

Police Luncheon

Tuesday October 1, 2019



Introductions

- **Paul J. Miola, CPCU, ARM**
 - JIF Deputy Executive Director
- **Susan Mooney, Qual-Lynx**
 - Liability Supervisor
- **David DeWeese, Esq.**
 - JIF Solicitor
- **Keith Hummel, Chief (Ret.) Voorhees P.D.**
 - JIF Safety Director



Why Are We Here?

- Police officers are named in lawsuits
- Don't always know what to expect
- Experience can be stressful
- Will I be covered by insurance?
- Who will defend me?



We plan to answer those questions and more for you today

How Did We Get Here?

Litigious Society



Rise of Social Media



“Jackpot” Mentality



Everyone Wants Their “Day in Court”

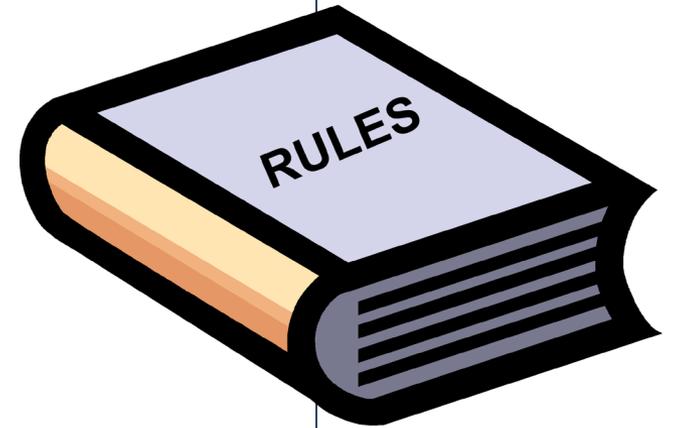


Liability Issues



Your Municipality Is Insured Through A Joint Insurance Fund

- A Quasi-Municipal Entity
 - Local Fiscal Affairs Law
 - Local Public Contracts Law
 - Open Public Meetings Act
 - Open Public Records Act



ACM, BURLCO, TRICO JIFs



JIFs were created in response to an insurance crisis

The JIFs* Are In Great Shape!

- \$5,075,000 in current dividends!
 - \$56,892,524 since inception
- Budget reductions in all three JIFs for 2019
 - **-\$1,352,978**
- \$106,222,775 Cash on hand
 - \$ 59,815,480 Surplus
- Financial Strength



Controlling costs through sound fiscal policy and reducing claims.

*ACM, BURLCO, and TRICO JIFs

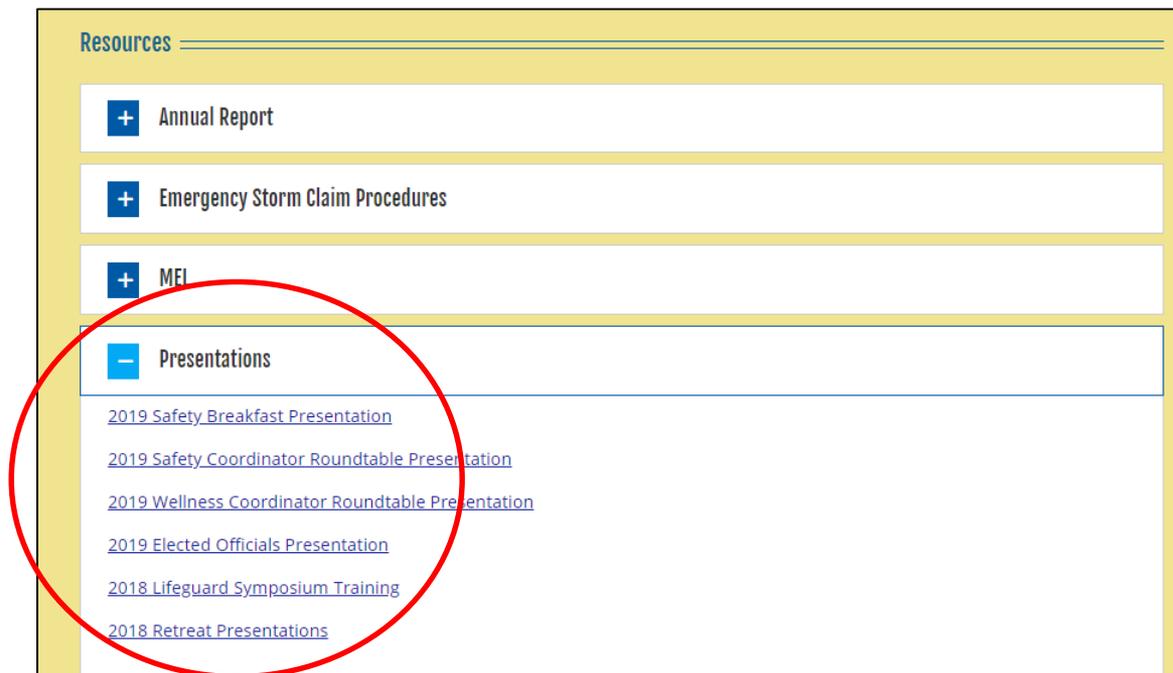
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Home Page → Scroll Down to Resources → Click Presentations



