:** None.

**FISCAL IMPACT:** None.

**BACKGROUND:** The item is to the Claims Committee members for any topics or ideas that members would like to address.

**ATTACHMENT(S):** None.