




University

Successful Claims Handling

September 26, 2018



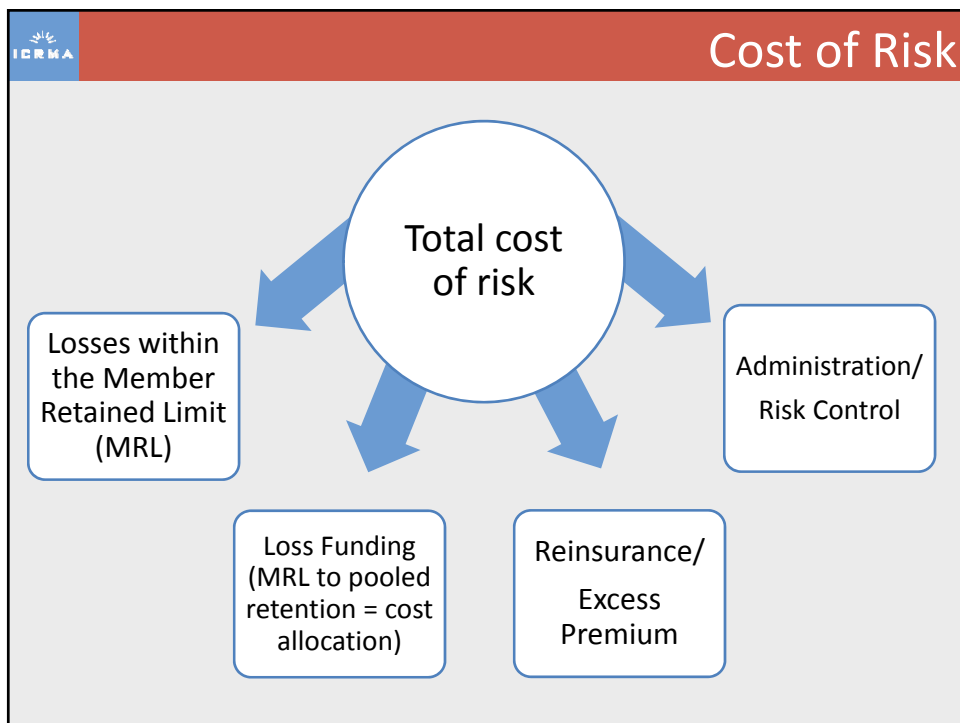
Learning Objectives

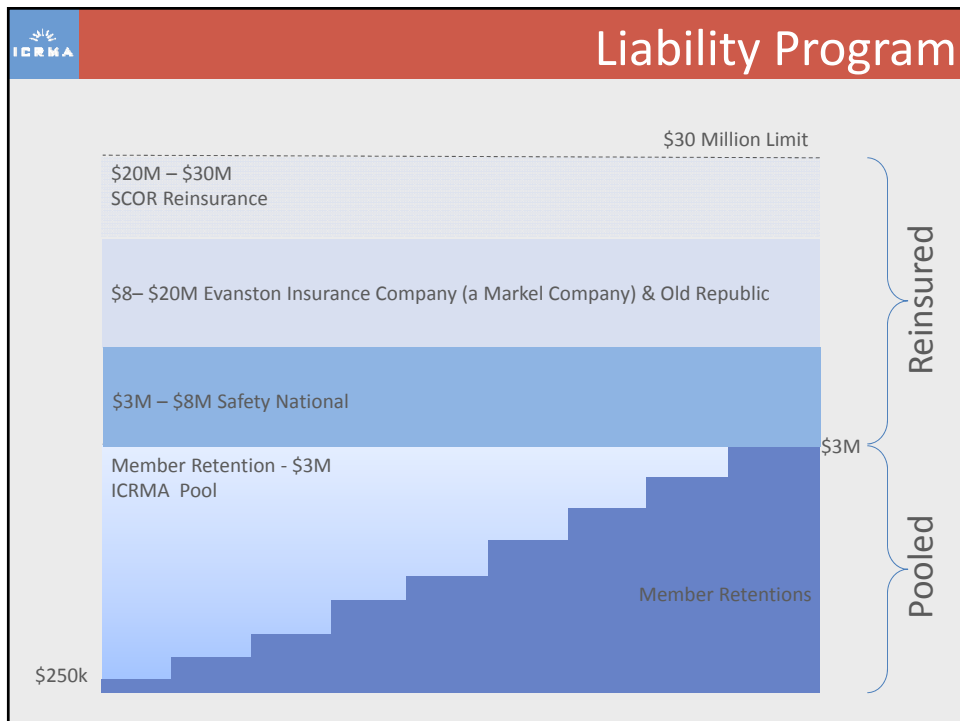
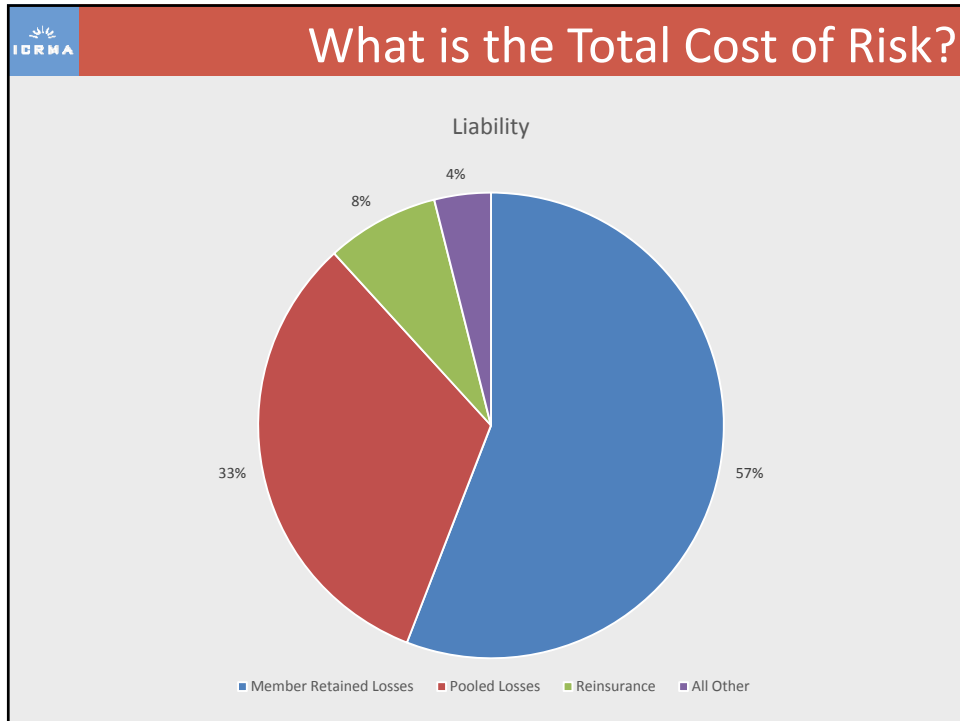
- Importance of initial case analysis and budget
- Establishing and following a litigation strategy
- Utilizing TPA Performance Standards & Litigation Management Policies and Procedures to maximum effect
- Reviewing legal bills
- Lessons learned from the ICRMA Liability claim audit

ICRMA **Successful Claims Handling**

Depends on...

- Litigation strategy/plan/budget
- Adjusting to developments
- Accountability of all stakeholders (Member, TPA, Defense Counsel, ICRMA)
- Enforcing the TPA Performance Standards & LMPP
- Realistic goals and expectations






ICRMA **Life of a Claim**


- City clerk receives claim
- City follows reporting process
 - **Every** claim must be reported to your TPA
- TPA reports “ICRMA Reportable claims” to ICRMA
- Ramifications if not reported to ICRMA; to reinsurance/excess
- If fail to meet reporting requirements, claims can be denied

ICRMA **Life of a Claim**

- Program Manager reviews claims & tracks, reports to excess/reinsurance, committee/board
- TPA Perf standards/LMPP are followed
- Must have authority before claims are settled
- Authority levels
 - Vary by city
 - Claims Committee: \$750,000 over the MRL
 - Board: All others

 MOC Reporting Requirements

Claim reasonably likely to exceed, inclusive of defense costs, \$250,000 or 50% of the member retained limit, whichever is less, or any occurrence involving:


 MOC Reporting Requirements, cont.

