

INTRODUCTION

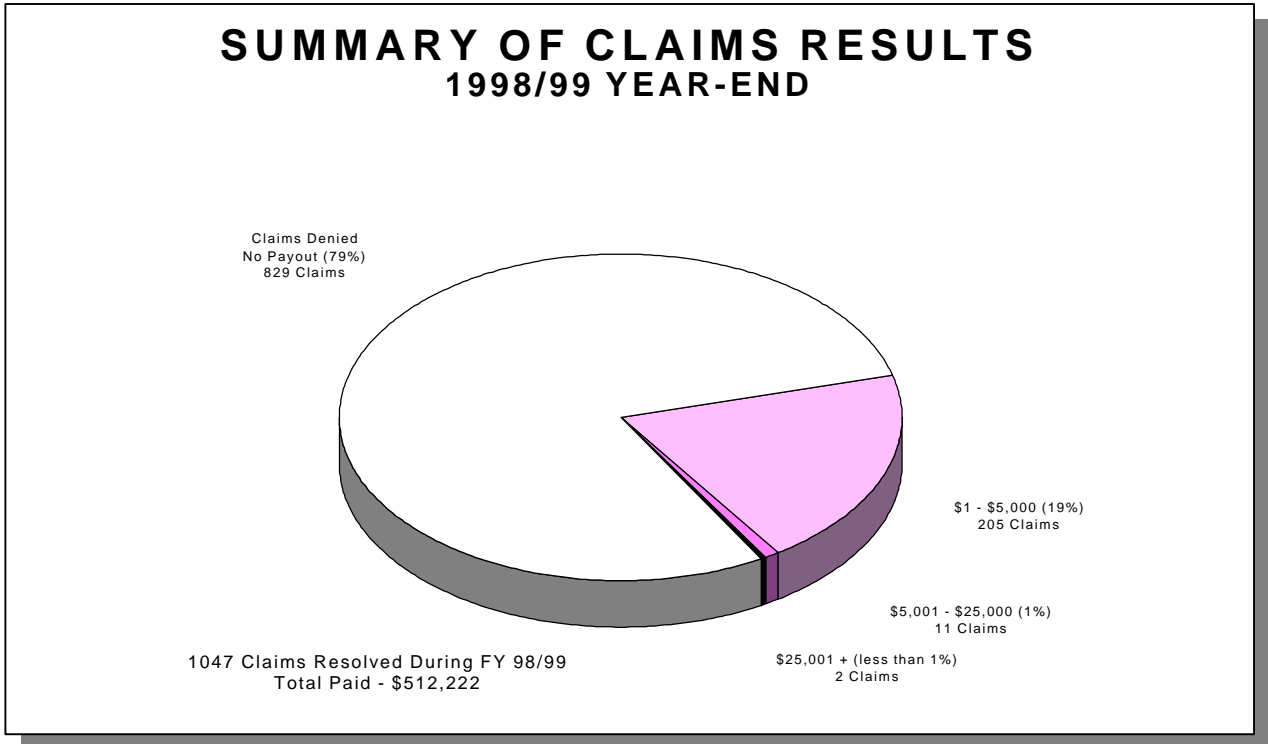
1. This annual Claims and Litigation Report provides the City Council and the City Manager with statistical and management information pertaining to claims and litigation which the City was a party in Fiscal Year 1998-1999.
2. This report contains information and statistics which are public information. This report will be presented by the City Attorney at the Council's September 30, 1999 Retreat. An additional report containing confidential attorney-client privileged information pertaining to pending litigation, liability exposure and litigation strategy will be presented to the City Council in closed session at a future date.
3. This report captures liability statistics for Fiscal Year 1998-1999 (July 1, 1998– June 30, 1999), as well as statistics as of October 21, 1998 that were provided to the City's outside auditors for the City's Annual Financial Report.
4. The City Attorney will issue the City Attorney's 1998-1999 Annual Report in late fall. This report will provide an overview and statistics regarding all matters (litigation and non-litigation) handled by the Office.

LITIGATION & CLAIMS HANDLING PHILOSOPHY

The Office of the City Attorney uses a multi-pronged approach in its claims and litigation management and in its efforts to minimize the City's liability exposure. The Office:

1. Aggressively advocates the City's interests in claims and litigation to reduce potential liability exposure;
2. Proactively identifies risk factors and works with the Office of the City Manager to eliminate those factors before they result in claims or lawsuits;
3. Aggressively utilizes a law and motion practice crafted to dispose of as many causes of action as possible prior to trial;
4. Develops substantive expertise in all areas of municipal law practice;
5. Creates joint teams of attorneys and non-attorney staff with specific subject matter expertise to strategically manage high exposure pre-litigation and litigation issues;
6. Proactively initiates litigation to enforce City ordinances and policies, and defends the City in administrative hearings and appeals.

Public Liability Claims Administration



Results:

- ❑ 79% of claims were resolved with zero payout. Of those claims denied, only 61 (or 7%) thus far have resulted in lawsuits.
- ❑ 19% of claims were resolved with a payout of \$5,000 or less, thus eliminating lawsuits being filed.

