



## AGENDA

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

**JPA:** ACCEL CLAIMS COMMITTEE MEETING

**DATE/TIME:** Tuesday, May 28, 2024, at 9:30 AM

**LOCATION:** Teleconference

Link: <https://alliantinsurance.zoom.us/j/99673402691?pwd=VzYzVVhrZlJrcnZEVCTc0QTc0eThTdz09>

Meeting ID: 996 7340 2691

Passcode: 805258

Dial: (669) 900-6833

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***In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.***

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*Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.*

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- MEMBER** • **City of Anaheim**, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805  
**LOCATIONS** • **City of Bakersfield**, 1600 Truxtun Ave., 4<sup>th</sup> Floor, Bakersfield, CA 93301  
**VIA TELE -** • **City of Ontario**, 200 North Cherry Ave., Ontario, CA 91764  
**CONFERENCE** • **City of Santa Cruz**, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060  
• **City of Santa Monica**, 1685 Main Street, Room 131, Santa Monica, CA 90401

### PAGE

#### **A. CALL TO ORDER**

#### **B. CONSENT CALENDAR**

2-4

- 1 **1. Approval of Minutes for the February 29, 2024, Claims Committee Meeting** (A)  
*The Committee will review these minutes and will take action to approve or give direction.*

#### **C. REPORTS**

##### **1. CLAIMS COMMITTEE'S REPORT**

5-11

- 1 a) **Litigation Update** (I)  
*George Hills will provide the Committee a litigation update.*
- 3 b) **CLOSED SESSION – Pursuant to Gov't Code 54956.95** (A)  
*Members will review the following Closed Session items and may take action or give direction.*
- i. Committee Review – ACCEL Open Loss Run
  - ii. George Hills Estimated Loss Payments

#### **RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS**

#### **D. PUBLIC COMMENTS**

- 4 *The public is invited at this point to address the Committee on issues of interest to them.* (I)

#### **ADJOURNMENT**



**MINUTES OF THE  
ACCEL CLAIMS COMMITTEE MEETING**

Item No. B.1.  
Claims Committee  
May 28, 2024

**Thursday, February 29, 2024 at 2:30 PM**

**LOCATION:  
Teleconference**

Link: <https://alliantins.ance.zoom.us/j/97274876742?pwd=VG1hV0hlaGhPY3FlaWxDSHNjSGs5UT09>

Meeting ID: 972 7487 6742

Passcode: 459145

Dial: (669) 900-6833

**MEMBERS PRESENT:**

Tracey Matthews, City of Anaheim  
Jena Covey, City of Bakersfield  
Numeya Williams, City of Ontario  
Ross Brandon, City of Santa Cruz

**MEMBERS ABSENT:**

Oles Gordeev, City of Santa Monica

**GUESTS AND CONSULTANTS:**

Ben Oram, George Hills Company  
David Trautz, George Hills Company  
Rich Santana, George Hills Company  
Conor Boughey, Alliant Insurance Services  
Lorissa Huey, Alliant Insurance Services

**A. CALL TO ORDER**

Tracey Matthews called the meeting to order at 2:35 PM.

**B. CONSENT CALENDAR**

**B1. Approval of Minutes for the January 8, 2024 Claims Committee Meeting**

A motion was made to approve the consent calendar.

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



	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					

### C. REPORTS

#### C1. CLAIMS COMMITTEE’S REPORT

##### C1a. Proposed Changes: ACCEL Claims Reporting and Handling Policy and Procedure

Lorissa Huey reported that the two proposed changes to the Claims Reporting and Handling Policy and Procedure are 1) a new bullet point in Section VIII. Claims Reimbursement Requests that describes if an occurrence is open and certain claims are resolved, how any additional reimbursements for defense costs and fees will be processed, and 2) defining the process of when a coverage opinion is obtained in Section V. Coverage Determinations. For the first proposed change, there were three proposed changes.

A motion was made to recommend the following proposed changes to the Board:

Remove Options 1 and 2 and revise Option 3 with the limits of \$50,000 or \$100,000 for the Board to discuss further for the proposed new bullet point in Section VIII. Claims Reimbursement Requests.

Also, to add verbiage, “Further, if time is of the essence” in the second sentence of the proposed new paragraph in Section V. Coverage Determinations.