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Resources

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- + Emergency Storm Claim Procedures
- + MEI
- Presentations
 - [2019 Safety Breakfast Presentation](#)
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Let's Get Started!



Part II: Coverage Considerations

Susan Mooney, Liability Supervisor
Qual Lynx



QUAL-LYNX
LINKING YOU TO QUALITY CLAIM SERVICES

Litigation Statistics

Cost of Defense vs. Cost of Settlement



Cost of Defense v. Cost of Settlement

• Policy years 2013-2018: ACMJIF

- Police Professional Bodily Injury: Paid to Date (Open Reserve)
 - Settlement Cost: \$665,500 (\$765,000)
 - Defense Cost: \$982,260 (\$701,965)
- Police Professional Personal Injury: Paid to Date (Open Reserve)
 - Settlement Cost: \$224,001 (\$265,500)
 - Defense Cost: \$641,596 (\$253,155)

• Policy years 2013-2018: BURLCOJIF

- Police Professional Bodily Injury: Paid to Date (Open Reserve)
 - Settlement Cost: \$0.00 (\$225,500)
 - Defense Cost: \$227,737 (\$99,205)
- Police Professional Personal Injury: Paid to Date (Open Reserve)
 - Settlement Cost: \$109,999 (\$35,000)
 - Defense Cost: \$148,811 (\$33,908)

Policy years 2013-2018: TRICOJIF

Police Professional Bodily Injury: Paid to Date (Open Reserve)

Settlement Cost: \$186,500 (\$311,000)

Defense Cost: \$273,872 (\$284,289)

Police Professional Personal Injury: Paid to Date (Open Reserve)

Settlement Cost: \$162,500 (\$249,591)

Defense Cost: \$165,674 (\$138,101)

*Cost amounts taken from Total Paid to Date. Costs may be higher/lower depending on outcomes of future settlements and/or additional legal and expense in pending litigation



Most Common Allegations Against Police

- **Excessive Force** - be wary of cell phones used to tape your actions and/or comments
- **Malicious Prosecution**-claims that officer wrongly deprived the plaintiff of right to liberty. Need: Officer to commence a proceeding/arrest, ends in victim's favor, no probable cause and brought with malice
- **False Arrest/Imprisonment**
- **Civil Rights Violations** – basic right to be free from unequal treatment, i.e. race, gender, disability discrimination
- **Negligence**- failure to exercise due care
- **Improper Training (and retraining), Supervision, Retention**
- **Failure to Follow Police Policies and Procedures**
- **Invasion of Privacy**
- **Unlawful Search and Seizure**

