

**CHICAGO'S LAWSUIT COSTS:  
COMPARISON, ANALYSIS AND BEST PRACTICES FOR RISK MANAGEMENT**

**A STUDY COMPLETED AT THE REQUEST OF ALDERMAN JAMES CAPPLEMAN**



# Summary and Conclusions

## 1. How much do lawsuit judgements and settlements cost the City of Chicago?

The City of Chicago spent \$809 million **on judgements and settlements (“J&S”)** between 2010 and 2018, an average of \$90 million per year. This figure has varied considerably from year to year, largely because a few very large payments can have an outsized impact on the annual total. While the variability of the cost makes it difficult to budget, Chicago has consistently underbudgeted J&S. The City’s underbudgeting will be detailed later in this report. Mayor Lightfoot has addressed that tendency by projecting \$145 million for J&S in her 2020 Budget Forecast.

## 2. How do Chicago’s costs compare to other American cities? Is Chicago an outlier?

Comparison among cities is difficult because every city’s costs will fluctuate, and because cities vary so widely in their scope of responsibilities. For example, New York is certainly the highest cost city, both on an absolute and per capita basis. However, the City of New York has jurisdiction over public hospitals, public schools, public housing and public parks.<sup>i</sup>

The data does allow us to state that:

- Chicago’s per capita J&S costs are among the highest, but not an outlier.
- Police misconduct accounts for the majority of J&S costs in all high-cost cities, including Chicago.

## 3. Are there any best practices from other cities which Chicago can emulate to contain these costs?

Based on reforms which appear to be yielding positive results in New York, as well as best practices promoted by the Government Finance Officers Association and others; COFA’s analysis of Department of Law (DOL) data; interviews with DOL staff<sup>ii</sup> and interviews with staff from the office of the Fort Worth City Attorney, we can make the following recommendations which will be discussed in full later in the report:

1. Develop a system to track claims and payments (perhaps following the model of New York’s ClaimStat) and analyze data to identify problem areas. Identification must be followed up with reforms and continuous monitoring.

Current DOL record-keeping practices make basic data analysis very difficult, and detailed data analysis impossible. COFA was able to conduct limited analysis with currently available data, leading to identification of problem areas and areas for further investigation. In addition, Mayor Lightfoot has appointed the City’s first Chief Risk Officer, creating an opportunity for better J&S data management.

2. Sharply increase staffing of both attorneys and non-attorneys at DOL’s Torts Division. This will permit:
  - a. More aggressive litigation strategies and fewer settlements.
  - b. Less reliance on outside counsel. Use of outside counsel is cost-effective for types of cases the City does not regularly face. Unfortunately, understaffing has forced the City to use

outside counsel for police misconduct cases of types it faces regularly, when it would be more effective to increase in-house staffing.

3. Full implementation of the Chicago Police Department's Consent Decree.
4. Continuous monitoring of Chicago Fire Department Human Resource practices.
5. Investigate the possibility more expeditious Shakman-compliant hiring practices for attorneys.
6. Lobby for reform of Illinois tort law, including limits on judgements against local governments (as 34 states have),<sup>iii</sup> rules to shield police from motor vehicle accident liability during pursuit (as California has),<sup>iv</sup> and reform of rules for calculating and awarding attorney costs (although the highest attorney cost awards against the City are in Federal civil rights cases).
7. When submitting J&S to Department of Finance for payment, DOL should request that Finance check for debts owed to the City, which would then be deducted from the payout. Currently, this is done for damage claims submitted to the City Clerk, but not legal J&S through DOL. The City of New York recently instituted city debt offsets for legal payouts.<sup>v</sup> However, there may be legal barriers to Chicago doing so.
8. Protect the City's Corporate Fund from risk. A small number of very large payouts account for a disproportionate share of total costs and almost all of the year-to-year fluctuations. COFA recommends two possible strategies for this:
  - a. Obtain private insurance for exceptionally large judgements.
  - b. Establish a Judgment Reserve Fund. Such funds already exist in many jurisdictions, including the District of Columbia,<sup>vi</sup> the State of New York<sup>vii</sup> and the Federal Government.<sup>viii</sup>

Isolating the Corporate Fund from the risk of very large judgements would improve budgeting. Also, reducing risk would allow the City to take a more aggressive litigation strategy.