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

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					



### C1b. Litigation Update

Ben Oram, George Hills provided the Committee a quarterly litigation update for informational purposes.

### C1c. CLOSED SESSION – Pursuant to Gov’t Code 54956.95

A motion was made to enter into Closed Session at 3:00 PM.

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

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					

A motion was made to come out of Closed Session at 4:42 PM.

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

	Tracey Matthews	Jena Covey	Numeya Williams	Ross Brandon	Oles Gordeev
Aye	X	X	X	X	
Nay					
Abstain					

Conor Boughey reported out of closed session that no reportable action took place. Direction was given to the Program Administrators to add language to the ACCEL Claims Reporting and Handling Policy and Procedure about prefunding requests should be requested by the City’s Finance Director.

**D. PUBLIC COMMENTS** - There were no public comments.

### ADJOURNMENT

Tracey Matthews adjourned the meeting at 4:49 PM.



**Item No. C.1.  
Claims Committee  
May 28, 2024**

## LITIGATION UPDATE

**ISSUE:** At today's meeting, Ben Oram, ACCEL Litigation Manager will provide another update because the Committee requested these to be provided quarterly.

**RECOMMENDATION:** This is an information item, no action is necessary.

**FISCAL IMPACT:** No financial impact is expected.

**BACKGROUND:** The Program Administrators discussed services with ACCEL's Claims Chair, Tracey Matthews. As a result of that discussion, ACCEL requested that George Hills provide a quarterly update.

ACCEL has not previously received litigation updates as part of our litigation management services, but has received updates at strategic planning meetings.

The Litigation Update documents are posted on the ACCEL Website in the Members' Only section.

**ATTACHMENT:** Litigation Update from George Hills.



Authority for California Cities Excess Liability  
Litigation Review and Update  
May 22, 2024  
Benjamin Oram, Esq.

## PRESENTATION OF CLAIMS

### ***Campbell v. L.A. Unified School Dist.***

Docket: B320442 (Second Appellate District)

Opinion Date: May 21, 2024

#### Summary Rules:

Under the Government Tort Act, a plaintiff suing a public entity for damages must timely present a written claim to the entity before filing suit. A complaint to the Labor Commissioner is not sufficient to meet this requirement nor is it the “equivalent of ‘substantial compliance.’” The tort claim must be provided the correct people and include the information required by the Government Code to comply.

#### Facts:

In September 2021, John Sandy Campbell filed a lawsuit against her former employer, the Los Angeles Unified School District, alleging racial discrimination and retaliation for whistleblowing. These allegations were in violation of Labor Code sections 1102.5 and 1106 and Government Code section 12940 (the Fair Employment and Housing Act). The District demurred, arguing that Campbell had not complied with the Government Code’s claim presentation requirement and that the statute of limitations barred her cause of action under the Act. The trial court sustained the District’s demurrer without leave to amend, citing *Le Mere v. Los Angeles Unified School District* and Government Code section 12965, subdivision (c)(1)(C).

#### Analysis and Holding:

The Court of Appeal of the State of California Second Appellate District Division Eight reviewed the trial court’s ruling independently and applied the standard for demurrers. The court agreed with the trial court, stating that a plaintiff suing a public entity for damages must timely present a written claim to the entity before filing suit. Campbell had not demonstrated that she substantially complied with the claim presentation requirement. Furthermore, Campbell’s amended complaint did not plead compliance with the claim presentation requirement.

Additionally, Campbell’s claim for violation of the Act was time-barred. The Department of Fair Employment and Housing had provided Campbell a Right to Sue notice dated October 9, 2018, giving her one year to file a civil action. Campbell did not sue until September 2021, making her suit untimely. The court also rejected Campbell’s

argument that the discovery rule saved her lawsuit. The court affirmed the judgment and order sustaining the demurrer without leave to amend and awarded costs to the respondent.

### ***City of Santa Cruz v. Superior Court of Santa Cruz County***

Docket: H050881 (Sixth Appellate District)

Opinion Date: April 16, 2024

#### Summary Rules:

A City may establish a local claim-presentation requirement for all claims are which excepted from a claim presentation requirement under section 905.

- Cal. Gov. Code Section 905 subd. (i.) – Except[s] certain types of claims from the presentation requirement, including claims brought by a local public agency such as the County.
- Cal. Gov. Code Section 935 authorizes a local public entity, such as the City, to adopt a claims presentation ordinance for claims “which are excepted by section 905” from the claim presentation requirement of the Gov. Claims Act (§ 935, subd. (a)).

