



Liability Trust Fund

History and Update

Presented to the City of Calabasas
December 13, 2017

Jon Shull, CEO
California JPIA



History 1954 to 1977

The Insured Years

- “Lakewood Plan” ushers in concept of contracting for municipal services
- Costs of service are very reasonable for cities
- County provides Sheriff’s services in exchange for “Fines & Forfeitures”
- Liabilities are covered by commercial insurance and paid for as part of the contract



History 1977 to 1989

Assumption of Liability

- Insurance market makes commercial insurance very expensive
- County self-insures Liability Trust Fund
- Cities and County enter into Assumption of Liability Agreement
- LTF Surcharge set at 2% for all contracted services



History 1989 to 1996

Joint Indemnification

- County-authorized audit is critical of County's decentralized administration of LTF
- LTF administration assigned to County Counsel
- LTF Administrator hired – Sal Reza
- CCCA forms City Managers subcommittee to review LTF administration and claims handling
- Significant under-funding of liabilities discovered

History 1989 to 1996

Joint Indemnification (continued)

- Following discussions with the CCCA, in 1991 the County puts in place a new Joint Indemnification Agreement with 3% rate for Sheriff and Public Works, and a 2% rate for all other services
- Board Letter expressed that cities that did not agree would be charged 4.5% for all services
- This was said to be an interim rate
- Several significant issues from the discussions were left out of the Agreement, but cities agreed (in order to lock in the 3%/2% rate)
- CCCA immediately sought to renegotiate the Agreement



History 1989 to 1996

Joint Indemnification (continued)

- County Counsel expressed that rate should likely be as high as 13%
- Discussions led to elimination of the \$7 million “Valentine” case from the LTF so rate could be lowered
- Revised Joint Indemnification Agreement was reached in 1993 – Ultimately not approved by Board
- New agreed rates 6.5% for Sheriff, 3% for all other services
- As implemented, rates were 6% for Sheriff, 3% for other services



History 1996 to 1998

SAFER

- Under Joint Indemnification Agreement, cities continued to monitor claims administration, but truly only had a sideline role in the decision-making
- Talamaivao and Hershey cases were appealed to exhaustion – final judgments and interest exceeded \$30 million, and determined by County to be a liability of the LTF
- Negotiations begin between CCCA and County to create a method to handle LTF that is more inclusive of the cities



History 1996 to 1998

SAFER (continued)

- 1996 – CCCA and California JPIA discuss management of a new joint powers authority to administer LTF obligations
- 1997 – CCCA and California JPIA discuss and refine JPA concept with County
- 1998 – Self-Insurance Authority For Effective Risk Management (SAFER) was formed by most of the cities contracting for Sheriff services in preparation for transfer of administration
- County will only allow transfer of LTF responsibility to SAFER if all cities contracting for Sheriff services agree
- December 1998 – CCCA City Managers Committee determines that unanimous participation by cities contracting for Sheriff services cannot be achieved, but greater oversight of LTF is desirable



History 1999 to 2006

LTF Oversight Committee/Claims Board

- CCCA meets with County regarding improved cooperation in management of LTF and claims
- May 1999 CAO/County Counsel/Sheriff/PW sign MOU with CCCA recognizing Liability Trust Fund Oversight Committee and committing to partnership
- February 2000 – Board of Supervisors approves LTFOC as Claims Board
- LTF Claims Board has settlement authority for claims up to \$100,000
- LTF Claims Board recommends action for claims over \$100,000 to County Claims Board



History 2006 to 2009

County-City Special Indemnity Agreement

- June 2006 – Several years of cooperative administration interrupted when CCCA is informed of County’s unilateral decision to charge LTF for liabilities associated with sex-crimes committed by on-duty Deputy Gabriel Gonzales.
- March 2007 – County attributes claim to contract city and pays from LTF.
- September 2007 – CCCA/LTFOC files claim against the County for inappropriate use of LTF funds.
- County plays hard-ball and threatens revision to MLESA
- August 2009 – Negotiations result in “County-City Special Indemnity Agreement” that splits cost of liabilities associated with sexually oriented crimes committed by deputies.



