

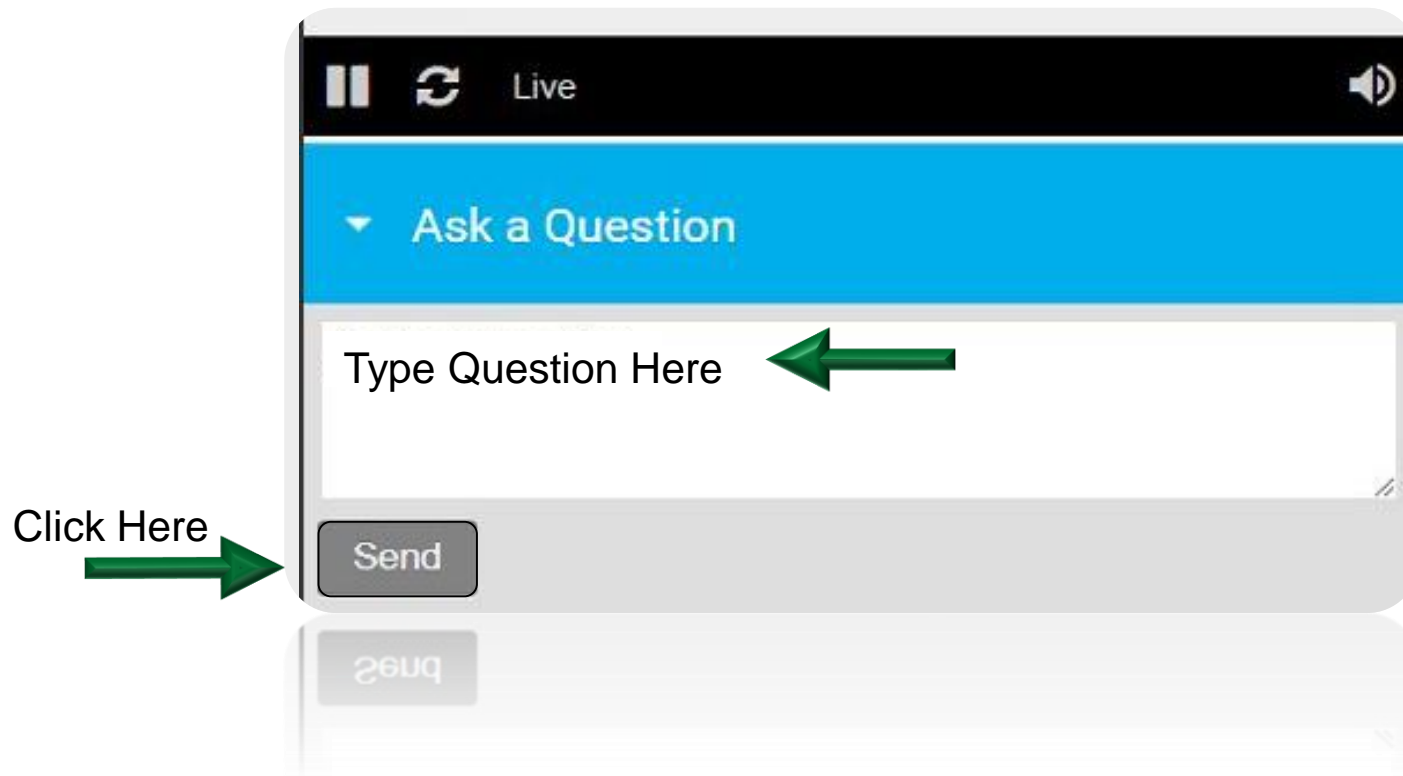


LIABILITY CLAIMS AND RISK MANAGEMENT SOLUTIONS FOR LOCAL GOVERNMENTS

To Ask a Question



Find this “Ask a Question” box on the left side of your screen



Panelists



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- The pandemic has exposed weaknesses in public health and the economy
- Increased scrutiny and emphasis on accountability
- Social inflation
- Public demand for substantive change in policing (accountability and recruitment of police)
- Longer protests nationwide
- Opportunity for broader social responsibility
- Risk management community can lead the way for substantive change



Policing in America is Changing



- Scrutiny of police departments and expectations of transparency



"We have been under a microscope.
We welcome that."
~Toney Chaplin, Hayward, Chief of Police

- Some large police unions are willing to change, and have to be a part of solutions (Google: "Police Unions in California")
- Accountability and recruitment of police
- Qualified Immunity is being challenged

How Do You Systematically Root Out Problem Officers?