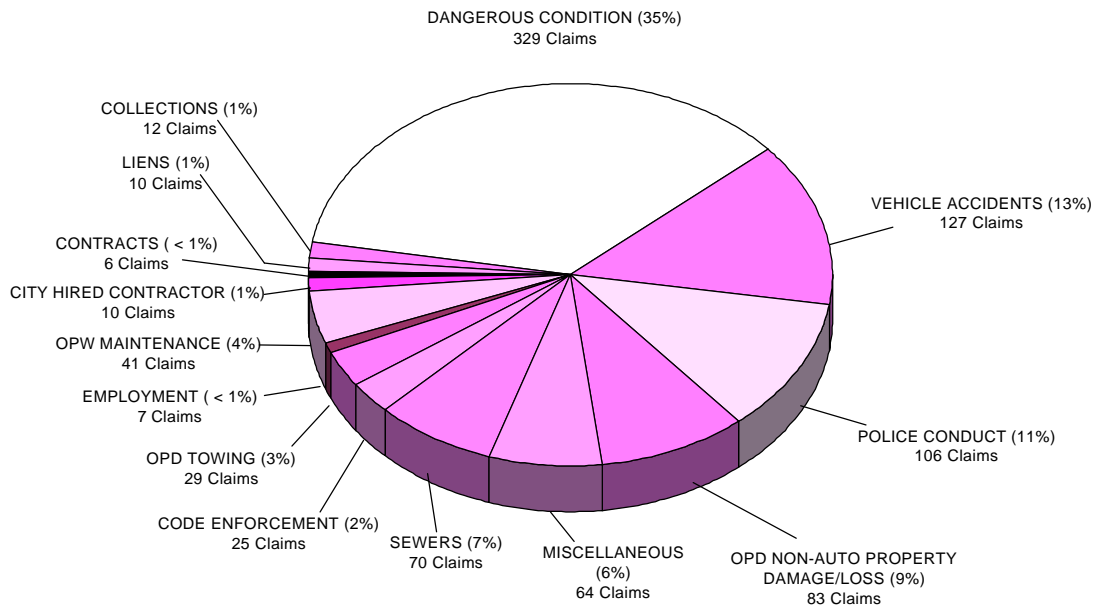
Management Analysis:

The Tort Claims Act (Government Code §§ 905, et seq.) generally provides that a claim must be filed with the City prior to filing a lawsuit. Claims are not required to be filed for causes of action based on federal or state constitutional law or where a statute includes a comprehensive administrative pre-lawsuit procedure.

Effective June 1, 1998, liability claims are filed directly in the Office of the City Attorney. Our three (3) highly experienced claims investigators are responsible for investigating and adjusting the claims, as appropriate. Our aggressive and thorough approach to claims investigations and adjusting has produced very favorable results.

SUMMARY OF CLAIMS RECEIVED IN FY 98/99 BY RISK TYPE

(919 CLAIMS RECEIVED JULY 1, 1998 THROUGH JUNE 30, 1999)



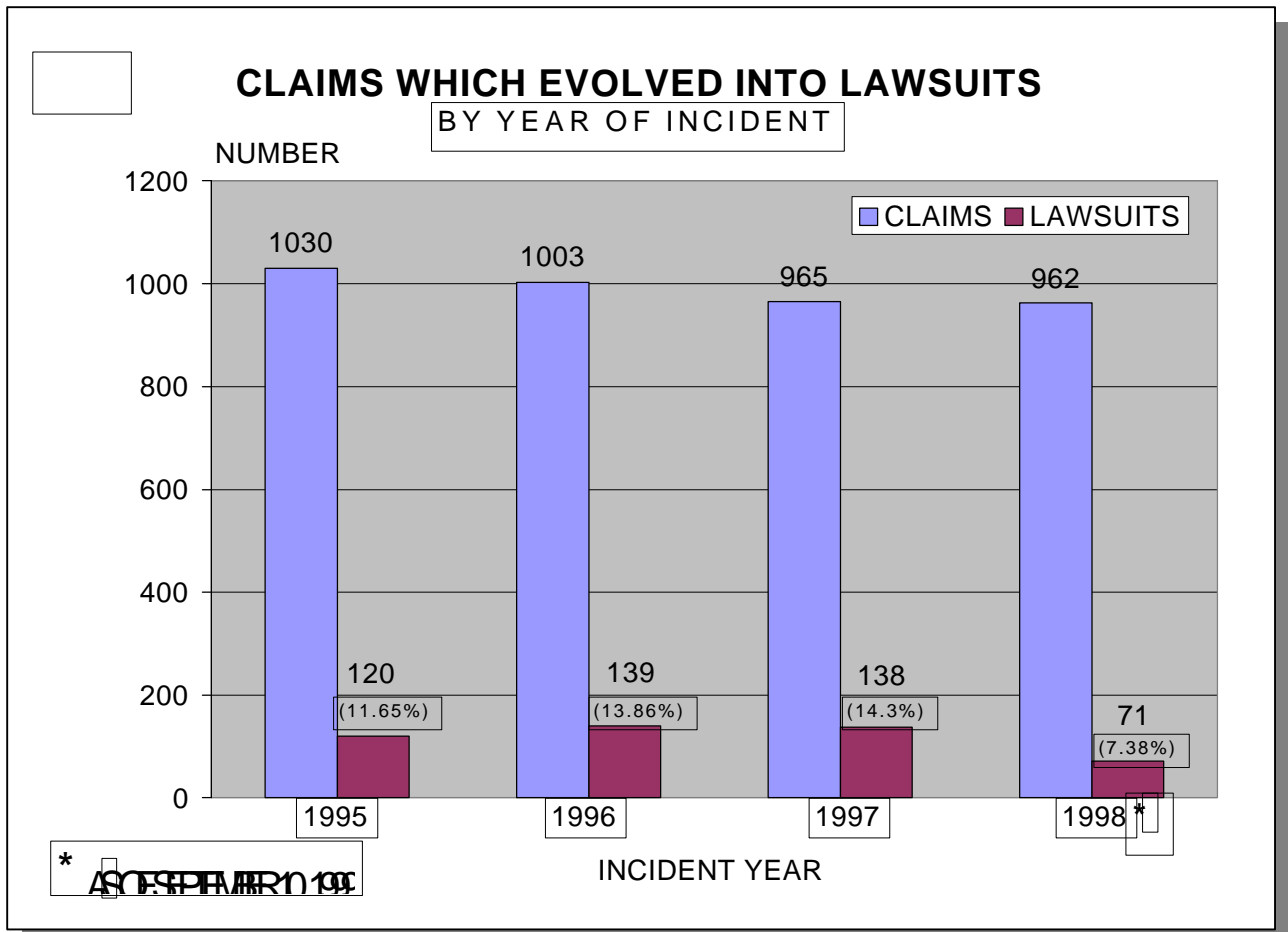
Results:

- The above chart summarizes the 919 claims filed against the City in fiscal year 1998-1999 by risk type.