A-Typical Allegations Against Police

- Deaf
- Mental Health Issues (i.e. schizophrenia)
- Autistic
- Disabled (i.e. Veterans)



Always follow the policy and procedures established by your Police Department, or if none is in place, consider establishing one, having a training session or retraining on the subject

Parties Named in Suits

- **Town/City/Borough**

- **Chief of Police**

- **Officers**

- **John Does** – in a lawsuit, sometimes the identity of a party is unknown at the time of filing, thus in place of their name, “John” or “Jane” Doe is used. An Amended Complaint will then be filed with the ID of the involved party



III. Reservation of Rights Letter





date

Sent via email and Certified mail

Officer
Town Police Department
address

Re: Matter : Plaintiff v. Defendant
Our Insured : Town/XXXJIF
Date of Loss : xx/xx/xxxx
Docket No. : XXXX
Our File # : 1111111111

Dear Officer XXXXXX:

Qual-Lynx is the third party claims administrator for the XXX Municipal Joint Insurance Fund (XXXJIF) which the Town is an insured member. As such, we have received the Complaint filed on behalf of Plaintiff, (name), naming you as a Defendant involving an arrest of Plaintiff on (date). Plaintiff alleges: false arrest and false imprisonment, malicious prosecution and the violations of civil rights, for which he/she seeks: compensatory and punitive damages, attorney fees, cost of suit, interest and other relief the Court deems just and appropriate.

Some of the relief sought by the above captioned claimant may be subject to an exclusion of the coverage document of XXX Municipal Joint Insurance Fund which denies coverage for:

“.... Any claim or award against the Member Town or any insured for punitive or exemplary damages”

Therefore, there would be no XXX Municipal Joint Insurance Fund coverage for any punitive relief sought.

Since the defense of any punitive damages claims is closely related to the defense of the other claims, defense counsel will, as a courtesy, defend any punitive damages as to the Township and those covered defendants, but, under a “strict reservation of rights” as stated later in this correspondence.

In addition, the XXX Municipal Joint Insurance Fund excludes coverage for injunctive relief as follows:

“.... Any demands or actions seeking relief or redress in any form other than money damages; and for fees or expenses in relation to demands or actions seeking such relief or redress”.

Plaintiff v. Town; file #/addressee

date

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In addition, the coverage document affords coverage for bodily injury which arises as follows:

“arising out of the performance of any insured’s official duties as a public employee, law enforcement official or officer in regular course of public employment”.

However, there will be no defense or indemnification provided for allegations of activities that did not arise out of the performance of official duties and/or are not within the scope of employment.

Also, insurance would not apply pursuant to the Law Enforcement Professional Liability exclusion as listed below:

“Insurance does not apply to bodily injury, personal injury or property damage arising out of (1) the willful violation of penal statute or ordinance committed by or with the knowledge and consent of the Member Town, or (2) acts or fraud committed by or at the direction of the Member Town with affirmative dishonesty or actual intent to deceive or defraud.”

As stated above, this office would like to advise you that the continuing action of the Fund to investigate and defend the above claim is with the strict understanding that the Fund is not waiving any of its rights under the coverage document. Since the defense of any punitive damages claims is closely related to the defense of other claims in litigation, the assigned defense attorney will, as a courtesy, defend the punitive damages under a strict reservation of rights as stated in this correspondence. You should understand, however, that if there is a judgment awarding punitive damages due to actions by you, payment of any judgment will be the sole responsibility of you and any other individuals which may be named. Since there is a potential personal exposure in this matter, any individual named in this matter certainly has the right to engage his own attorney to defend his interests in this litigation. However, any defense-related expenses for any personal attorney consulted or retained by an individual will be at his/her own expense and are not subject to reimbursement by the XXX Municipal Joint Insurance Fund.