It will take time for any improved practices to be reflected in lowered costs, because legacy lawsuits can result in J&S many years after the fact. The City paid damages related to the 1969 Shakman case as recently as 2012 and could well do so again in the future. If changes in risk management practices are effective, the majority of cost reduction would manifest within four years for lawsuits and one year for accident and property claim cases.<sup>ix</sup>

## Discussion and Detail

### Comparison to Other Cities

Governing magazine conducted the most comprehensive multi-city study of J&S costs. It obtained three years of data for twenty of the twenty-five largest cities in the United States. The results were as follows:

City	Fiscal Years	Per capita average annual total
Fort Worth	2013-2015	\$2.60
Columbus	2014-2016	\$2.79
Austin	2013-2015	\$4.81
Indianapolis	2013-2015	\$5.40
Houston	2014-2016	\$5.87
El Paso	2013-2015	\$6.65
Dallas	2014-2016	\$7.23
Jacksonville	2014-2016	\$7.76
Nashville	2014-2016	\$7.94
Phoenix	2014-2016	\$7.97
San Jose	2014-2016	\$10.86
Charlotte	2014-2016	\$11.23
Los Angeles	2014-2016	\$28.49
Philadelphia	2014-2016	\$30.23
Seattle	2013-2015	\$35.39
San Diego	2014-2016	\$39.58
<b>Chicago</b>	<b>2013-2015</b>	<b>\$56.32</b>
San Francisco	2014-2016	\$67.88
Washington, DC	2014-2016	\$82.75
New York	2014-2016	\$83.84
<b>TOTAL</b>		<b>\$39.31</b>
<b>12 LOWEST</b>		<b>\$6.77</b>
<b>8 HIGHEST</b>		<b>\$59.82</b>

Five of the seven lowest cost cities are in Texas, raising the question of whether Texas state law was particularly protective of local governments. COFA interviews with Gerald Pruitt and Laetitia Brown from the office of the Fort Worth City Attorney support that theory. Cities in Texas enjoy many advantages, such as the fact that damages against governments are limited to \$250,000 per individual and \$500,000 per incident, and that governments cannot be held liable when their employees follow policy, only when they are negligent. The Fort Worth City Attorney's staff also emphasized what they described as a "conservative, pro-police culture," which they said was reflected in both juries and judges, including the

federal judges in their district, whom they described as very conservative.<sup>x</sup> Columbus and Indianapolis, the two non-Texan cities among the lowest cost seven, are also in states with very favorable tort laws and in relatively conservative counties.<sup>xi</sup>

Police misconduct accounts for the bulk of J&S costs in all high-cost cities. Police misconduct J&S rose 48% between 2010 and 2014 for the nation's ten largest police forces. Many observers tied the rise to the ubiquity of cell phone video, which has provided crucial evidence and has contributed to changing public attitudes toward the police.<sup>xii</sup>

Figures for New York City and the District of Columbia are higher in part because those cities have a far wider range of responsibilities, including public schools, mass transit, parks and public hospitals. The last item is especially important. Medical malpractice accounts for a quarter of New York's J&S costs.<sup>xiii</sup>

DOL staff also cited the length of the Shakman hiring process as an obstacle to pursuing a more aggressive litigation strategy. While the slowness of Shakman hiring is handicap for all departments, they argued that the market for top legal talent is especially competitive, and that by the time they were able to offer positions to the best candidates, they had already taken other jobs.

Los Angeles' costs have been on an upward trend which continued after the *Governing* magazine study. Although the study showed an average cost of \$113 million per year, that broke down as \$92 million in 2014, \$100 million in 2015 and \$147 million in 2016. After the *Governing* study, LA's cost climbed to \$201 million in 2017, before falling back to \$109 million in 2018. Reportedly, the increase was driven by large police use-of-force judgements and increased damages resulting from long-neglected infrastructure maintenance.<sup>xiv</sup>

Los Angeles' police operated under a federal consent decree from 2001 through 2013,<sup>xv</sup> while Seattle's did the same from 2012 through 2018.<sup>xvi</sup> Seattle and Los Angeles' high costs, as shown in the *Governing* study, and Los Angeles' rising costs thereafter indicate that neither entering into, or emerging from a consent decree guarantees relief from the cost of police judgements.

### **Best Practices**

Darren McKinney, Communications Director for the American Tort Reform Association, stated that the most important practice for cities was to establish a reputation as hardline litigators who rarely, if ever settle. Mr. McKinney cited Chicago and Los Angeles as two cities which had become known as "easy targets."<sup>xvii</sup>

Chicago Department of Law (DOL) staff consulted for this report stated that DOL's Tort Division did not have enough staff (both attorneys and support staff) to pursue an aggressive litigation strategy. This contention is supported by the fact that DOL's Litigation Division is budgeted for 160 FTE positions, compared to 647 in New York City's Law Department Torts Division (up from 447 in 2014). New York's staffing is 27% higher on a per-capita basis. In addition, since 2014, NYC has also created a new unit with 40 FTE devoted to contesting claims.<sup>xviii</sup> Some of that discrepancy is due to New York City's wider range of responsibilities.<sup>xix</sup> However, NYC's Torts Division does not handle medical malpractice, so it is likely that most of the per capita staffing discrepancy is due to it placing a higher priority on litigating J&S.