Management Analysis:

The number of claims filed against the City annually has remained fairly constant. Claims where there is clear City liability are settled quickly, generally for payment of the actual or reasonable cost of repair or damages sustained. Claims where liability is questionable are either settled after negotiation or are denied. A significant number of claims proceed to small claims court and are resolved through that process.

SUMMARY



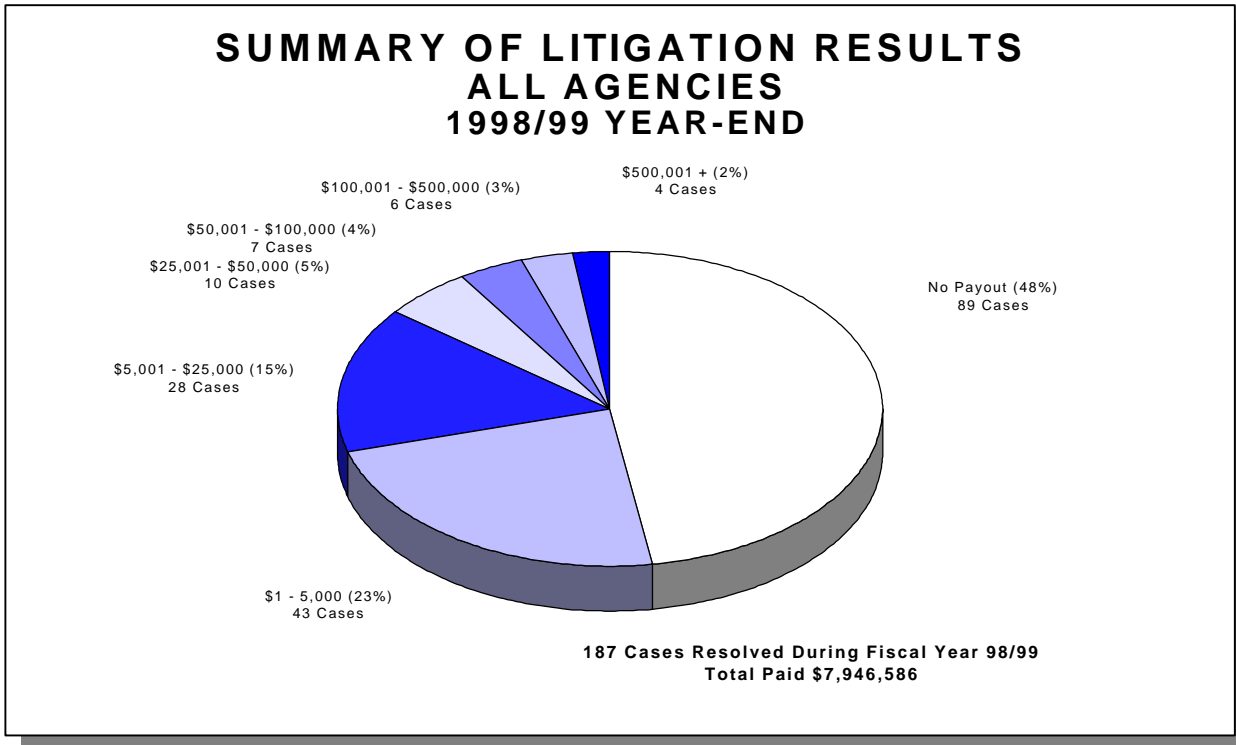
Results:

- The above chart summarizes the number of claims presented vs. the number of lawsuits filed by year of incident.

Management Analysis:

The goal of reducing liability exposure can best be achieved by resolving matters in the claims stage, to prevent litigation from being filed. We believe that the number of 1998 claims that will evolve into litigation will either be lower than or within the same range as the previous years.

Defense of Lawsuits



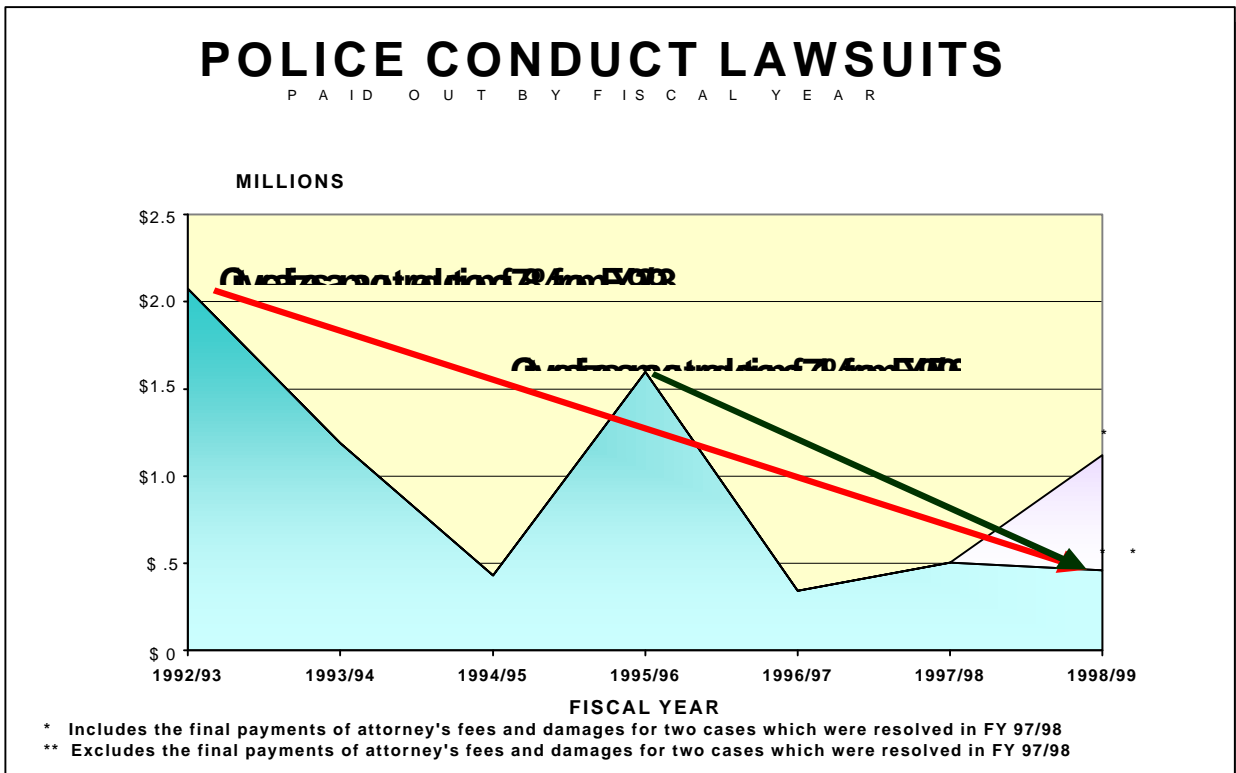
Results:

- ❑ In fiscal year 1998-1999, 86% of cases were resolved with payouts under \$25,000. 48% resulted in no payout.
- ❑ In fiscal year 1997-1998, 84% of cases were resolved with payouts under \$25,000. 38% resulted in no payout.

Management Analysis:

This basic pattern has remained virtually unchanged over the past ten years. It reflects that the general operation of the City (public works, recreation, public safety, etc.) generates a consistent level of routine litigation. Exceptional cases such as civil rights actions, personnel litigation, sports-related litigation, major personal injury and inverse condemnation actions present more complex and challenging litigation issues. A very limited number of cases resulted in significant payouts. Given the myriad of functions and activities engaged in by the City and its more than 4,000 employees, the number of high exposure cases is relatively low.

Police Payouts Dropped:

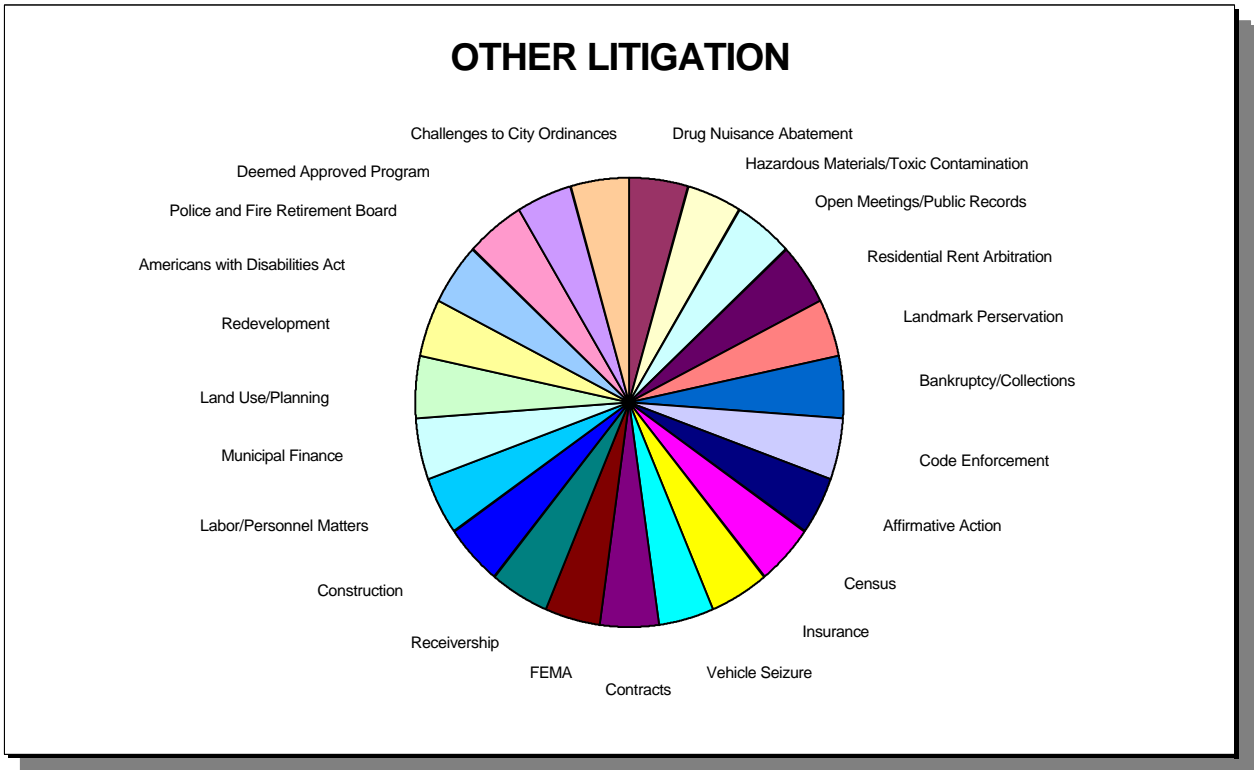


Results:

- ❑ With the exception of two aberrational cases, there was a 78% reduction in payouts over seven (7) years. Even including those two payments, the City still reduced its police conduct payouts 46% since FY 92/93 and 30% since FY 95/96.
- ❑ In fiscal year 1998-1999, the City had fewer pending police conduct cases (48 cases) than at any time during the last seven (7) years. This includes roughly 88% fewer cases handled by a well-known local civil rights lawyer. This number also includes 9 cases handled by pro per plaintiffs that have little or no merit and will be dismissed or resolved with minimum payout.