#### Facts:

The County of Santa Cruz (County) sued the City of Santa Cruz (City) for \$1.2 million in emergency repairs to a portion of Capitola Road and surrounding area, located within the jurisdiction of the City (failure to maintain and manage the area). Causes of action included: (1) dangerous condition of public property, (2) trespass, (3) nuisance, (4) waste, (5) indemnity and contribution, (6) removal of lateral and “sub-adjacent” support, (7) declaratory relief, (8) account stated, and (9) goods and services rendered.

The County alleged that pursuant to section 905, subdivision (i) of the California Government Code, it was *not* required to present a claim to the City before bringing the lawsuit. However, the City demurred, arguing that the County failed to present a claim directly to the City as required by the City’s own claim presentation ordinance (Santa Cruz Mun. Code, § 1.14.010).

The trial court sustained in part and overruled in part the City’s demurrer, rejecting the City’s argument that the County was required to present a claim before filing the lawsuit. The court reasoned that the City’s ordinance applies to claims that are “not governed by” section 905, and the County’s claim against the City is governed by section 905, which provides an exception to the claim presentation requirement for the County’s claim against the City.

The City appealed, arguing that its ordinance, which applies to claims “not governed by” section 905, must be interpreted as applying to claims “excepted” from section 905.

#### Analysis and Holding:

The Court of Appeal agreed with the City's interpretation, concluding that the trial court erred in determining that the County was not required to comply with the claim

presentation ordinance before filing its lawsuit against the City. The Court of Appeal stated that the similarity in language and structure of the City's ordinance and section 935 support the interpretation that the City's ordinance was intended to create a local claim presentation requirement in accordance with the City's authority under section 935 and to encompass those claims excepted from the claim presentation requirement under section 905. The court rejected the County's contention that an ordinance must expressly reference section 935 in order for the ordinance to "effectuate" section 935.

## TRAIL IMMUNITY

### ***Helm v. City of Los Angeles***

Docket: D083075(Fourth Appellate District)

Opinion Date: May 14, 2024

#### Summary Rules:

Cal. Gov. Code section 821.4 - Trail immunity applies to a cable suspended between two posts where the cable is located in a designated recreation area on an unpaved trail intended for pedestrian recreational use and intended to keep out vehicle traffic.

#### Facts:

The plaintiff, Brady Helm, tripped and fell on a wire cable while walking in a recreational area at Diaz Lake which is just south of Lone Pine, CA and which is owned by the City. The wire cable was suspended between two wooden poles and was intended to prevent vehicles from accessing a pedestrian pathway. Helm alleges he exited his vehicle and began walking his dog down a footpath to the lake when he tripped over the cable that he had not seen. Helm sued the County of Inyo and the City of Los Angeles, alleging causes of action for dangerous condition on public property, premises liability, and negligence.

The defendants prevailed on summary judgment in the Superior Court of Inyo County, arguing that Helm tripped while walking along a trail, and thus, they were immune under Government Code section 831.4 (trail immunity). Helm appealed the final judgment, contending that trail immunity does not apply in this case and that disputed questions of material facts exist regarding the alleged dangerous condition of the subject public property.

#### Analysis and Holding:

The Court of Appeal, Fourth Appellate District Division One State of California, disagreed with Helm's first contention and concluded that the trial court did not err in granting the defendants' motion for summary judgment because trail immunity barred Helm's claims. The court found that the area where Helm fell was a trail for purposes of section 831.4 and the wooden poles and wire cable were incorporated into the design of the trail. Therefore, the court affirmed the judgment.

## QUALIFIED IMMUNITY

### ***Hart v. City of Redwood City***

Docket: 22-17008

Opinion Date: April 19, 2024

#### Summary Rules:

Qualified Immunity applies in the absence of previously decided case law which puts officers on notice that their conduct clearly violates established law. The Court looks to the facts of the incident and compares with caselaw to determine if the specific conduct has been decided to violate individual rights by a prior Court.