- One or more fatalities;
- Loss of limb or amputation or multiple fractures;
- Loss of use of any sensory organ;
- Spinal cord injuries, quadriplegia, paraplegia, or hemiplegia;
- Burns in the second or third degree;
- Serious cosmetic disfigurement;
- Paralysis;
- Suspected or diagnosed substantive brain trauma resulting in cognitive disability and/or neurological injury associated with depreciated sensory consequence;

ICRMA MOC Reporting Requirements, cont.


- Serious loss of use of any body functions;
- Long-term hospitalization;
- Any claim alleging sexual abuse, molestation, or harassment;
- Title 42 U.S.C. section 1983 claims or other claims involving civil rights violations;
- Any claim that includes a statutory attorney fees provision;
- Any class action; or
- **WRONGFUL EMPLOYMENT PRACTICES.**






The slide features a red header with the ICRMA logo on the left and the title "Member's Role" on the right. Below the header, four white rounded rectangular boxes are stacked vertically, each containing a role description. Each box is connected to a light blue horizontal bar that extends to the right edge of the slide.

- Report Claims to TPA as quickly as possible
- Participate in four-way partnership
- Supervise the TPA
- Perform effective risk management



The slide features a red header with the ICRMA logo on the left and the title "Liability Program Manager's Role" on the right. Below the header, four blue horizontal bars are stacked vertically, each containing a role description. Each bar is connected to a white circle on the left side, which is part of a vertical line that has a diagonal tick mark at the top and bottom.

- Participate in four-way partnership
- Oversee claims handling
- Report to reinsurance carriers
- Present claims to Claims Committee & Board


TPA's Role


Participate in four-way partnership

Manage Litigation

Issue engagement letters

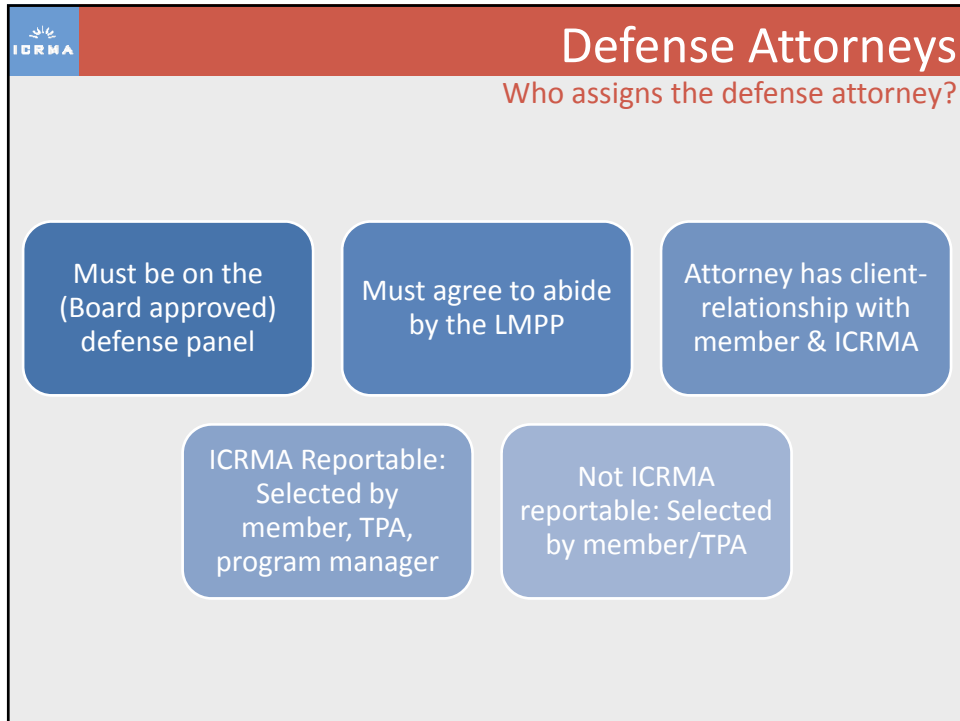
Provide feedback re. attorney to Member & ICRMA

Review attorney bills


TPA's Role

Refer to the TPA Performance Standards for complete and accurate details.