History 2009 to Present

Normal LTFOC/Claims Board Operations

- After accepting compromise “Special Indemnity Agreement,” excess insurance premiums increased materially.
- Other operations of LTF returned to pre-dispute routine.



What is the LTF Oversight Committee?

- The LTF Oversight Committee was established in 1999 to provide input from the contracting cities into the risk management activities of the County as it concerns the contracted services
 - Procures excess insurance program
 - Conducts financial audits and actuarial studies
 - Determines surcharge rates for contributions to LTF
 - Makes risk management and operational recommendations to Sheriff and other departments
 - Contracts with California JPIA to provide administrative and risk management support



What is the LTF Claims Board?

- Established by Board of Supervisors action in 2000 to act as “claims board” for claims assigned to Liability Trust Fund
 - Determines whether to settle or fight claims within its jurisdiction
 - Approves settlements up to \$100,000
 - Recommends settlements over \$100,000 to Board of Supervisors
 - Approves defense panel attorneys



Representation

- Member Representation Policy adopted by LTF Oversight Committee and CCCA Board of Directors
- Representation reflects four Sheriff's Department Patrol Divisions plus at-large members



Representatives

Members

- Curtis Morris, San Dimas
- Pat Kearney, Lawndale
- Margaret Finlay, Duarte
- James Bozajian, Calabasas
- Mark Waronek, Lomita
- Doug Prichard, Rolling Hills Estates
- Jose Pulido, Cudahy
- Mark Alexander, La Canada Flintridge
- Ken Striplin, Santa Clarita
- Ray Cruz, Rolling Hills
- Marcel Rodarte, CCCA

Alternates

- Lindsey Horvath, West Hollywood
- Vacant, Councilmember Central Div.
- Vacant, Councilmember East Div.
- Steve Hofbauer, Palmdale
- Gustavo Camacho, Pico Rivera
- Reva Feldman, Malibu
- Steve Mandoki, Lawndale
- Darrell George, Duarte
- Paul Arevalo, West Hollywood
- Ernie Hernandez, Hawaiian Gardens



LTF Administration

Memorandum of Understanding

- 11 key points of understanding
 - Committee established with settlement authority for contract cities' claims
 - Actuarial analysis
 - Financial audits
 - Claims reserving practices
 - Claims audit
 - Approval of defense panel
 - Defense litigation plans
 - Reliable data collection and availability
 - Reporting of severe cases for direction
 - Purchase of excess insurance
 - Risk management and training recommendations of the Committee will be accepted by County

LTF Administration

Financial Issues

Actuarial Status of LTF

(Expected Probability Level)

- Sept. 1997: \$46.0 million in liabilities, \$6.2 million in assets = **(\$39.8 million)**
- June 2004: \$23.3 million in liabilities, \$29.7 million in assets = **\$6.4 million**
- June 2009: \$28.0 million in liabilities, \$56.2 million in assets = **\$28.2 million**
- June 2010: \$32.4 million in liabilities, \$63.2 million in assets = **\$30.8 million** (rate changes and 6-mo. payment holiday provided)



LTF Administration

Financial Issues

Actuarial Status of LTF

(Expected Probability Level)

- June 2011: \$35.9 million in liabilities, \$60.3 million in assets = **\$24.4 million**
- June 2012: \$38.1 million in liabilities, \$57.4 million in assets = **\$19.3 million** (12-mo. payment holiday provided)
- June 2013: \$43.9 million in liabilities, \$55.6 million in assets = **\$11.7 million**