The Government Finance Officers Association (GFOA) offers a best practice advisory on “Creating a Comprehensive Risk Management Program.” The full advisory is attached to this report as Appendix 2, but the key steps are: 1. Risk Identification; 2. Risk Evaluation; 3. Risk Treatment; 4. Risk Management Implementation; 5. Risk Program Review.

Steps 1, 3, 4 and 5 are all about tracking information. Mayor Lightfoot has appointed the City of Chicago’s first Chief Risk Management Officer, and the City’s Officer may be in the process of establishing such a program. At present, it is impossible for Chicago to identify its risks, because its legal records are not kept in a way to allow for statistical evaluation.

GFOA’s third best practice, Risk Treatment, refers to financial instruments such as insurance or risk management pools. GFOA writes, “When a government retains risk (i.e., self-insures) it assumes financial responsibility for some losses. Retaining some risk (e.g., paying a deductible) can lower the government’s premiums. However, the government needs to be aware of its exposures through self-insurance.” Chicago has, to date, remained self-insured. This practice has worked well for employee health insurance, because there is little chance that a single extremely high-cost employee would significantly change the citywide average. However, it has not worked well for legal costs, because those which have fluctuated greatly from year-to-year based on a small number of extremely large cases. Aside from the uncertainty this has added to the City’s budget, it has forced the City to pursue a risk-adverse litigation strategy, where settlements must be offered based on a worst-case judgement scenario.

For that reason, COFA recommends that the City remain largely self-insured, but invest in outside insurance to cover extremely large judgements, or to cover judgements above and beyond what the City has budgeted for them. We also recommend that the City consider establishing a Judgements Reserve Fund, following the example of the federal government, New York State and the District of Columbia.

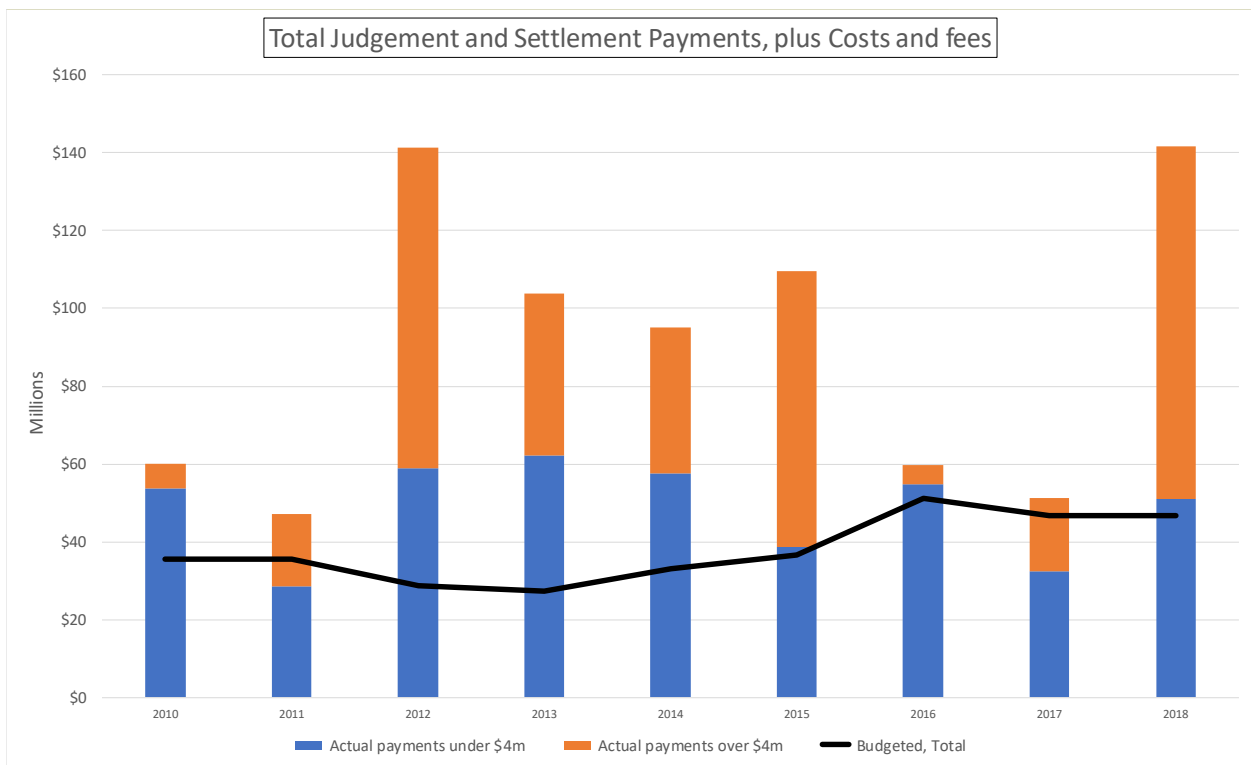
In addition to its increased Tort Division staff and accompanying more aggressive approach to litigation, New York City has taken a data-driven approach to preventing claims and suits. It launched a program called ClaimStat in 2014. By tracking patterns in claim filings, the City identified clusters of blocks prone to flooding, along with other problems, such as playgrounds with high injury rates intersections with high accident rates.<sup>xx</sup>