Good HR management

Reviewing every use of force

Providing access to counseling and support for officers who need it

Field Training Officer (FTO) Programs

Mentoring

What Are Key Law Enforcement Legal Aspects?



- Deliberate indifference
- Qualified immunity
 - How do officers qualify for immunity?
- Pattern and practice
 - How is practice different from policy?



What Policy Considerations Should Be Made for Protests & Demonstrations?



- Policy purpose
- Needs
- De-escalation techniques and sensitivity training
- Lawful demonstration objective
- When a demonstration becomes unlawful, the emphasis shifts to containment, dispersal and arrest procedures



Law Enforcement Risk Solutions



- Law Enforcement Liability Self-Assessment (offline)
- Policies and procedures (Law enforcement and jail operations)
- Data collection and alert technology
- COVID-19 checklist (Law enforcement and jail operations)



Motor Vehicle Crashes – Solutions



- First Responders –
(S:ERVE Online Simulator)
- Motor Vehicle Record Criteria –
What disqualifies someone to drive
on employer business?
- Train-the-Trainer (Smith System,
National Safety Council,
Skid Pan/Pad Training)
- Police pursuits and 3rd party litigation
(Departmental Policy, reasonableness
of the pursuit and calling it off)



What Are Some Best Practices to Control COVID-19 for Law Enforcement?



Most importantly: **Follow CDC Guidelines**

- OSS COVID-19 expert, Dr. Paul Adler, D.O. says:
 - Social distance – more than 6 feet, wear a mask, cover sneezes and coughs, hand washing etc.
 - Ask subjects if they have a fever, cough, sore throat, body aches or short of breath or been in contact with anyone testing positive
 - When in gym clean barbells after use and do not share towels
- Additional for Fire Depts., Law Enforcement, and Jails
 - Safety culture will drive what is actually understood and practiced
 - Controlled access to hot spots
 - Disinfect vehicles
 - Disinfect shared work spaces before and after shifts



What Should Risk Managers Consider Regarding COVID-19 Liability Claims?



- Civil Liability Claims

- Failure to provide a safe space for third parties
- Failure to follow legal requirements or guidelines
- Requires proof of causation – challenging
- Extent of duty of care to third parties is uncertain



What Should Insureds Know About Liability Claim Reporting and the Life of the Claim?



- Emphasize of reporting claim to Safety National; be aware of reporting requirements
- Want to get a copy of the lawsuit
- Partner with insured and counsel to manage case throughout the life of the claim
- Being kept advised of the status
- Occurrence vs. claims made (malicious prosecution)
- Report to all carriers (past and present) not just current carrier



What Types of Liability Claims Do You Typically See Cross Your Desk?



- Third-party bodily injury claims
- Law enforcement liability claims
- Employment practices liability claims
- Auto liability claims
- Libel/slander/defamation claims



What Should Risk Managers Know Regarding Negligence and Premises Liability?



- Contractual transfer
- Additional insured
- Hold harmless
- Loss control



Security and Crime:

- Security and safety
- Lighting adequate
- Property security crime analysis



What Are Some Key Risk Reduction Solutions to General Liability Claims?



- General Liability:
 - The underwriting process & application
 - Documentation and premises dangerous conditions inspections
 - Notice pre- and post-risk control
 - Notice of a hazard process to resolve
 - More technology to document and file inspections electronically – pilot program

A Paperless Solution for Public Entities

Participate in Safety National's pilot program and gain access to mobile safety inspection software powered by Simple But Needed. To date, public entities have used this software to execute over **4.5 million** critical safety operations.

Convenient

Present records during discovery through immediate, traceable record access and reduce potential liabilities.

What Types of Employment Practices Claims Cross Your Desk?



- Equal Employment Opportunity Commission (EEOC) demands and notices
- Sexual harassment
- Retaliation
- Age and racial discrimination
- Section 1983 claims



Employment Practices Solutions



- Safety National public entity customers with liability coverages get free access to HR Essentials Online
- Includes a hotline to provide guidance from HR professionals and attorneys



From an Attorney Perspective Why Is Transferring and Mitigating Risks Critical?