Please be advised that none of the rights or contentions under the confirmation of coverage document are waived and it shall also be understood that the Fund specifically reserves all rights to further evaluate the existence of coverage or lack thereof, and re-evaluate the defense of any punitive damages claims and other allegations under the coverage document in question for any reason that may appear in the future, in addition to those mentioned above.

We will continue to investigate and defend this matter under a full reservation of rights in accordance with this correspondence.

Please note that your signature is required below to confirm your receipt and understanding of this notice.

Plaintiff v. Town; file #/addressee

date

Page two

Should you have any questions, please feel free to contact the undersigned.

Sincerely,

Adjuster

Adjuster Name

Title

Phone #

Email address

cc: Paul Miola, CPCU, ARM, Executive Municipal JIF Strategist-XXXJIF
Paul Forlenza, Area VP-AJG
David DeWeese, Esquire
XXX XXXXX, Fund Commissioner
XXX XXXXX, Claims Coordinator
XXX XXXXX, Clerk
Police Chief XXX XXXXX
Shelly Long, Director-Claims Operations
Christopher Roselli, Account Manager
Susan Mooney, Liability Supervisor

Please sign below indicating that you have read the above correspondence, consisting of three pages in total, and return the same to our office as soon as possible.

Date: _____

Officer

XXX Police Department

IV. Coverage Afforded to Officers



IV. Coverage Afforded to Officers

- There is a Joint Insurance Fund (JIF) Casualty Policy with coverage under Part I – Commercial General Liability Insurance and Part II – Law Enforcement Professional Liability Insurance. There is also an Auto Policy for claims involving insured vehicles
- The JIF policy affords coverage to the Municipality, Police Chief, Officers up to the applicable Self Insured Retention, ie currently \$500,000
- Once the underlying JIF Self Insured Retention (SIR) is exhausted by payments made from the Liability and/or Workers Compensation claims, the Municipal Excess Liability Joint Insurance Fund (MEL) becomes involved with a \$5,000,000 per occurrence limit

Damages

- **Compensatory Damages**

- The purpose of compensatory damages is to monetarily compensate the injured person for the loss suffered as a result of the tort. Compensatory damages can include medical expenses, loss of income, and pain and suffering.

- **Punitive Damages**

- Sometimes called exemplary damages, may be awarded in addition to compensatory damages. Punitive damages are intended to punish the wrongdoer for outrageous or reckless conduct and/or deter the defendant and others from similar conduct.



Coverage – Personal Assets

If suit is filed and liability is found against you for a Count that is not covered under the JIF policy, you will be personally responsible for any monetary Judgment entered against you on the uncovered Count, i.e. intentional acts or acts outside the scope of your duties and responsibilities as a Police Officer



**Part V:
Assignment of
Defense Counsel**

**David DeWeese. Esq.
ACM, BURLCO, TRICO
JIF Attorney**

V. Assignment of Defense Counsel



- ❖ In most Civil Rights cases, one member of our defense panel is assigned to defend the case on behalf of the Municipality and all individually named defendants. If you are individually named, you will receive a copy of the assignment letter.
- ❖ Rest assured that the attorney who is assigned to defend these cases is very experienced in the handling of these types of cases.
- ❖ The attorney is representing you and your individual interests. After meeting with you, department representatives and other individually named defendants, the attorney may recommend that separate counsel be assigned to represent one or more defendants based upon potential conflicts of interest.

What is covered and what is not?

- ❖ The Reservation of Rights (ROR) letter will advise you as to which counts of the Complaint against you are covered under the JIF policy of insurance and which counts are not covered.
- ❖ Assigned Defense Counsel will typically defend you on all counts, but if liability is found against you for a Count that was not covered, you will be personally responsible for any monetary judgment entered against you on these uncovered counts.
- ❖ Intentional acts or acts outside the scope of your duties and responsibilities as a Police Officer are examples of counts that could be uncovered.