Given the length of time which cases can take to resolve as well as the unpredictability of annual fluctuations, it will take years before the success of NYC’s reforms can be gauged. However, it is showing promising results. Tort J&S payments declined 19% between FY 2017 and 2018.<sup>xxi</sup>

### Breakdown of Chicago J&S Costs

When asked about J&S statistics, DOL was only able to offer COFA downloadable spreadsheets of payments issued on DOL's webpage.<sup>xxii</sup> These spreadsheets appear designed to track Department of Finance Vouchers rather than any kind of legal information. It was impossible to analyze the raw data, because the limited case information was not labeled consistently nor categorized in any way. With considerable labor, COFA was able to categorize the 8,998 separate entries sufficiently to perform limited analysis with the caveat that inaccuracies are most likely few and minor, although omissions are significant.

All of the statistics on the following pages are from COFA's analysis of the records downloaded from DOL's web page.



Over the nine-year study period, J&S costs totaled \$809 million, an average of \$90 million per year, which varied widely, and did not follow a trend. Actual payouts exceeded budget appropriation every single year. Actual costs were more than double budgeted costs in five of the nine years.

The fluctuations were driven by a small number of very large cases. Thirty-eight of 8,998 total payments were for \$4 million or more. Those 38 large payouts were 0.4% of all payments, but accounted for 46% of the amount paid out. As the above graph shows, those few small payments accounted for the majority of the year-to-year fluctuation.

MAJOR CATEGORY	Total payments, fees & costs	% of total			
POLICE MISCONDUCT	434,937,150	53.7%			
MOTOR VEHICLE ACCIDENT (MVA), CITY VEHICLE	100,020,364	12.4%	CPD motor vehicle accidents	53,741,202	6.6%
			Non-CPD motor vehicle accidents	46,279,162	5.7%
EMPLOYMENT	99,636,933	12.3%	CFD 2012 racial salary verdict	75,179,369	9.3%
			Other CFD employment cases	12,591,340	1.6%
			Non-CFD employment cases	11,866,224	1.5%
ISSUANCE OF PUBLIC GARAGE LICENSE	62,359,487	7.7%			
ACCIDENT OR PROPERTY DAMAGE, NOT CITY MVA OR BIKE	45,124,993	5.6%			
UNKNOWN/OTHER	27,446,627	3.4%			
SPEED CAMERA SETTLEMENT	27,147,343	3.4%			
BICYCLE ACCIDENT	5,683,241	0.7%			
2ND AMENDMENT	3,479,538	0.4%			
FAILED/DELAYED EMERGENCY RESPONSE	2,319,500	0.3%			
FOIA	1,181,305	0.1%			
<b>GRAND TOTAL</b>	<b>809,336,481</b>				

Police misconduct accounts for 54% of all payouts.

The Fire Department accounts for 88% of all employment-related payouts. The item labeled “CFD 2012 racial salary verdict” was a verdict handed down in 2012 in a salary class action suit filed in 1998.<sup>xxiii</sup> Even excluding that verdict from the analysis, the Fire Department accounts for the majority of the remaining employment-related payouts.

The Police Department accounts for the majority of all motor vehicle accident payouts.

The \$62 million payout labeled “Issuance of Public Garage License” was a 2015 verdict in a lawsuit which was filed when BACP issued a license for the Aqua Garage, unaware that the 2006 parking meter privatization prohibited the City from issuing permits for new parking garages in the central business district.<sup>xxiv</sup>

The item labeled “Speed Camera Settlement” is for a 2018 settlement of a 2015 lawsuit alleging that the City failed to follow due process on speed camera violations by failing to send a second notice of violation and imposing late fees four days too soon.<sup>xxv</sup>



<b>Total Payments, Fees and Costs</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	<b>Total</b>
OFFER OF JUDGMENT	0.0%	0.0%	0.0%	0.4%	0.0%	0.8%	0.9%	0.1%	0.0%	<b>0.2%</b>
SATISFACTION	37.9%	16.8%	2.9%	19.3%	9.0%	8.7%	10.0%	10.7%	9.0%	<b>12.0%</b>
SETTLEMENT	46.6%	76.0%	39.4%	73.0%	59.7%	22.9%	80.0%	70.6%	82.6%	<b>59.1%</b>
VERDICT	15.5%	7.2%	57.7%	7.3%	31.3%	67.6%	9.1%	18.6%	8.3%	<b>28.7%</b>

Satisfactions are cases wherein a judgement has been issued against the City, but the plaintiff agrees to accept less than the full judgement, usually because the City agrees not to appeal.