Management Analysis: The dramatic drop in payouts can be attributed to:

- Effective law and motion practice substantially narrows the scope of many of the police conduct matters. As a result, plaintiffs have voluntarily dismissed several lawsuits and we have been able to eliminate pattern and practice claims in most police conduct matters.
- The City Attorney's Office's reputation in the legal community as being a formidable adversary.
- Effective PSA litigation risk management (drop in payouts correspond with implementation of program in 1993).



In addition to the tort defense litigation described on the previous pages, the City Attorney’s Office handles a wide range of City initiated (plaintiff) litigation and defends challenges to City ordinances and policies. The City has been on the forefront of developing and implementing “first of its kind” legislation to address issues such as neighborhood and commercial blight, drug and alcohol related nuisances, prostitution and vacant and abandoned housing issues. In addition, the City Attorney has filed numerous actions pursuant to this legislation and has prosecuted code violators, as appropriate. The above chart depicts the myriad of other litigation matters covering the broad range of practice areas handled by the City Attorney’s Office.

Drug Nuisance Abatement

In the past year, 4 new drug nuisance abatement lawsuits have been filed involving single family homes, apartment buildings, and motels and abatements have been achieved in 27 cases without litigation.

Highlights Include:

Litigation:

- ⇒ City of Oakland v. Wong: Successful abatement of narcotics problem at a 4-unit apartment building at 5842 Walnut Street.
- ⇒ City of Oakland v. Tong: Successful demolition of Farmhouse Motel, a substandard and drug infested property.

The following properties are currently in litigation:

- | | |
|-----------------------------------|-----------------------------------|
| = 1327 E. 23 rd Street | = 1144 71 st Avenue |
| = 994 57 th Street | = 1419 80 th Avenue |
| = 3768 Ruby Street | = 1810 E. 22 nd Street |
| = 3025 School Street | = 1148 71 st Avenue |
| = 444 W. MacArthur Blvd. | = 5842 Walnut Street |

Non-Litigation:

- | | |
|----------------|------------------------|
| = 1321 Peralta | = 2400 MacArthur Blvd. |
|----------------|------------------------|

⇒ Abatements have been achieved in all districts throughout the City.

Management Analysis:

- Health and Safety Code §§ 11570, et seq. provide for closure of drug nuisance locations through civil nuisance lawsuits. In 1987, the Oakland City Attorney's Office brought Northern California's first lawsuit under this statute, resulting in the sale and closure of a notorious crack house.
- This program has generated statewide interest and the City Attorney's Office has delivered presentations at League of California Cities conferences and to individual cities on the program.
- Drug nuisance cases are referred to the City Attorney's Office for litigation by PSA Beat Health.
- In the early years of this program, the focus was on filing litigation. The litigation averaged 20 cases per year. The City Attorney's Office works with PSA to resolve cases in the pre-litigation stage, utilizing alternative dispute resolution methods if possible.
- By participating in weekly meetings with PSA Beat Health Officers, Advisory Division attorneys have achieved successful drug nuisance abatements in 20 cases without having to file time consuming and costly litigation.

Code Enforcement

Last year, 7 code enforcement matters proceeded to litigation. These cases included defending the City in litigation seeking to block the demolition of buildings. Other cases have involved seeking court orders to enforce the City's zoning regulations and to vacate substandard buildings.

Highlights Include:

- ⇒ Successful defense in Carroll v. City of Oakland, a civil action seeking to enjoin the demolition of a substandard building at 1600 90th Avenue.
- ⇒ Successful defense in Antonni v. City of Oakland, a writ action challenging the City's declaration that a large mixed-use commercial/residential building at 2401-2421 Telegraph Avenue was substandard.
- ⇒ Successful defense in Zimmerman v. City of Oakland, a constitutional challenge to the City's Blight and Vehicle Abatement Ordinance.
- ⇒ Successful defense in McClinton v. City of Oakland, a constitutional challenge to the City's Blight and Vehicle Abatement Ordinance.
- ⇒ Successful abatement of 4690 Tompkins Avenue, a residential care facility.
- ⇒ Successful closure of 2266 East 19th Street, a severely substandard residential property.
- ⇒ Successful closure and relocation of tenants from 1321 Peralta Street.
- ⇒ Successful abatement of illegal scrap metal business (DC Metals) at 3rd Street and Mandela Parkway. Judgment for the City.

Management Analysis:

- Amendments to the Blight Ordinance including enhanced civil penalties have resulted in strong settlement incentives for code violators.
- Cross-departmental team approach has resulted in focused legal resources on major problem areas in Oakland.
- Individual attorneys are liaisons on hot spot teams enabling earlier legal analysis.
- Attorneys are present at community meetings enabling more efficient evidence gathering and responsiveness to community concerns.

Deemed Approved Program

In FY 98/99, the City Attorney has achieved successful results in all three (3) Deemed Approved Program cases in which liquor stores were taken through the administrative hearing process. Compliance has been achieved in several other matters, short of litigation. In all of the cases, the Alcoholic Beverage Action Team (ABAT) monitors the stores to ensure that the storeowners comply with the terms of the settlement agreement. If there is substantial non-compliance with the agreement, the City Attorney's Office can take the owners back to the hearing officer for revocation of their Deemed Approved Status.

Highlights Include:

- ⇒ City of Oakland v. Star Liquors (7940 International Blvd.), licensee agreed to adhere to various conditions requested by the City, including hiring a security guard.
- ⇒ City of Oakland v. APG Market (8432 East 14th Street), hearing officer imposed various conditions on the licensee/property owner, including hiring a security guard. Licensee/property owner recently sold the property, and the new owner is making substantial improvements to the store.
- ⇒ City of Oakland v. ARROW One Stop Market (8607 Bancroft Avenue), hearing officer imposed various conditions on the licensee/property owner, including maintaining newly installed lighting and surveillance system on the premises.

Management Analysis:

- The majority of establishments comply with the performance standards of the ordinance after receiving inspection notices from the ABAT officer resulting in a low number of cases that actually are taken through the administrative process.