LTF Administration

Financial Issues

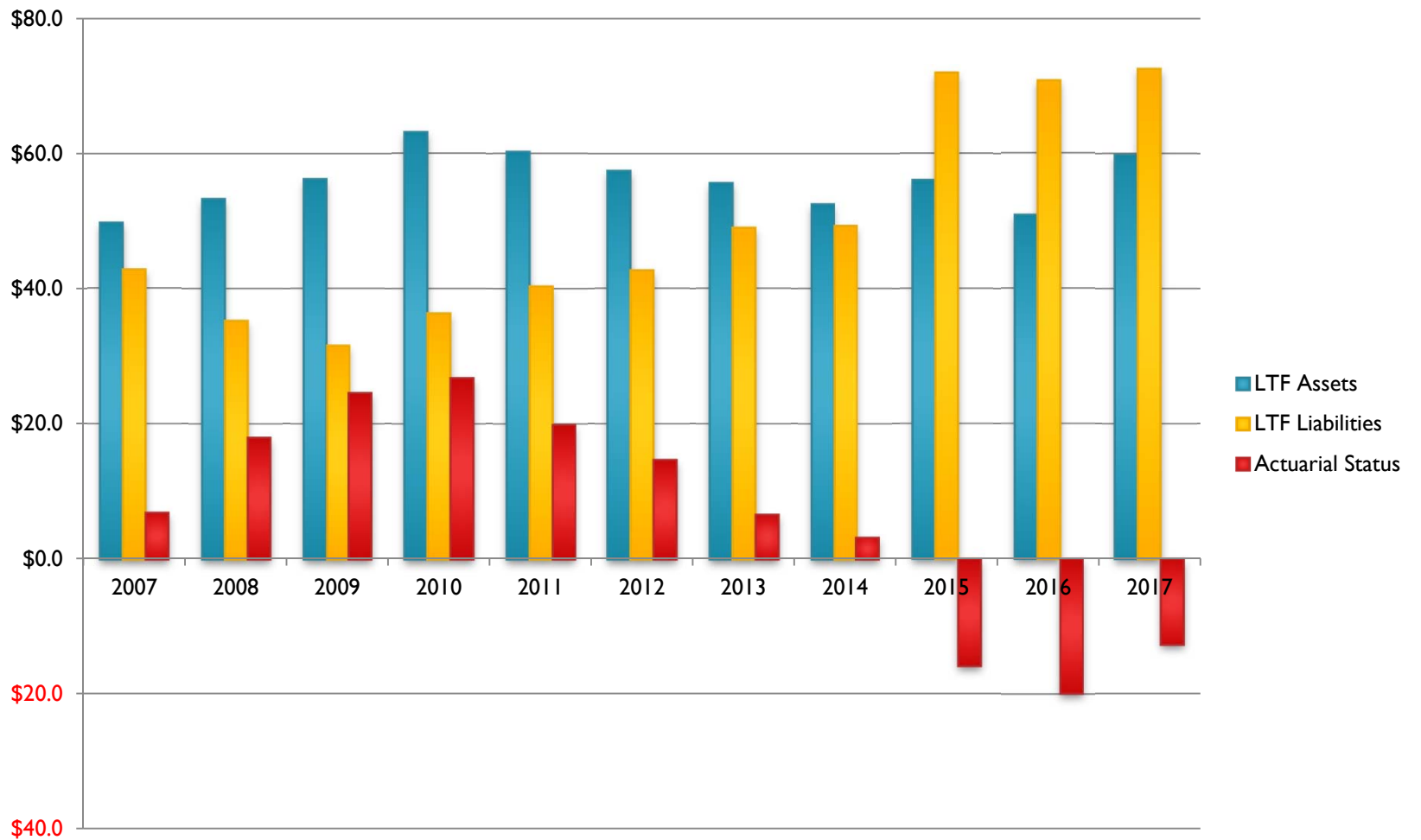
Actuarial Status of LTF

(Expected Probability Level)

- June 2014: \$49.3 million in liabilities, \$52.5 million in assets = **\$3.2 million**
- June 2015: \$72.0 million in liabilities, \$56.1 million in assets = **(\$15.9 million)**
- June 2016: \$70.8 million in liabilities, \$50.9 million in assets = **(\$19.9 million)**
- June 2017: \$72.6 million in liabilities, \$59.9 million in assets = **(\$12.7 million)**