- ❖ Punitive Damages by law cannot be covered by any policy of insurance. Therefore, if punitive damages are awarded against you, you will be personally responsible.
- ❖ If you have concerns regarding uncovered counts and/or punitive damages, you should consult with personal counsel to obtain legal advise as to how you should proceed.

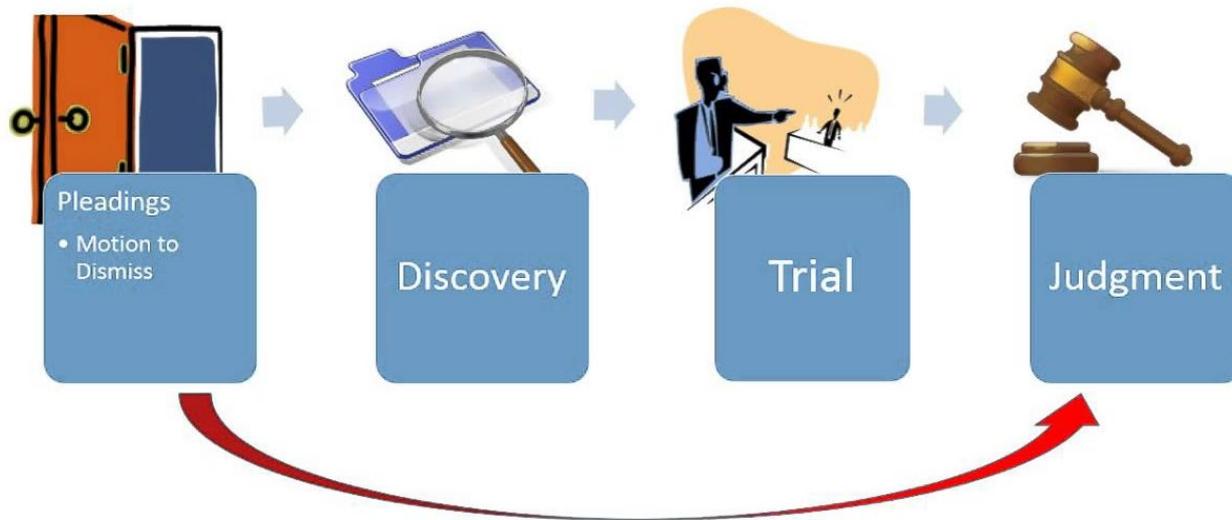




Preparing the Defense

- ❖ Topics to discuss with your attorney include:
 - ❖ Trial Strategies: Your attorney will provide you with his/her recommendations.
 - ❖ Personal & Confidential: What will be included and required for discovery?
 - ❖ Time Lines: Developing a time line for your attorney may assist with their understanding of the facts and circumstances surrounding the case. The presentation of this timeline will assist you and your attorney to develop clarity.
 - ❖ Side Conversations: You should not speak to others about the complaint. They may be required to testify about your conversations.

Part VI: The Litigation Process



Discovery:

- ❖ The Court Rules permit the parties to engage in a period of discovery. Basically, discovery is the exchange of information between the respective parties. During the discovery process, you will be required to answer questions regarding your personal history, employment history, prior work related incidents and the incident that is the subject of the litigation.
- ❖ In general terms, everything is fair game!



Interrogatories & Requests for Production:



- ❖ Interrogatories are written questions that are propounded upon parties to the litigation by the other party's attorneys. The written questions, together with requests for production of documents, are served upon your attorney. Your attorney will forward these documents to you with specific instructions regarding your preparation of your specific answers to the discovery.
- ❖ Thereafter, you will be scheduled to meet with your attorney to review and finalize your responses.
- ❖ Remember – these are your responses which you will be locked into for the remainder of the litigation. Therefore, it is imperative that all responses are truthful, carefully thought out and reviewed with your defense attorney. The questions should be answered directly, and they should not go beyond the question. Be prepared to explain your answers in a deposition.
- ❖ You will receive copies of the other parties' responses to discovery requests from your Assigned Defense Counsel. Please review these responses carefully and advise your attorney of any issues that you identify.