Receivership

The Receivership Program is a court enforced program designed to take control of residential properties that are physically substandard and vacant, bring the properties up to code, and reintroduce the properties into the City's productive housing stock, all with a minimum of delay. This is accomplished by initiating litigation which results in a third party "receiver" being appointed by the court to take temporary possession of the property and undertake the necessary property management and rehabilitation to convert the property to productive use pursuant to processes set forth in the Health and Safety Code and Civil Code.

Below is a synopsis of the status of seven (7) cases:

Highlights Include:

- ⇒ 4 properties have been sold and are currently being rehabilitated by the new owners.
- ⇒ 1 property is being rehabilitated by the original owners.
- ⇒ There are 2 properties currently in litigation.

Management Analysis:

- Program has created a clearly defined, effective strategy for ensuring those vacant and blighted properties will be returned to productive use.
- The mere threat of filing a petition has prompted owners and other interested parties to take action.
- The courts have been cooperative and receptive to the program.
- The program has generated statewide interest.

Labor and Employment Arbitrations and Hearings and Retirement Board Hearings

The City Attorney's Office handles multiple disciplinary arbitrations ranging from reprimands to terminations. It also handles cases regarding the representation status of employees in the City. In addition, the City Attorney defends the decision of the City's retirement boards.

Highlights Include:

- ⇒ Successfully defended Kreeft v. City of Oakland. A class action retirement FLSA premium pay matter. The Court of Appeal upheld the lower court's judgment in favor of the City. The Supreme Court denied plaintiffs' petition for review. The City's potential liability was in excess of \$13 million.
- ⇒ Successfully defended Local 790 v. City of Oakland. A class action grievance alleging violation of overtime provision of MOU with respect to Code Enforcement Inspectors. Potential liability exceeded \$100,000.
- ⇒ Successfully defended Local 21 v. City of Oakland. A class action grievance challenging the City Council's 1997 layoffs of Public Information Officers. Grievants asserted that the layoffs were not for legitimate budgetary reasons and therefore were motivated by disciplinary justifications. Grievants also contended that the layoffs violated the "just cause" provisions of the MOU.
- ⇒ Successfully defended a grievance by an Oakland Police officer who was terminated, a grievance challenging the layoff of an employee in the City Clerk's Office, and several MOU grievances by Local 21 and IBEW.

Management Analysis:

- Class Action for judicial interpretation of what is included as compensation for purposes of calculating retirement are ongoing; show an upward trend, and remain in litigation in excess of five years per case.
- With the City's zero tolerance policy for willful misconduct, disciplinary arbitrations are on an upward trend.

Vehicle Seizure Program: (Operation “Beat Feet”)

Operation “Beat Feet”, Oakland’s Blight Ordinance providing for the seizure and forfeiture of vehicles used to purchase street-level narcotics and prostitution is a first of its kind program implemented under the direction of the Advisory Division. Adopted in 1997, this is a effort coordinated and administered by the City Attorney’s Office in conjunction with the Oakland Police Department Vice-Narcotics Unit and the Alameda County District Attorney.

Highlights Include:

- ⇒ 167 vehicles have been seized.
- ⇒ 33 claims opposing forfeiture settled.
- ⇒ \$151,453 in settlements, proceeds of vehicles sold and fees have been collected, compared to \$69,000 in fiscal year 1997-1998.
- ⇒ 17 vehicles were forfeited by order of the Alameda County Superior Court.
- ⇒ 59 vehicles were forfeited and sold at auction.
- ⇒ 29 cases settled with a stipulation to forfeit cash in lieu of forfeiting the vehicle.

Training: The City Attorney’s Office provided legal training to law enforcement personnel regarding enforcement of the ordinance. Legal forms and procedures were developed in conformity with court rules and legal requirements. Staff was present to provide on sight review of operations and oversight at the command post during each undercover operation.

Procedure: Once a vehicle is seized, a claims filing procedure with the Alameda County Superior Court provides the opportunity for the owner to legally contest the forfeiture of the vehicle. The City Attorney’s Claims Division administers negotiations for settlements in lieu of forfeiture of the vehicle. The owner may agree at any time to the non-judicial forfeiture and sale of the vehicle. If no agreement is reached, the vehicle owner may choose to litigate the matter.

Management Analysis:

- Designed a team approach to using in-house attorneys, claims investigators and paralegals to absorb this new program without using additional resources.
- Program currently being challenged by ACLU in the State Court of Appeals. Decision not expected before Spring 2000.
- Legislation is pending in the Governor’s Office that prevents municipalities from seizing and forfeiting vehicles pursuant to any local ordinances, such as Oakland’s.

Land Use Litigation

Attorneys work proactively in the early stages of land use matters to prevent expensive and protracted litigation. Consequently, over the last several years there has been a marked decrease in the number of land use lawsuits filed against the City. Attorneys utilize mediation, informal settlement negotiations and other alternative dispute resolution approaches to resolve land use disputes and to decrease the number of hours spent on land use litigation.

Highlights Include:

- ⇒ Successful trial court defense of Shirazian v. City of Oakland. A regulatory taking case that was brought after the City Council upheld the Planning Commission's decision to disallow the reopening of a Park Blvd. gas station that had caused neighborhood contamination. The case is now on appeal.
- ⇒ City of Oakland v. Cigarette Cheaper, et al. – The City successfully sought and obtained a temporary restraining order to prohibit Cigarettes Cheaper from converting a former travel office to a tobacco store without complying with City building and zoning regulations. The defendants subsequently stipulated to entry of judgment in the City's favor.

Management Analysis:

Because of proactive early involvement in drafting appropriate land use legislation, preparing zoning appeals for the City Council and advising the decision making bodies, the City Attorney's Office has maintained an excellent defense record on land use cases, winning almost all cases in the past fifteen (15) years.

Litigation Impacting Regional, State & National Issues

The City Attorney's Office devotes litigation resources to regional, state and national issues impacting the City. Regional, state and national issues that may impact the City, or the City's citizens are identified early, legal issues are analyzed and recommendations are made to the City Council, City Manager and City departments.