• Contractual Risk Transfer

Insurance	<ul style="list-style-type: none">• Compare forms and endorsements
Indemnification and hold harmless agreements	<ul style="list-style-type: none">• Enforceable?• Backed by insurance?
Additional insured requirements	<ul style="list-style-type: none">• Shared limits• No completed operations coverage• “Other insurance” clause disputes• Limitations on coverage afforded to additional insureds by various forms of additional insured endorsements.

What Would You Tell a Risk Manager About Sovereign Immunity?



- State Sovereign Immunity
 - Tort Claims Acts – waiver of sovereign immunity
 - Discretionary or governmental functions
 - Proprietary or Ministerial Acts
 - Premises liability
 - Operation of motor vehicles
 - Highway defect statutes
 - Notice requirements
 - Monetary caps or limits



How Does Conduct Affect Governmental Immunity and How is it Applied?



- Municipal/County/Local Governmental Immunity
 - Governmental/Discretionary Acts vs. Proprietary/Ministerial Acts
 - Public Duty Doctrine
 - Federal Civil Rights Liability (42 U.S.C. 1983)
 - Notice requirements and deadlines
 - Monetary caps or limits

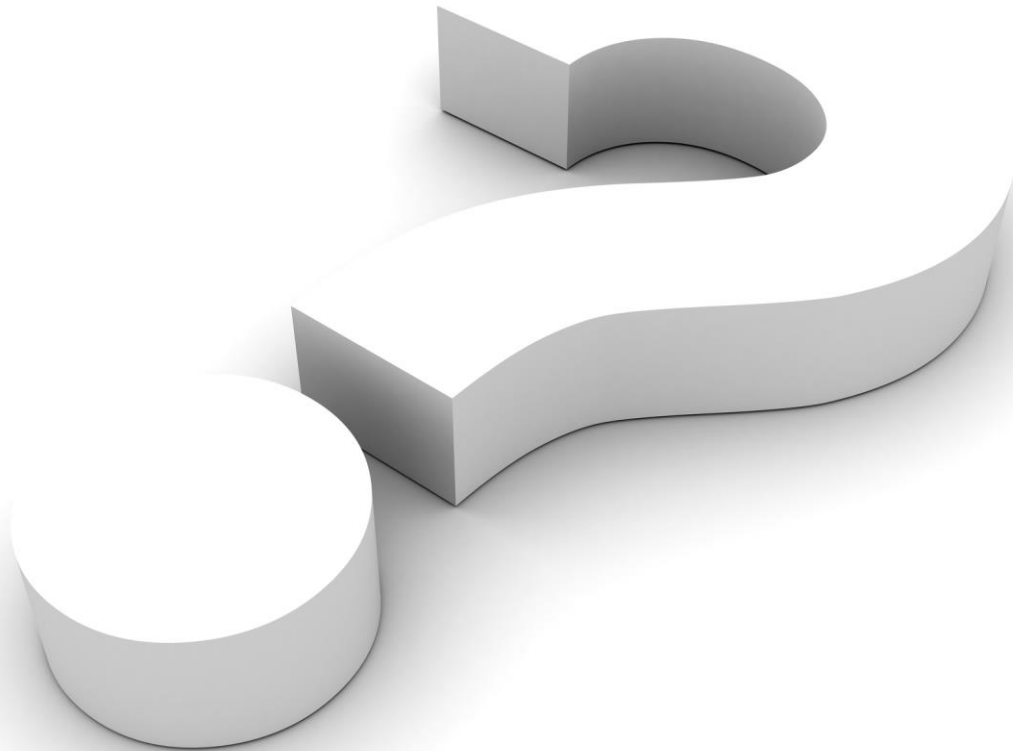


Call to Action: Remaining Challenges Moving Forward



- How are we going to be better prepared for pandemics going forward?
- How are we going to effectively handle police accountability?
- How are we going to recruit the best officers?
- What more can we do to support the well-being of police/first responders?
- Know and understand what practices are sustainable and what are not?
- What more can local governments do to be resilient and lead the way for resiliency in our communities?

Questions?





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Thank
you