LTF Actuarial Status

LTF Actuarial Status June 2007 to June 2017





Actuarial Implications

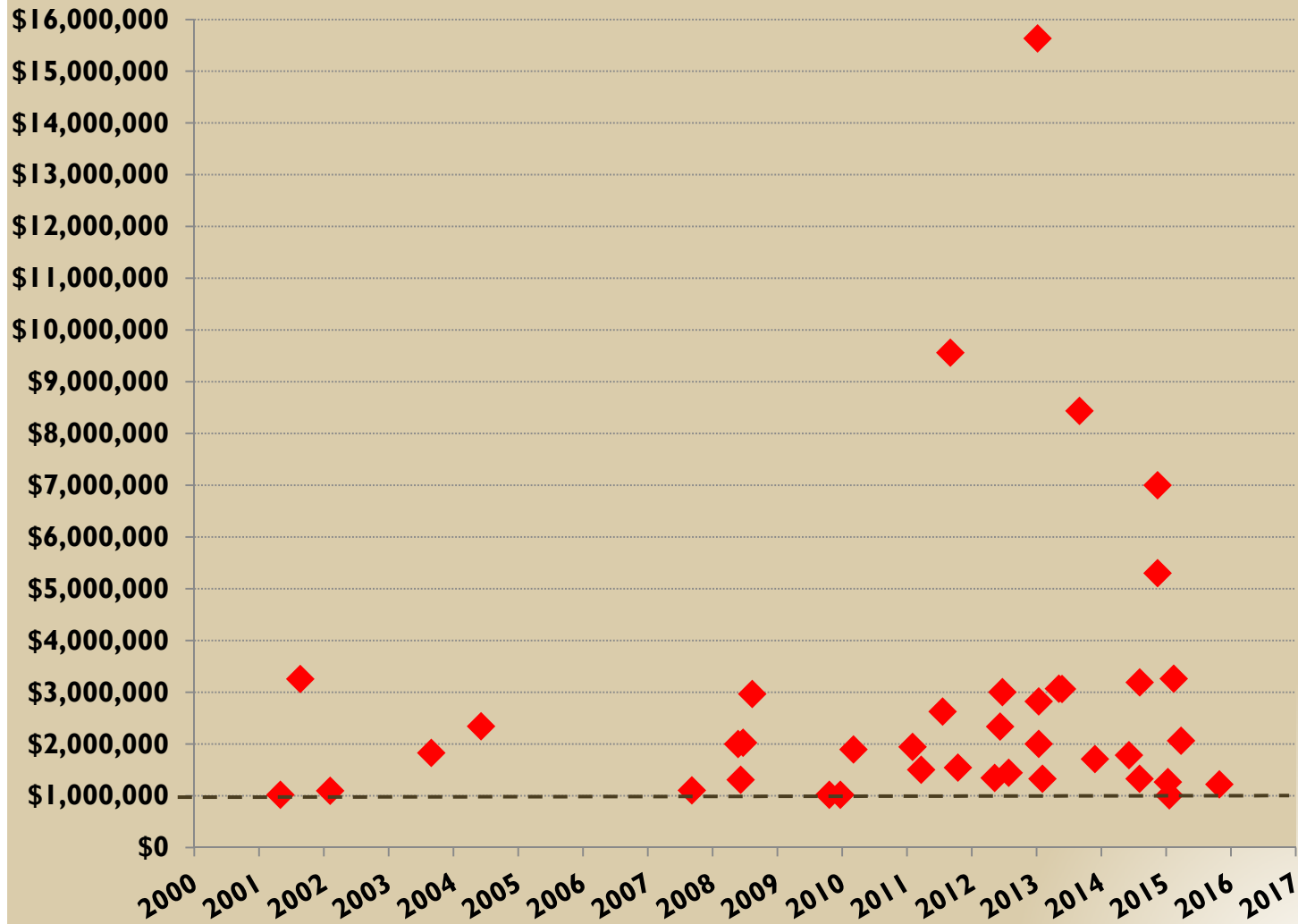
- Continued challenges associated with the Fund's actuarial status
- Surcharge increases are needed, though slowing: 9.5% → 10%, effective July 1, 2017
- Recommended rate of 12.2% for 2017-18 and 13.0% for 2018-19
- Actuarial analysis contemplated current \$4M self-insured retention, which will likely change at June 15, 2018 renewal