Verdicts accounted for less than 29% of all payouts. Verdicts were less than half of total payouts in every year except 2012 when the \$75 million CFD racial discrimination verdict was issued and 2015 when the \$62 million garage license verdict was issued. This reflects the City's hesitancy to pursue litigation.

**ACCIDENT OR PROPERTY DAMAGE, NOT CITY MVA OR BIKE**

<b>BY TYPE OF INCIDENT, AND DEPARTMENT</b>	<b>% OF TOTAL</b>	
<b>STREET CONDITION</b>	<b>11,458,794</b>	<b>25.4%</b>
<b>TREES</b>	<b>7,929,467</b>	<b>17.6%</b>
<b>SIGNAGE</b>	<b>7,470,592</b>	<b>16.6%</b>
<b>WATER DAMAGE (DWM)</b>	<b>2,425,963</b>	<b>5.4%</b>
<b>DAMAGE TO PEOPLES GAS PROPERTY</b>	<b>2,316,454</b>	<b>5.1%</b>
WATER MANAGEMENT	2,101,133	4.7%
TRANSPORTATION	184,292	0.4%
LAW	13,407	0.0%
POLICE	9,365	0.0%
STREETS & SANITATION	6,937	0.0%
2FM	1,320	0.0%
<b>OBJECTS IN PUBLIC WAY</b>	<b>1,766,261</b>	<b>3.9%</b>
TRANSPORTATION	1,286,276	2.9%
WATER MANAGEMENT	269,500	0.6%
STREETS & SANITATION	135,484	0.3%
POLICE	75,000	0.2%
<b>PARAMEDIC MALPRACTICE</b>	<b>1,517,226</b>	<b>3.4%</b>
<b>DAMAGE TO AT&amp;T PROPERTY</b>	<b>1,090,603</b>	<b>2.4%</b>
WATER MANAGEMENT	946,221	2.1%
TRANSPORTATION	74,298	0.2%
OEMC	57,825	0.1%
STREETS & SANITATION	7,049	0.0%
LAW	5,209	0.0%
<b>WRONGFUL DEMOLITION (BUILDINGS)</b>	<b>1,041,426</b>	<b>2.3%</b>
<b>DAMAGE TO ComEd PROPERTY</b>	<b>896,264</b>	<b>2.0%</b>
WATER MANAGEMENT	724,653	1.6%
TRANSPORTATION	171,611	0.4%
<b>TOW/IMPOUND DAMAGE</b>	<b>427,554</b>	<b>0.9%</b>
<b>SIDEWALK CONDITION</b>	<b>254,277</b>	<b>0.6%</b>
<b>ANIMAL LOSS (AC&amp;C)</b>	<b>4,182</b>	<b>0.0%</b>
<b>OTHER/UNKNOWN</b>	<b>6,525,931</b>	<b>14.5%</b>
WATER MANAGEMENT	3,759,687	8.3%
TRANSPORTATION	1,375,225	3.0%
STREETS & SANITATION	482,482	1.1%
LAW	331,281	0.7%
POLICE	229,145	0.5%
LIBRARY	87,000	0.2%
BUILDINGS	75,500	0.2%
REVENUE	61,132	0.1%
2FM	59,288	0.1%
FIRE	46,651	0.1%
ANIMAL CARE AND CONTROL	11,084	0.0%
FINANCE	5,003	0.0%
BACP	2,454	0.0%
<b>Grand Total</b>	<b>45,124,993</b>	

As used in this analysis, the category *Motor Vehicle Accidents* is intended for accidents involving a City vehicle. If the City was liable for a motor vehicle accident which did not involve a City vehicle (for example, due to road conditions or improper signage), it was categorized as *Accident or Property Damage, Not City Vehicle or Bike*.

This analysis-by-type can help identify the practices and policies which contribute to J&S costs. The solution for one type of cost may be better training for City drivers, while the solution for another may be better placement of signs.

Greater detail, combined with more consistent labeling and categorizing of data would allow the City to identify problem clusters, such as particular drivers, geographic locations, particular vehicles or vehicle types, or particular operations. It would be especially helpful to have more detail for the costs under the categories of “trees” and “street conditions,” in order to better target resources to prevent future costs.