Depositions:



- ❖ Depositions are the taking of oral testimony from parties and witnesses, in the presence of a court reporter. They typically occur in the office of an attorney, and all parties are entitled to be present for all depositions.
- ❖ A Deposition is basically a question and answer session. In preparation for your Deposition, you should:
 - ❖ Review the complaint and all relevant documentation.
 - ❖ Review your rules, regulations and policies.
 - ❖ Meet with your attorney prior to your deposition to receive instructions regarding the anticipated questions and your testimony.

Depositions (*continued*):

- ❖ During your Deposition, you should choose your words carefully and be sure you can define each word that you choose. You should hesitate before responding to each question to allow your attorney to comment or object, and to think about the answer you are going to give before you speak the words. You should be clear, concise and stay on topic. You may refer to your notes and documents, and you may request a break at any time.
- ❖ Following the deposition, a transcript of everything that was said in the room is produced. You should request copies of all deposition transcripts and carefully review not only your testimony, but the testimony of other parties and witnesses. Any errors or inconsistencies should be reported to your attorney immediately.

Trial:

- ❖ Very few cases go to Trial. The estimate is that less than 2% of all litigated matters actually go to Trial. However, you never know whether your case will be one of these few. Therefore, throughout the litigation process, you must prepare as though the case will be going to Trial.
- ❖ If your case does go to Trial, consult with our Assigned Defense Counsel as to the appropriate clothing to wear to the Trial. In some circumstances, your police uniform will be recommended and in other circumstances, a suit and tie will be recommended.
- ❖ If your case does go to Trial, you will be expected to attend every day of the Trial and you will be seated next to your Assigned Defense Counsel at the Defendant's table throughout the Trial.
- ❖ It is important to understand that your demeanor (facial expressions, body language, verbal communications, reactions, etc.) are all being carefully scrutinized by the Judge and the members of the Jury.



Part VII: What Hurts Our Ability to Defend?

Preparing for the Department's Defense
Keith Hummel, Chief-Voorhees P.D. (Ret.)
ACM, BURLCO TRICO JIF Safety Director



Preparing for the Department's Defense

What to Expect?

- **Allegations, allegations, and more allegations!**
 - Rumors and allegations are halfway around the world before the truth gets its sneakers on
 - It's a "Marathon" put your long distance running shoes on!



Preparing for the Department's Defense

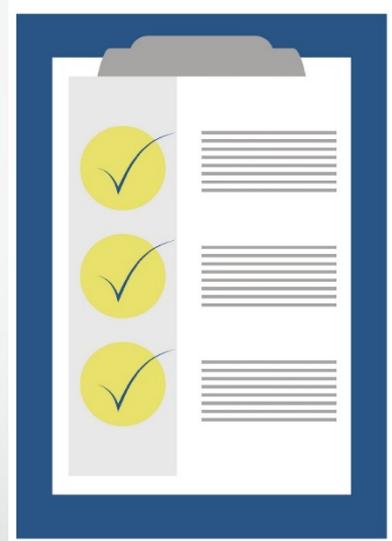
What can we do to help in the defense of ourselves and the department?

- Cooperation
- Honesty – defense attorneys do not like surprises
- Inconsistent police reports
 - Explanation – from your perspective, 360°
 - What you knew at the time!
- Decision making process
- Court appearances – probable cause stipulation

Preparing for the Department's Defense

Records:

- **Training Records**
 - Who, what, where, why and when
 - Signature forms!
 - Certificates, time actually spent training?
- **Qualification of Trainers**
 - Past schools, experience
 - Documentation, lesson plans
- **Police One Learning Management System**
 - Assignments, testing
 - Documentation



Preparing for the Department's Defense

What else can we do?