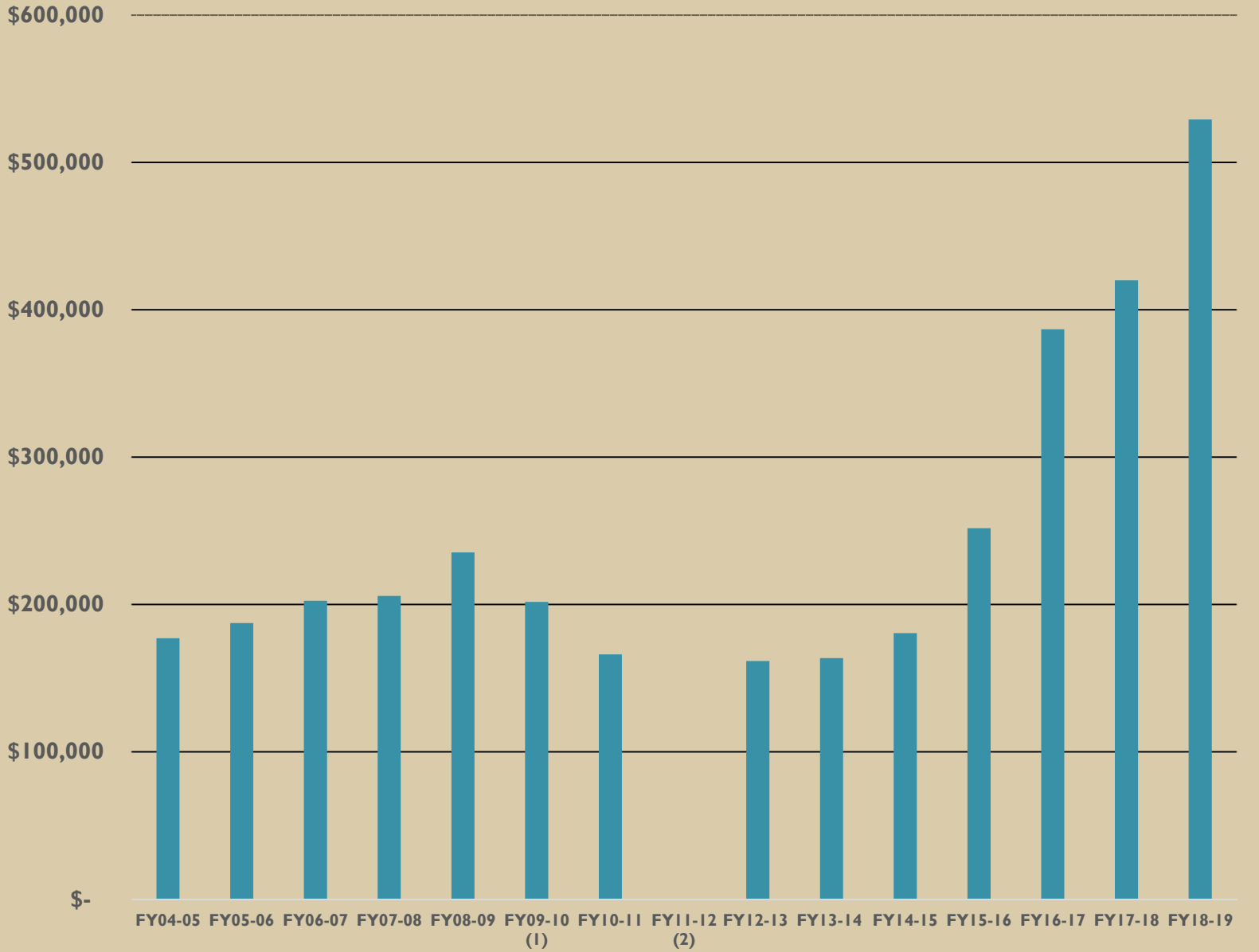
Judicial Update

- Nationwide climate is still very distrustful of law enforcement, and remains a favorite media topic
- Los Angeles County continues to be one of the worst Plaintiff jurisdictions in the country
- Irrational Juries, Verdicts, Judges
- Small pool of specialty attorneys target class; large jury verdicts become new standard
- Adverse jury verdicts (however small) result in assumption of Plaintiff's attorney fees, which can be substantial
- Even cases where no clear misconduct was involved are frequently most cost-effectively resolved by settlement, rather than risking "runaway jury" situation