The Department of Water Management generated \$12.5 million in payouts, including \$2.4 million for “water damage,” but the data does not consistently label whether cases originate from the Water Division or the Sewer Division.

The Peoples Gas, AT&T and ComEd categories represent City payments for damage to the property of the respective utility. The Department of Water Management generates the bulk of payouts to all three, as one would expect given that DWM’s facilities are primarily underground. It would be worthwhile to investigate whether the disproportionate payouts to Peoples Gas is due to their facilities being more vulnerable to damage from City work than the others, or whether it is due to Peoples Gas more aggressively seeking damage payments. If it is the latter, then the City should investigate appropriate defenses. If the former, DWM should investigate what changes in work practices could reduce damage to gas and other utility property.

<b>MOTOR VEHICLE ACCIDENTS, CITY VEHICLES</b>		
POLICE	53,741,202	53.7%
STREETS & SANITATION	19,204,055	19.2%
WATER MANAGEMENT	18,451,001	18.4%
TRANSPORTATION	5,745,756	5.7%
FIRE	2,018,592	2.0%
2FM	420,276	0.4%
OTHER DEPARTMENTS	439,481	0.4%
<b>Grand Total</b>	<b>100,020,363</b>	

The Police Department generates 54% of all motor vehicle accident payouts, costing the City \$6 million per year. This contrasts with police departments in California, where the State Supreme Court recently upheld a law which grants law enforcement vehicles engaged in pursuit almost total immunity from liability for accidents.<sup>xxvi</sup>

## FIRE DEPARTMENT EMPLOYMENT-RELATED J&S PAYMENTS PLUS FEES & COSTS

CASE YEAR	PAYOUT YEAR									Grand Total
	2010	2011	2012	2013	2014	2015	2016	2017	2018	
1988	126,300		75,179,369							75,305,669
2008									247,915	247,915
2009				81,451		1,400,000				1,481,451
2010						82,500				82,500
2011					3,414,610		7,750			3,422,360
2012						162,320	6,769,634	40,359		6,972,313
2013						2,000		70,000		72,000
2014					7,500	124,000				131,500
2016								10,000	45,000	55,000
<b>ANNUAL TOTAL</b>	126,300	0	75,179,369	81,451	3,422,110	1,770,820	6,777,384	120,359	292,915	<b>87,770,709</b>

The Fire Department cost the City \$88 million in employment-related payouts during the nine-year study period.

Although large payouts have continued in the years since the 2012 racial discrimination verdict, including \$6.8 million in 2016, the bulk of those costs were for cases filed in 2012 or earlier. This may indicate that the Department has corrected its employment-related liability issues. In the absence of data, we can only go by anecdotal information, such as the report by the Better Government Association<sup>xxvii</sup> and the Chicago Sun-Times<sup>xxviii</sup> that the EEOC found probable cause to open a new line of investigation into CFD employment practices in 2017. Thus, a key question for the City's Risk Manager is whether CFD employment practices are sufficiently reformed to protect the City from large future costs.

<b>POLICE MISCONDUCT</b>		
<b>TOTAL PAYMENTS, PLUS COSTS AND FEES</b>		
USE OF FORCE/WRONGFUL DEATH	162,680,645	37.4%
REVERSED CONVICTION	136,777,397	31.4%
48 HOUR RULE/CONDITIONS OF CONFINEMENT	31,610,957	7.3%
FALSE ARREST	30,702,543	7.1%
DENIAL OF MEDICAL CARE	25,352,750	5.8%
SEARCH/SEIZURE	12,448,105	2.9%
BURGE REPARATIONS	5,333,793	1.2%
DUI STOP	1,773,548	0.4%
MALICIOUS PROSECUTION	940,750	0.2%
DENIAL OF LEGAL REPRESENTATION	31,000	0.0%
OTHER/UNKNOWN	27,285,662	6.3%
<b>Grand Total</b>	<b>434,937,150</b>	

Given that police misconduct makes up 54% of all J&S payouts, risk management will be inextricably tied to police reform. As this report is being written, CPD is six months into its consent decree. On September 1, 2019, WBEZ reported that,

*“The city of Chicago has failed to meet at least a third of the deadlines in the first six months of the legally-binding police reform plan being overseen by a federal judge. Among the missed deadlines are a requirement that the Police Department post monthly information on shootings and other incidents of police force, a deadline to ‘develop and implement a policy that prohibits sexual misconduct’ by officers and a promised overhaul of the field training program for officers fresh out of the academy. In one instance, the city misrepresented its progress to the judge overseeing the reform plan, which is laid out in a legal agreement called a consent decree.”<sup>xxix</sup>*

Assigning sub-categories to the police misconduct cases was especially difficult, because the descriptions in the downloadable data was often unclear, and many cases overlapped multiple sub-categories. COFA was able to make “best guess” assignments of cases to sub-categories with enough confidence to at least allow a general sense that CPD’s difficulties are not limited to a single practice, but rather cut across multiple categories.