Timeframe	Action
2 working days (pg. 2)	Open claim Acknowledge receipt of claim Complete two-point contact Set reserves
3 working days	Within 3 days of significant developments, adjust reserves to reflect status
15 working days (pg. 3)	Complete investigation Liability and damages assessment
30 days (pg. 3)	Prepare captioned report Review attorney invoices (pg. 9 of LMPP) – <i>Exercise: Review invoice</i>
60 day intervals (pg. 4)	Update action plan Update diary
90 day intervals (pg. 4)	Update reserves
60 days post settlement/verdict (pg. 5)	Ensure all invoices have been received Close claim
Biannually	Participate in litigation management meetings

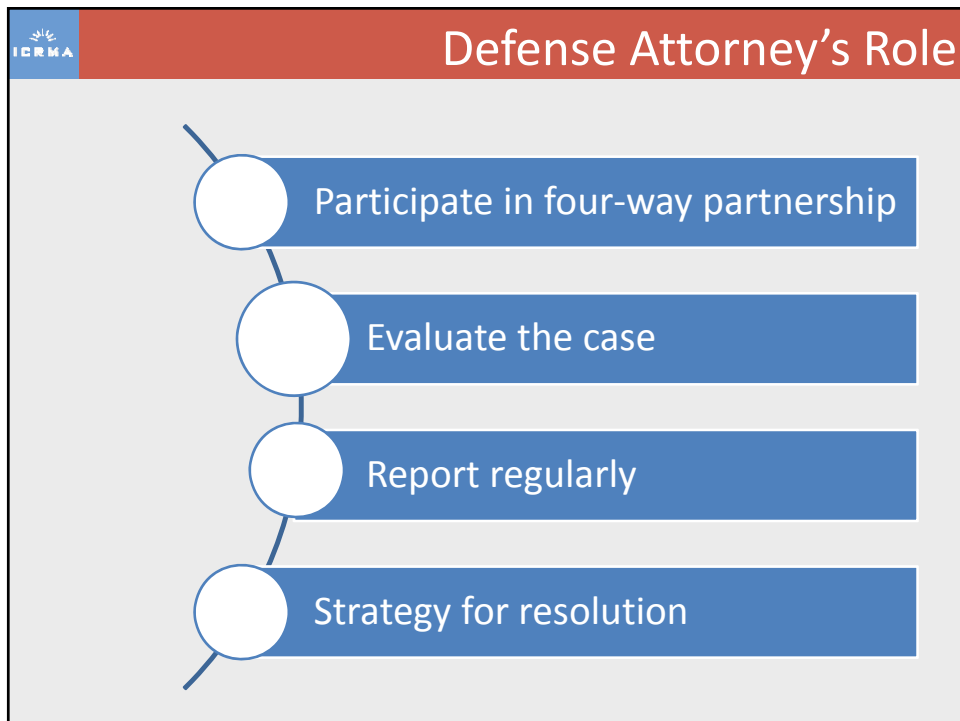


The slide features a red header with the ICRMA logo on the left and the title "Defense Attorneys" in white. Below the title, the question "Who assigns the defense attorney?" is posed. The main content consists of five blue rounded rectangular boxes arranged in two rows. The top row contains three boxes, and the bottom row contains two boxes.

Defense Attorneys

Who assigns the defense attorney?

- Must be on the (Board approved) defense panel
- Must agree to abide by the LMPP
- Attorney has client-relationship with member & ICRMA
- ICRMA Reportable: Selected by member, TPA, program manager
- Not ICRMA reportable: Selected by member/TPA



The slide features a red header with the ICRMA logo on the left and the title "Defense Attorney's Role" in white. The main content is a vertical list of four roles, each preceded by a white circle connected to a blue horizontal bar by a thin line.