⇒ Policies and Steps Being Taken to Manage Impact Litigation Matters:

Early Preventive Measures

- ◆ Prior to making amicus curiae recommendations and decisions, all amicus requests and recommendations are centrally coordinated and personally reviewed and approved by the City Attorney to ensure there are no conflicts with City Council policies.
- ◆ Legislative and other options are analyzed to determine whether viable non-litigation alternatives exist.
- ◆ Issues where no Council policy has been articulated are taken to Council for approval.
- ◆ City efforts are coordinated with those of other municipalities with similar interests to achieve City-desired outcomes. The City Attorney sits as a member of the League of California Cities Legal Advisory Committee, where decisions are made regarding League participation in amicus curiae requests.

Personnel and Training:

- ◆ Regular municipal law updates are provided to City staff to ensure staff is kept abreast of recent developments in the law.
- ◆ Attorneys are encouraged to write articles for legal publications and to participate in bar association and the California League of Cities' activities, to keep current in recent developments in the law.
- ◆ Attorneys are required to participate in continuing legal education courses.

Formation of Interagency Teams

- ◆ Attorneys are assigned to provide advice and counsel to City Council task forces and City Manager work groups that are working on cutting edge policy and legal issues to address broad-based community problems.

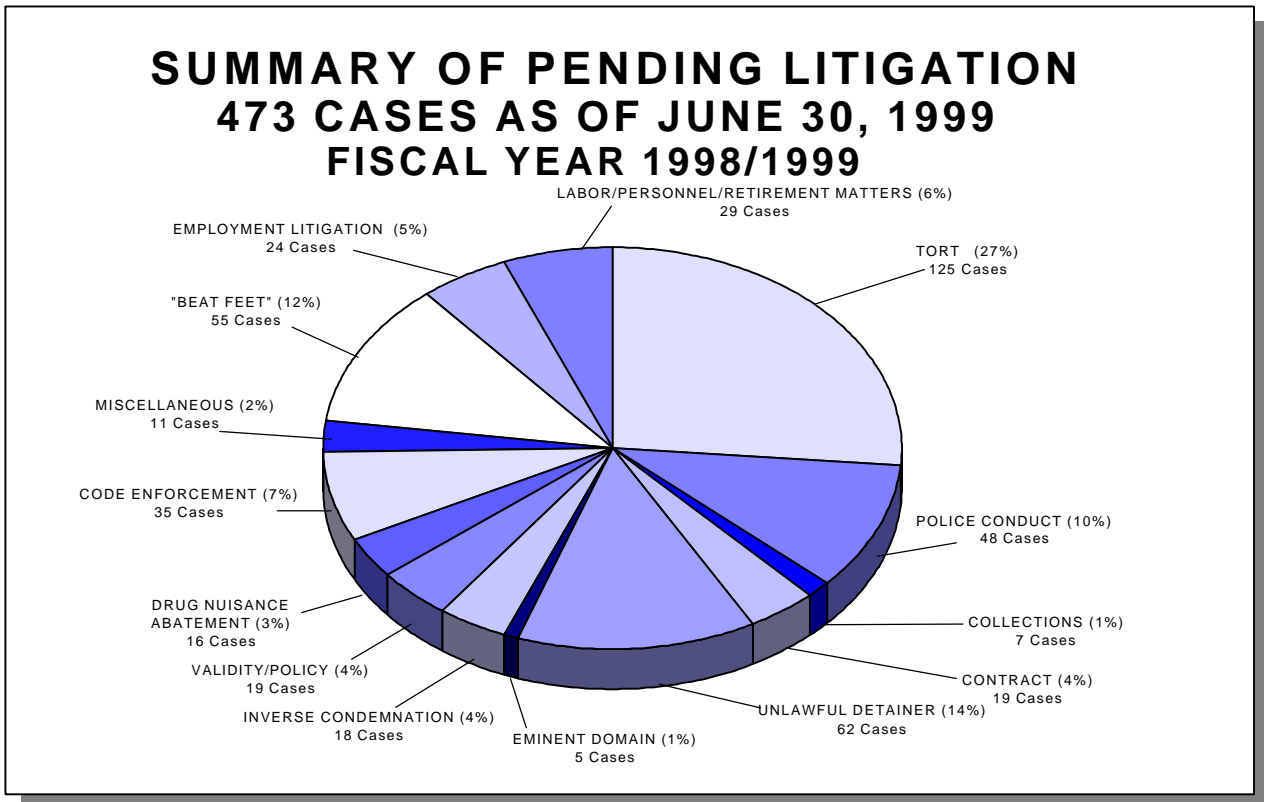
RESULTS

⇒ **The most significant cases impacting regional, state and national issues are listed below:**

- ◆ **People of the State of California, et al. v. Bryco Arms, Inc., et al.:** The City, in conjunction with other California cities, has initiated litigation against key gun manufacturers, distributors and dealers. The City is seeking reform of the gun industry, civil penalties and disgorgement of profits, based upon an Unfair Business Practices claim pursuant to Business & Professions Code § 17200. This Office is working with the Police Services Agency and the County of Alameda to obtain the statistical and anecdotal information on gun-related incidents for inclusion in the pleadings. Litigation may take up to two years.
- ◆ **U.S. v. Oakland Cannabis Buyers Club:** Ongoing participation as amicus in the Oakland Cannabis Buyers Club’s effort to prevent its closure by the Federal Government. **Result: 9th Circuit Court of Appeal decision on September 13, 1999 sent the case back to District Court on the issue of determining “medical necessity” for use.**
- ◆ **Spanish Speaking Citizen’s Foundation v. Quackenbush:** Public Advocates’ successful challenge to zip code rating for setting automobile insurance. On appeal. **Result: Still pending on appeal.**
- ◆ **California Rifle and Pistol Association, Inc. v. City of West Hollywood:** The City joined as amicus supporting West Hollywood in a challenge to its junk gun ban. West Hollywood successfully defended its ordinance at trial and on appeal. **Result: The Supreme Court denied review.**
- ◆ **U.S. House of Representatives v. Department of Commerce:** The City joined as amicus supporting Department of Commerce’s statistical sampling method of correcting undercounting for the year 2000 census. U.S. House of Representative prevailed. On appeal by the Department of Commerce. **Result: The Supreme Court decided, in a split decision, that the Department of Commerce cannot use sampling method for redistricting, but may use it for purposes of allocating federal or state funding.**