The categories of false arrest, malicious prosecution and reversed conviction together are all related to pursuing the wrong suspect. Collectively, those make up 39% of payouts. Likewise, denial of legal representation, denial of medical care, and 48 hour rule/conditions of confinement all relate to treatment of suspects after arrest, and collectively make up 13% of payouts

Developing a data system to more accurately track sub-categories would allow reforms to be specifically tailored to Chicago’s requirements.

DOL staff interviewed for this report argued that federal courts are unduly generous in awarding attorney fees. The fact that fees and costs averaged 19% of plaintiff payouts in federal cases and 3.0% in non-federal cases supports their observation.

Federal courts' more generous approach to awarding attorney fees primarily affects police misconduct cases, which are often sued under federal civil rights law, and employment cases, which are often sued under federal equal employment law. During the study period, federal courts awarded 73% of plaintiff payouts in police misconduct cases, 98% of plaintiff payouts in employment cases, and 2% of plaintiff payouts in other cases.

# Appendix:

## Government Finance Officers Association Risk Management Best Practice



Government Finance Officers Association

### BEST PRACTICE

## Creating a Comprehensive Risk Management Program

#### BACKGROUND:

Risk management is a program designed to identify potential events that may affect the government and to protect and minimize risks to the government's property, services, and employees. Effective risk management ensures the continuity of government operations. The importance of risk management has been growing steadily over the last several years for a variety of reasons including legal, political, and medical liability, increased use of technology, and higher litigation costs.

Risk management is geared to achieving a government's objectives through strategic decisions that flow through high-level goals, effective use of resources, reliability of reporting, and compliance with applicable laws and regulations.

#### RECOMMENDATION:

GFOA recommends that governments develop a comprehensive risk management program that identifies, reduces or minimizes risk to its property, interests, and employees. Costs and consequences of harmful or damaging incidents arising from those risks should be contained. Adequate and timely compensation for restoration and recovery is another consideration.

The following steps should be included in an effective risk management program.

1. Risk Identification - An essential component in identifying risk is to understand the sources, types, and likelihood of risk. Risk identification should identify at a minimum the exposures in each of these areas.

- Physical environment (natural or man-made disasters and infrastructure)
- Legal environment (laws and legal precedents)
- Operational environment (day-to-day activities and actions within the local government, including services provided and workforce demographics)
- Political environment (legislative activity, elections)
- Social environment (socio-economic composition of the community)
- Economic environment (market trends, interest rates)
- Internal environment (the attitude of individuals towards risk)

2. Risk Evaluation - The frequency and severity of claims should be monitored and modifications made as necessary. Risk evaluation reports often include such information as the number of open claims, the amount paid out, and the amount reserved. Report results should be communicated in a form and timeframe that enable employees to carry out their responsibilities. Over time, these



reports reveal a government's risk profile. The Public Risk Management Association (PRIMA) has a variety of risk evaluation data available to governments.

3. Risk Treatment - After identifying and evaluating risk exposures, the next step is to decide how best to treat the exposures. Management may select a variety of risk responses - avoiding, accepting, reducing, sharing, or transferring risk. A risk management program should be a well-rounded combination of preventative and control measures, risk transfer, and risk retention. The latter two methods refer to a government either shifting the financial burden of risk to another entity or performing the task of risk financing in-house. In addition to these three methods, governments may occasionally choose not to provide a service altogether, a risk management technique known as risk avoidance.

- Loss prevention and control - Training, workshops, and inspections are common loss control measures.
- Risk transfer - Two basic types of risk transfer involve financial or contractual risk.
- Financial risk transfer may involve the use of an insurance company or risk managements pools. The criteria for procuring insurance should involve quality and scope of service, breadth of coverage (level of deductibles), financial stability, and cost. Most governments typically begin with three basic types of coverage.
  - Property insurance protects against damage or loss of property.
  - Liability insurance covers losses related to a government being found negligent in the performance of operations.
  - Worker's compensation provides employees with coverage for all medical bills resulting from job-related injuries or disabilities as well as lost income.
  - Risk management pools may be classified through various factors like type of service, lines of coverage, or type of government. Additional information on risk management pools can be found through the Association of Government Risk Pools (AGRIIP). A government can also transfer risk by having a contractor pick up the liability.
  - Risk retention - When a government retains risk (i.e., self insures) it assumes financial responsibility for some losses. Retaining some risk (e.g., paying a deductible) can lower the government's premiums. However, the government needs to be aware of its exposures through self-insurance.
  - Risk avoidance - Governments may avoid providing specific services if the risk management costs are excessive.