- **When an attorney is assigned to your case, ask questions!**
 - Ensure that all of the documents, audio files, dispatch recordings, body and car cam recordings are properly secured, and any other information that is required!
 - Spoliation – safeguarding evidence, if it is destroyed, lost or misplaced, the defense can present to a jury that the information was being purposely destroyed or hidden to cover something up that would make the officer or the agency look bad!

Preparing for the Department's Defense

What else can we do?

- Preparation of discovery, versus trial strategy documents “personal and confidential”
- Time lines, meet with your attorney, tell your story, they need to know, they do not know about the inner workings of your agency
- Every agency has its own culture
- No surprises!
- Attire

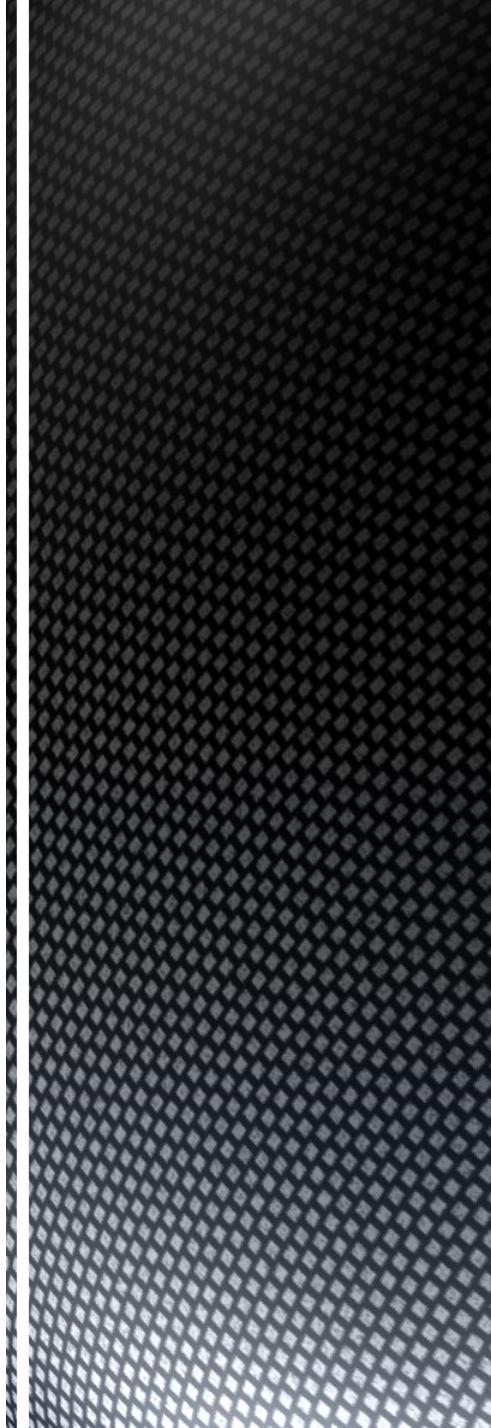


Part VIII: Settle or Defend

David DeWeese. Esq.
ACM, BURLCO, TRICO JIF
Attorney



VIII. Settle or Defend



Risks of Trial:

❖ There are many risks involved when a matter is taken to Trial. Some of these include the following:

- 1) It is unpredictable to leave the decision to the discretion of six (6) individuals who have no legal experience or expertise, and whose opinions are highly influenced by the media and social media.
- 2) These cases are fee shifting. If there is an adverse verdict, the Plaintiff's attorney will recover his/her counsel fees in addition to the damages (no matter how insignificant). Plaintiff's counsel fee applications in these cases range from \$250,000.00 to \$500,000.00.