PENDING MATTERS

Summary of Pending Litigation



- ❑ The above chart is a snapshot of the litigation caseload as of June 30, 1999.
- ❑ As of June 30, 1999, our in-house litigation and advisory attorneys were handling 96% of all pending cases.
- ❑ 4% of all pending cases (20) are assigned all or in part to outside counsel. Of this amount, 6 cases are matters where there is a conflict of interest, thus requiring retention of independent counsel.

Management Analysis:

- Increase in sexual harassment actions and decrease in police conduct cases.
- Employment litigation has increased and become more complex and generally has very high exposure.

LITIGATION MANAGEMENT

Continuous efforts are devoted to the development of effective litigation management. Key steps that are implemented are:

1. Proactive Outlook

- Proactively identify areas of potential liability exposure and implement measures to eliminate or minimize that exposure.
- Highest priority is placed on early identification and evaluation of high exposure cases.

2. Litigation Focus Teams

- Created teams of highly skilled staff attorneys and non-attorney technical staff with subject matter expertise in each high exposure category.
- A primary responsibility of these teams is to identify risk factors to the City Manager so that administrative initiatives can be undertaken to eliminate or reduce lawsuits before they are filed.
- These teams assess claims and lawsuits as early as possible, develop recommendations for Council action and report to Council and the City Manager as soon as possible.

3. Litigation Tactics and Strategies

- **Use of Offers to Compromise Judgment:**
 - An offer to compromise judgment is a means to limit the City's exposure to attorney's fee awards, a means to limit the City's costs, and a means to discourage plaintiffs' attorneys from needlessly litigating to increase their fees. Where liability is probable, an early offer to compromise judgment, even if it is not accepted by plaintiff(s), can result in savings to the City if a judgment less than the offer is awarded.

LITIGATION MANAGEMENT

➤ **Developing a Strong Law and Motion Capacity:**

- Developing a strong law and motion capacity in all areas of high exposure litigation is a cornerstone to our ability to successfully defend the City's interests in litigation. To this end, we have hired a staff attorney with extensive law and motion experience who has been extremely effective in obtaining dismissals or eliminating causes of action and defendants, which has enabled the City to eliminate \$1.675 million in liability exposure and saved almost \$330,000 in outside counsel costs.
- This strategy has been highly successful in defending police conduct litigation. In fiscal year 1998-1999, we continued to experience a significant reduction in the filing of new police conduct lawsuits (31) from the number of new cases filed in fiscal year 1994-1995 (57).
- This strategy results in dismissal of defendants, causes of action or entire cases, thereby reducing the City's exposure and litigation expenses.
- Effective law and motion practice frequently forces plaintiffs to seriously evaluate their cases and frequently leads to settlement favorable to the City. We continue to experience this dynamic in our litigation with plaintiffs' attorneys who voluntarily dismiss defendants and "pattern and practice" causes of action rather than oppose well-crafted dispositive motions.

➤ **Applying Flexible Litigation Tactics:**

- Flexible litigation strategies are implemented to specifically tailor to the facts in individual claims and lawsuits. The objectives that we intend to attain are developed and the most appropriate strategy to achieve our objectives. Our strategy is always premised on achieving the most favorable result for the City. For example, in some cases, where liability is clear and exposure is substantial, we will strive to steer the matter to an appropriate Alternative Dispute Resolution forum. This is done in order to dispose of the matter as early as possible and to limit the City's exposure as much as possible.
- In other cases, we will litigate vigorously to develop the strongest possible position to dispose of the matter through law and motion, settlement or to win at trial.

4. Personnel and Training

➤ **Developing a Strong Cadre of Trial Attorneys at All Levels of Litigation and Administrative Hearings:**

- Sound journey level trial expertise continues to be a major training theme in our Office. Staff attorneys have prepared more civil cases for trial than most mid-sized firms and our senior level attorneys have more state and federal civil trial experience than many litigation partners in large law firms. We endeavor to effectively provide all litigation attorneys with the training necessary for them to have impeccably sound basic litigation skills for trials, arbitrations and administrative hearings.

➤ **Training:**

- We continue to strengthen our in-house Continuing Legal Education training program with a heavy emphasis on strengthening basic skills, such as propounding discovery, sound analysis, effective writing, oral advocacy and effective negotiations and mediation strategies.
- We continue to strengthen our in-house Continuing Legal Education Program by providing more specialized courses by recognized experts. These courses have been provided at no cost by private law firms and attorneys.

5. Other Tactics

➤ Use of Focus Groups:

- We continue to strengthen and refine our use of “focus groups” to aid in our assessment, preparation and successful defense of high exposure cases.
- A variety of focus groups are used that are comprised of:
 - ⇒ Professionals and experts;
 - ⇒ City employees;
 - ⇒ Experienced private attorneys with subject matter expertise in the specific issues in dispute;
 - ⇒ Experienced staff attorneys with subject matter expertise in the specific issues in dispute.

➤ Use of Mock Trials:

- Mock trials in which individual defendants and critical witnesses actually undergo direct and cross-examinations, along with the attorneys developing their trial themes and litigation strategies are used.

➤ Use of Technology:

- Litigation practice is becoming more reliant on technological case management. We continue to develop training in this area as resources permit.
- Enhancements to our current computer system are acquired to accommodate new applications and court rules and procedures as resources permit.