4. Risk Management Implementation - To implement a risk management program, consideration should be given to the establishment of risk management polices and procedures that includes a statement of the organization's goals, identifies officials charged with carrying out risk-related functions (e.g., planning, organizing, coordinating, implementing, monitoring, and controlling the government's risk management program), and contains guidelines for making decisions about fundamental activities (e.g., risk control and risk finance). It is essential that government officials are aware of not only the policies and procedures, but that the risk responses are implemented and effectively carried out.

5. Risk Program Review - In the environment of shrinking budgets and increased accountability within the government, it is essential that organizations review the effectiveness and efficiency of the risk management programs functioning within their organizations and make changes or modifications as necessary.

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- Association of Government Risk Pools (AGRiP) (<http://www.agrip.org/>).
- Public Risk Management Association (PRIMA) (<http://www.primacentral.org/>).

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- <sup>ii</sup> COFA interviewed Attorneys Mary Reuther, Caroline Fronczak, and Tyeesha Dixon
- <sup>iii</sup> “United States: Sky’s The Limit? A 50-State Survey of Damage Caps and the Collateral Source Rule,” by W. McDonald Plosser, Butler Snow LLP, updated December 11, 2018.
- <sup>iv</sup> *Los Angeles Times*, “California’s top court rules for police in a pursuit accident case,” by Maria Dolan, August 13, 2018.
- <sup>v</sup> Office of the New York City Comptroller Scott M. Stringer, Bureau of Law and Adjustment, *Claims Report: Fiscal Year 2018*, April, 2019, p. 5.
- <sup>vi</sup> As detailed in a letter from Lynn H. Gibson, Acting General Counsel of U.S. General Accountability Office to Peter J. Nickles, Attorney General for the District of Columbia, November 2, 2009. <https://www.gao.gov/assets/390/387088.pdf>
- <sup>vii</sup> *Local Government Management Guide: Reserve Funds*, Office of the New York State Comptroller, January, 2010.
- <sup>viii</sup> Judgement Fund, U.S. Department of the Treasury, <https://fiscal.treasury.gov/judgment-fund/>
- <sup>ix</sup> As a matter of practice and policy, claims are generally resolved within one year of incidents. The four-year figure for lawsuits is based on the fact that the majority of monies paid out during the 2010-2018 study period were for cases filed four or fewer years prior to the payout year. This was true in the aggregate, as well as for the Police Misconduct, Motor Vehicle Accidents, Bicycle Accidents, and Accidents or Property Damage not City Vehicle MVA categories taken separately. The majority of employment lawsuit payments were within four years of case filing if one excludes the CFD racial discrimination verdict, which was handed down in 2012 for a case filed in 1998.
- <sup>x</sup> Interviews conducted by COFA with attorneys Gerald Pruitt and Laetitia Brown of the Fort Worth City Attorney’s Office.
- <sup>xi</sup> Plosser, op. cited.
- <sup>xii</sup> *Wall Street Journal*, “Cost of Police-Misconduct Cases Soars in Big U.S. Cities,” by Zusha Elinson and Dan Frosch, July 15, 2015
- <sup>xiii</sup> *Governing*, op. cited.
- <sup>xiv</sup> *Los Angeles Times*, “L.A. is slammed with record costs for legal payouts,” by Emily Albert Reyes and Ben Welsh, June 27, 2018.
- <sup>xv</sup> *Los Angeles Times*, “Federal judge lifts LAPD consent decree” by Joel Ruben, May 16, 2013.
- <sup>xvi</sup> “Settlement Agreement History,” <https://www.seattle.gov/police/about-us/professional-standards-bureau/settlement-agreement-history>
- <sup>xvii</sup> *Governing*, op. cited
- <sup>xviii</sup> Ibid
- <sup>xix</sup> *New York City Council*, Discretionary Funding Budget, Executive Budget Reports, Department of Law.
- <sup>xx</sup> Ibid
- <sup>xxi</sup> Office of the New York City Comptroller Scott M. Stringer, op. cited., p. 2.
- <sup>xxii</sup> <https://www.chicago.gov/city/en/depts/dol.html> “Judgement and Settlement Payment Requests” drop-down menu.
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<sup>xxviii</sup> *Chicago Sun-Times*, “Nine-year tab for Chicago Fire Dept. bias claims: \$92 million,” by Jared Rutecki, February 2, 2017

<sup>xxix</sup> *WBEZ News*, “Chicago Misses 2 Dozen Deadlines In Police Reform Plan,” by Patrick Smith, September 20, 2019.