LTF Claims over \$1M 2000 to Present



City of Calabasas LTF Surcharge Amounts



Montalvo v. COLA

- April 26, 2009
- Montalvo exits Circle K parking lot and drives erratically as though he has just been involved in criminal behavior. A pursuit ensues in which Montalvo reaches speeds in excess of 50 mph in residential areas. Montalvo collides with a parked vehicle and deputies surround him with patrol vehicles. He is ordered to exit the vehicle. He refused, reached under his seat, and placed his car in reverse ramming it into the Sheriff's vehicle directly behind his vehicle. Mr. Montalvo then drove forward, but then once again, reversed his vehicle into the Sheriff's vehicle a second time. Fearing for their safety, deputies fired at Mr. Montalvo approximately 60 shots. Several deputies were injured in the incident. Montalvo died at the scene.
- Demand: \$7,000,000
- November 19, 2012: Jury awarded \$8,756,600.

Burley v. COLA

- August 3, 2012
- Deputies responded to East Glencoe Street in Compton for a domestic violence call of man strangling a pregnant woman.
- Mr. Burley approached the police vehicle with his fists clenched at his sides, grunting inaudibly, with a blank stare on his face. There was foam coming from his mouth and deputies believed he was under the influence of PCP.
- Deputies commanded that Burley lie on the ground. Burley approached the vehicle with clenched fists and began to growl at them threateningly. The pregnant woman emerges from crowd screaming, "He tried to kill me!" Burley begins to run after her. Deputies tackle him and ultimately subdue him with a Taser. He continues to struggle while hand-cuffed and he is hobbled. Burley lost consciousness and expired at hospital 10 days later.
- December 31, 2014: Jury awarded \$8,000,000 plus attorney fees; \$9,600,000. Under appeal.

Arias v. COLA

- April 10, 2013
- Responding to a vandalism call, a Deputy shot Luis Arias when he failed to show his hands and instead reached inside his large jersey toward a bulge in his pants pocket. Mr. Arias claims that he was putting his hands up, as ordered by the Deputies, when he was shot for no reason.
- Mr. Arias suffered a gunshot wound to the left chest. The bullet was removed during surgery, and he was discharged from the hospital two days later.
- Demand \$375,000
- March 10, 2017: Judgment against the County that includes \$900,000 in compensatory damages and \$275,000 in attorneys' fees and costs, for a total Judgment of \$1,175,000.



Robertson v. COLA

- December 12, 2015
- Responding to a person with a gun call, Deputies shot and killed Nicholas Robertson as he pointed his gun at them and threatened the lives of the officers and the public.
- Demand \$5,000,000
- December 4, 2017: Judgment against the County citing negligence awarding \$3,600,000 to Robertson's three children.
- Robertson determined to be 33% comparatively negligent, verdict reduced to \$2,400,000.



Current Excess Insurance Program (2017-18)

- \$50M limit excess of a \$4M Self-Insured Retention with 10% Quota Share in the first layer (\$10M xs \$4M)
- Overall Premium \$4.3M
- Structured in five layers with US and London capacity



Market Conditions

- Very limited market in CA for public entities
- The 3 largest lead markets (Everest, Starr, National Casualty) have quit writing business in CA due to poor loss history
- LTF current lead carrier, Lexington (AIG) has a current loss ratio estimate of 854%
- Program will need to be significantly restructured to retain coverage at renewal



Renewal Update

- Good News: Lexington did not non-renew, despite loss ratio
- Bad News: they demanded an increase the SIR from \$3M to \$4M along with a significant premium increase and a quota share of their layer
- The new 10% surcharge effective July 1, 2017 contemplated only a \$3M retention; goal was to mitigate additional necessary surcharges to largest extent possible
- We were able to negotiate the increase from \$3M to \$4M, with a new 10% “corridor deductible” within the \$10M limit to avoid a full pre-funding of retention
- Premium on first layer increasing from \$1,736,190 to \$3,199,000, which translated to increases in excess layers
- Pursuing other structural options, but all would involve significant additional assumption of risk by the LTF



Risk Management Update

- Sheriff's Department commitment to risk management improving
- Loss reported frequency has decreased by 38% over last 3 years
- Hopefully this will translate to an improvement in loss severity, but severity is also significantly impacted by variables beyond our control
- Still studying body-worn cameras and all of the associated records management issues