Defense Attorney's Role

- Participate in four-way partnership
- Evaluate the case
- Report regularly
- Strategy for resolution

ICRMA Defense Attorney's Role	
This timeline is designed as a helpful summary. Refer to the LMPP for complete and accurate details.	
Timeframe	Action
Within 60 days of assignment (pg. 6)	Complete case analysis, including: <ul style="list-style-type: none"> • Evaluation of allegations & legal liability • Defense plan & strategy • Facts/elements to be proved/disproved • Work distribution description • Tactics to be used in defending the case • Evaluation of settlement status & ADR • Investigation (where possible, should be completed by TPA) Budget
60 day intervals (pg. 7)	Written status report
120 days prior to trial (pg. 8)	Pre-trial report
60 days post settlement/verdict	Ensure all invoices have been provided to TPA Provide closing report/lessons learned
Biannually	Participate in litigation management meetings

ICRMA Litigation Management	
<div style="border: 1px solid blue; border-radius: 20px; padding: 20px;"> <ul style="list-style-type: none"> • Why is Litigation Management Important? <ul style="list-style-type: none"> – Exploding Settlements and Verdicts – Law Enforcement Activities <ul style="list-style-type: none"> • Excessive Force • Wrongful Shooting/Deaths • Wrongful Imprisonment – Sexual Harassment/ Abuse – Sexual Misconduct/Molestation—Rec/after school programs/Explorer Scouts </div>	

ICRMA **Litigation Management**

- **Why is Litigation Management Important?**
 - Dangerous condition of public property
 - Fires
 - Streets, roads, bike paths/lanes
 - Crosswalks
 - Bus stops
 - Employment related - #MeToo

ICRMA **Litigation Management**

The Evidence: Statewide and Nationally

- \$500M settlement: Penn State –Sexual molestation/abuse (Gymnastics physician)
- \$22M settlement (\$15.7M settlement, \$6.5M expenses): Redlands USD –Sexual abuse (Teacher)
- \$45M Settlement (\$31M to Plaintiff, \$15M expenses): Torrance USD –25 students (Wrestling coach)
- \$19.9M settlement: City of Claremont – Homes destroyed by fire; alleged dangerous condition

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Litigation Management


The Evidence: more bad news

- \$4.5M settlement: City - nurse hit in crosswalk going to work (negligent driver with only \$100,000 insurance)
- \$12.8M verdict: Member of excess JPA - worker of refuse company hit by door of another vehicle while at entity owned dump site
- \$20M settlement: City - bus hit pedestrian walking along road (Driver age 75. Plaintiff in vegetative state)
- \$44M verdict: Chicago police shooting while off duty

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Litigation Management

- In L.A. County, police misconduct claims payouts have increased from \$5.6M in 2011/12 to \$50.9M in 2015/16 - **a tenfold increase!!**
 - “The numbers are pretty shocking!”-L.A. Times, April 5, 2017
- In Chicago, police misconduct claims have already cost \$66M in 2018, not including \$61M in jury verdicts on appeal
 - “ a string of massive payouts to victims and attorneys that has surpassed \$300M in recent years”- L.A. Times, Aug. 29, 2018


 ***Commercial Break***

Brief commercial:

- CAJPA Tort Liability Data Collection Project
- Demonstrate the impact of liability claims on public entities
- Please begin educating elected officials (local & state) of the impact these claims are having and the need for tort reform


 **Litigation Management**

- Selecting the right defense firm
- Designating who at City will oversee litigation
- Creating Litigation Plan
- Frequent communication
 - Developments, goals and strategy
- On-going evaluation of ADR and settlement
- Compliance with ICRMA LMPP




Litigation Management

- Selecting Defense Counsel
- Consider: Subject matter expertise
 - Trial experience
 - Willing to work within the LMPP
 - Integrity & trust
 - Consider conflicts of interest




Litigation Management

- Who is in charge?
- Designate city staff member who will:
 - Approve Litigation Strategy & Budget
 - Act as liaison
 - Make on-going decisions
 - Review and approve status reports and legal bills
 - Oversee TPA



Litigation Management

- **What is the Litigation Strategy?**
 - Case Analysis and Budget are strategic and financial blueprint
 - Preliminary investigation by TPA
 - Frank assessment of liability
 - ADR/settlement options