#### Facts:

The case involves a lawsuit filed by the family of Kyle Hart against the City of Redwood City and its police officers, following Hart's death in a police shooting. Hart was attempting suicide with a knife in his backyard which caused his wife to call 911. Hart was covered in his own blood and his wife had blood on her as well when officers arrived on the scene. Hart was in the backyard and two officers entered by the side gate. Hart was across the backyard approximately 35 feet away but began walking towards officers as soon as he saw them enter the backyard. Hart was shot by Officer Gomez when he approached the officers with the knife despite commands to drop the weapon. The family alleged constitutional and state law violations arising from the shooting and argued that the officers could have and should have retreated rather than open fire.

The United States District Court for the Northern District of California denied Officer Gomez's claim of qualified immunity at summary judgment. The court found that the officer was not entitled to qualified immunity, relying on a previous court decision that stated it was objectively unreasonable to shoot an unarmed man who had committed no serious offense, was mentally or emotionally disturbed, had been given no warning of the imminent use of such a significant degree of force, posed no risk of flight, and presented no objectively reasonable threat to the safety of the officer or other individuals. The City appealed to the Ninth Circuit.

#### Analysis and Holding:

On appeal, the Ninth Circuit reversed the district court's decision. The appellate court held that Officer Gomez was entitled to qualified immunity. The court found that Hart posed an immediate threat when he rapidly approached the officers brandishing a knife and refusing commands to drop it. Furthermore, even if Officer Gomez's conduct violated the Fourth Amendment, he would still be entitled to qualified immunity because the conduct did not violate clearly established law. None of the cases the plaintiffs identified would have put Officer Gomez on notice that his actions in this case would be unlawful.

## IMMUNITY FROM PUBLIC NUISANCE

### ***City of Norwalk v. City of Cerritos***

Docket: B327413(Second Appellate District)

Opinion Date: February 1, 2024

#### Summary Rules:

Cal. Civil Code Section 3482 - What is not deemed a nuisance: "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance."

#### Facts:

The case revolves around a dispute between two cities, Norwalk and Cerritos, both located in California. In 1974, Cerritos enacted an ordinance restricting commercial and heavy truck traffic to certain major arteries within the city. The ordinance was amended in 2019 and 2020, resulting in the removal of one of these arteries. Consequently, Norwalk sued Cerritos, arguing that the ordinance created a public nuisance by diverting extra truck traffic through Norwalk and thus causing various "adverse effects" linked to heavier traffic flow. Cerritos claimed immunity under Civil Code section 3482, which shields a city from public nuisance liability for actions "done or maintained under the express authority of a statute".

#### Analysis and Holding:

The Court of Appeal of the State of California Second Appellate District found that the Vehicle Code explicitly authorized cities to regulate the use of their streets by commercial or heavy vehicles. Therefore, the court held that Cerritos was immune from liability for the public nuisance of diverting traffic into Norwalk. The court stated that the immunity conferred by Civil Code section 3482 applied not only to the specific act expressly authorized by the statute, but also to the consequences that necessarily stemmed from that act. The court affirmed the judgment in favor of Cerritos.

## EVENT-BASED RELEASE AGREEMENT

### ***Whitehead v. City of Oakland***

Docket: A164483 (First Appellate District)

Opinion Date: February 13, 2024

#### Summary Rules:

A release agreement required by the City in order to participate in a recreational activity is enforceable to protect the City against a claim of dangerous condition of public property on which the event is taking place.

### Facts:

The plaintiff, Ty Whitehead, participated in a training ride for the AIDS LifeCycle fundraiser in March 2017. During the ride, Whitehead hit a pothole on a road maintained by the defendant, the City of Oakland, causing him to flip over his bicycle handlebars, hit his head on the pavement, and suffer injury. Prior to the ride, Whitehead had signed a release agreement which exempted the “owners/lessors of the course or facilities used in the Event” from future liability. Whitehead sued the City of Oakland for injuries he suffered due to the pothole. The trial court granted the City's motion for summary judgment, concluding the release was enforceable. Whitehead appealed, arguing the release was invalid because it concerned a matter of public interest, and that the court erred by not addressing whether there was a triable issue of fact as to the City's gross negligence.

### Analysis and Holding:

The Court of Appeal of the State of California First Appellate District Division Three affirmed the trial court's decision. The court found that the release was valid and enforceable because the cycling event was a nonessential, recreational activity that did not affect the public interest within the meaning of Civil Code section 1668. The court also found that Whitehead failed to adequately raise and support a claim of gross negligence.