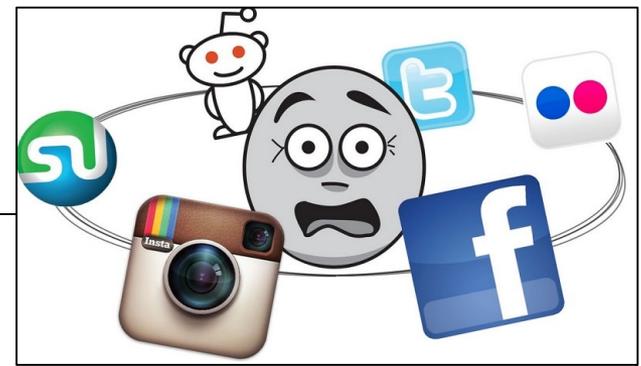


Risks of Trial (*continued*):

- 3) There is always the risk of a jury awarding punitive damages which must be personally paid by the individual.
- 4) Preparing for and participating in a Trial is an extremely emotional and physically draining experience.



Current Jury Climate:



- ❖ Social media has changed the mentality of our prospective jurors. Every incident involving police officers is replayed over and over again on social media, and it seems that the reporting and comments regarding an incident are very distorted. These reports have led many individuals to form opinions that are anti-police, and the respect that the general public had for Officers and the uniform, has been eroded.
- ❖ Based upon these factors, there is a strong likelihood that your jury pool will consist of many individuals who have an anti-police sentiment that will view your actions negatively. In addition, these individuals can influence the other jurors.
- ❖ For these reasons, there is a significant risk when deciding to take these matters to Trial.



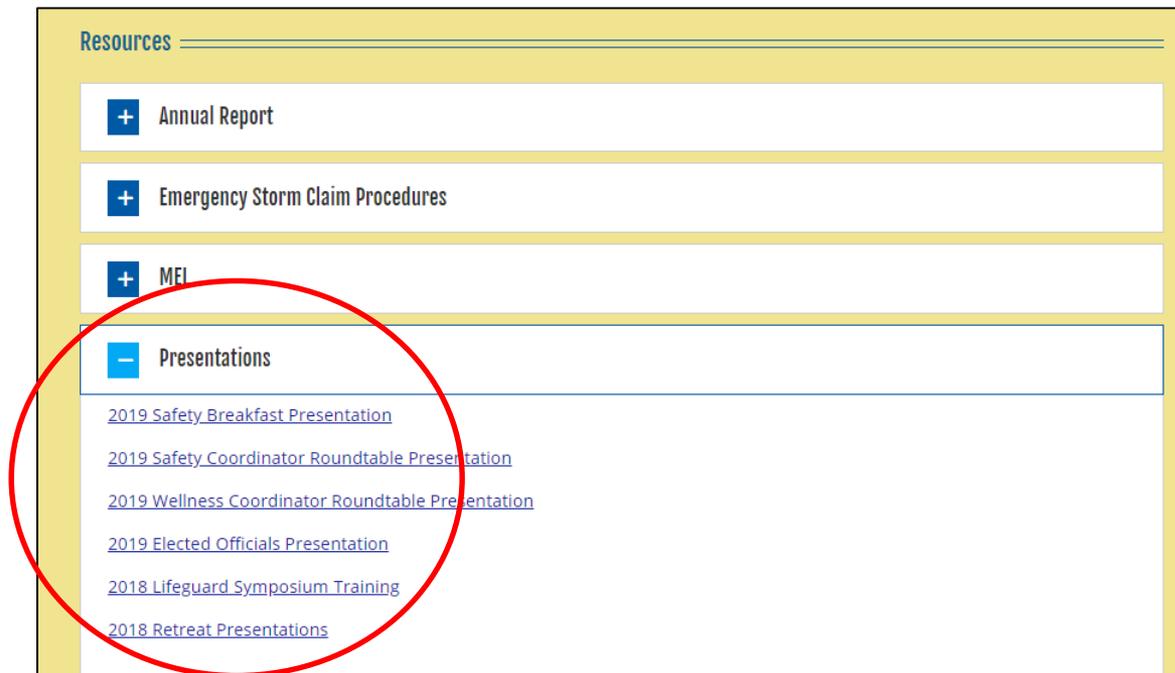
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Police Luncheon

THANK YOU!