Litigation Management

- **What's the plan?**
 - Early meeting of key stakeholders to discuss litigation strategy (including ADR/settlement options)



Litigation Management

- **Where are we now?**
 - Regular conference calls/meetings
 - Where we are and where we are going?
 - Evaluate costs/benefits of key decisions
 - Likelihood of successful MSJ
 - Settlement options and opportunities



Litigation Management

- **Are we there yet?**
 - Weigh cost of continuances
 - Pre-trial evaluation is critical

ICRMA


Litigation Management

- **Challenges**
 - Member goals and expectations in the litigation
 - Plaintiff's expectations
 - Obstacles to Settlement

ICRMA


Litigation Management

- **Litigation Management Policies & Procedures**
 - Adopted by ICRMA members (the Board)
 - Read them
 - Understand them
 - Follow and Enforce them




Litigation Management

- **Litigation Management Policies & Procedures**
 - Members and Counsel “shall comply”
 - Page 6: Case Analysis, Strategy, Status Reports
 - Page 7: Litigation Budget
 - Page 8: Communication
 - Page 9: Policy regarding fees/expenses
 - Page 10: Billing Procedures




Litigation Management

- **Other Tools**
 - Implement LMPP for all claims
 - Consider internal litigation policies (e.g. city)
 - Are you paying an hourly rate differential (pg. 9 of the LMPP)?



Litigation Management

- **Bill Review: Top to Bottom**
 - Encourages accountability
 - Encourages compliance with the LMPP
 - Evidences stewardship



Litigation Management

- **Bill Review: Top to Bottom**
 - Are services consistent with litigation strategy?
 - Are services consistent with budget?
 - Do services comply with Litigation Management Policies and Procedures?
 - Are services efficient, reasonable, appropriate to task?

ICRMA

Litigation Management

- LMPP Compliance:
 - Rates
 - Duplicative efforts
 - Prior approval
 - Experts & Vendors
 - Block billing

ICRMA

Litigation Management


- Having the conversation
 - LMPP adopted by ICRMA members for a reason
 - Attorneys on the defense panel must adhere to the LMPP
 - Justification for non-compliant bills
 - Achieving a fair resolution in the spirit of partnership


ICRMA **Litigation Management**


- Case Studies
 - What worked well
 - What didn't work so well

ICRMA **Lessons Learned: Claim Audit**

Authority	<ul style="list-style-type: none"> • Consider granting TPA authority (e.g. \$500 for "first call" settlements) • Has your agency has adopted a resolution to provide claim settlement authority to city manager or designee (Gov. Code allows city council to delegate \$50,000)?
Communi- cation	<ul style="list-style-type: none"> • Liability program manager MUST be copied on all correspondence involving ICRMA reportable claims
TPA Reporting	<ul style="list-style-type: none"> • Outline the reporting you need and contact the TPA adjuster to request it


 Lessons Learned: Claim Audit	
Decision Making	<ul style="list-style-type: none"> • Ensure your TPA adjuster has identified/documented appropriate staff members to receive updates. • Designate decision maker on liability claims.
Liability Assessment	<ul style="list-style-type: none"> • When full or partial liability has been determined, immediate steps must be taken to obtain damages information to assess value
Attorney Reporting	<ul style="list-style-type: none"> • On adjuster's third request for status update, manager should contact defense counsel • If recurrent pattern, manager contact after second request • Make liability program manager aware of issue so Board can be notified

 Lessons Learned: Claim Audit	
Trust Accounts	<ul style="list-style-type: none"> • TPA & City create account • Relieves administrative burden on city staff • All payments still approved by the city • TPA makes expense & loss payments accurately & timely; recorded in loss data
Closing Report	<ul style="list-style-type: none"> • Ensure a closing report is submitted on all claims, regardless of value • Report should address the success of early resolution or attempts of early resolution
Case Resolution	<ul style="list-style-type: none"> • On newly received litigation & the assignment of defense counsel, give careful consideration to case value. Will slight increase in offer will resolve the case before litigation costs are incurred?

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Thank you for attending

Questions?