



**MAGIC 8-BALL SAYS:  
Threats and Opportunities  
For Municipalities**

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2021 Lunch Bunch Meetings**



# A moment of nostalgia for the “good old days” ...

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- For many decades, municipalities lived in a pretty friendly world
- Public perceptions of municipal services were largely positive, or at least neutral
- We had a great set of liability laws protecting municipal services, and the people who performed those services
- Legislators were not inclined to turn local government into a liability scapegoat
- “Tort reform” and “workers’ compensation reform” worked in our favor
- When we had to go to court, we could depend on a reservoir of good will among potential jury members
- Municipal government was generally a pretty congenial environment in which to work
- These favorable conditions were reflected in the overall cost of risk

# Today's hard, cold realities....

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- The “government closest to the people” no longer gets the same respect it once did for all it does – perceptions today start at indifference and escalate to suspicion and outright hostility, and ugliness can permeate the organization from the top down, and throughout
- Our liability laws aren't what they once were, and we're starting to grow numb to the constant erosion of liability protections with little or no ability to provide input or to influence the outcome
- “Reform” doesn't mean what we think it used to mean
- Changing juror perceptions – “social inflation”
- Cost of risk is ever-increasing – hard insurance market – some insurers pulling out – some coverages becoming less available – limits of coverage being reduced
- We just lived through a worldwide pandemic... and now we're confronting “Pandemic: The Sequel”

# Threats on the horizon: a short list

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Here's some of our top worries (at the moment and in no particular order):

- Law enforcement liability and its resultant impacts on law enforcement services and the cost of law enforcement liability coverage
- Sexual misconduct liability and its resultant impacts on any services involving minors
- Other liability threats made more likely by changing social climate, one-party rule, the rise of incivility, etc.
- Ransomware, computer fraud and other cyber crimes
- Climate change and its results – increased risk of property damage from hail, wildfires; mudslides, floods, etc.
- Pandemic Part 2 and associated fatigue

**WHAT'S ON YOUR LIST??**

# Let's drill down on a few of these: **law enforcement**

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- Law enforcement has never been an easy profession, and it keeps getting harder
- Public and governing body expectations have never been higher. Police departments are not just expected to prevent and solve crimes. The woes of society have been delegated to them to solve – homelessness, the opioid crisis, lack of resources for mental health issues, code enforcement...the list goes on and on
- At the same time, scrutiny has never been more intense, and the job is thankless and dangerous
- Certainly there have been some terrible incidents that should not have happened the way they did. But public sentiment now creates a different perception of virtually every negative encounter...and most police encounters are by nature negative
- Public sentiment and public scrutiny are not just factors from within our own communities – there is now a statewide, nationwide, and worldwide community that instantly sees and judges what's going on in our jurisdictions

# Let's drill down on a few of these: **law enforcement**

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- Changes in liability laws are not just aimed at municipalities, departments, or policy-makers – they are taking personal aim at the pocketbooks and bank accounts of individual officers. Senate Bill 20-217 (and its progeny this year – e.g., SB 21-183, HB 21-1250) are making the liability picture worse and worse
- Things have also changed at the federal level – talk of eliminating federal qualified immunity, re-emergence of Department of Justice “pattern and practice” investigations
- Many good people are leaving the profession, many good people are choosing other career paths

# Let's drill down on a few of these: **sexual misconduct liability**

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- We've seen a few cases of "bad actors" in municipal government – predatory behaviors against children or other vulnerable individuals – but not to the same extent as other levels of government, most notably schools
- Liability laws have worked in our favor: an individual who commits sexual misconduct has always been likely to be unprotected by immunities (or insurance) – and properly so – but the municipality has generally had protections from liability
- This is changing. Under SB 21-88, any organization providing services that interface with minors – including municipalities – will face a significant new liability exposure. SB 21-73 also eliminates the statute of limitations for sexual misconduct claims.
- Our members' good loss history in this area has been reassuring to our reinsurance partners
- But no longer will we be able to make the assurances we made last year during reinsurance negotiations about the legal landscape in Colorado

# Let's drill down on a few of these: **the organizational environment**

- Are we seeing more ugliness and incivility within our organizations, starting at the top and working its way through? If so, why?
  - Seen in just ONE recent article about a federal elected official interacting with administration personnel: He **“excoriated”** them. **“Tore into”** them. **“Lambasted”** them. **“Accused”** them of **“insubordination.”** **“Sharply criticized”** them.
  - People make headlines, and sometimes political points, with this kind of rhetoric
  - News outlets love to report on a good kerfluffle...and we like to read about them!
  - Even absent news outlets, there are plenty of social media outlets for engaging followers in this way
  - Is this kind of conduct filtering through to our level of government? If so, what is the impact?



# Let's drill down on a few of these: **the organizational environment**

- Things are getting uglier during and after employment in many workplaces. And the uglier things are, the more likely it is that someone will be demanding their “pound of flesh” ... and then some
  - It's human nature to want to hit back when hit
  - Real reputational harm can be caused by improvident comments, especially in public settings, and especially by the organization's leaders
  - The possibility to turn those comments into a weapon in the form of a harassment or discrimination claim against your entity exists
- So, if the leaders of your organization aren't doing their part to help maintain a humane workplace, and an exit a dignified and discreet one, the organization may be paying a premium for that indiscretion

# Let's drill down on a few of these: **cyber-threats**

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- Since 2013, we've had about 21 cyber-related claims (cyber coverage has only been in place since 2015)
- They include ransomware claims, "social engineering" (impersonation emails), ACH and wire transfer fraud, and personal information breaches
- Ransomware may be the most disruptive – in addition to the hard costs of either paying the "ransom" or re-building systems, there are the "soft" costs of disruption to work, reputational damage, an accelerated need to replace outdated hardware and software etc.
- Organizations large and small have been hit
- Coverage can be challenging to secure, and may include unanticipated exclusions or limitations
- Nationally, businesses and governments have been making the news because of cyber-related claims – **could the next one to hit the news be you?**

# Let's drill down on a few of these: **Pandemic fatigue**

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- We've been living with coronavirus issues for more than a year now, with various impacts at home, in the workplace, and elsewhere
- Earlier this summer, we seemed to be headed towards some version of normalcy
- And now...are we experiencing the Pandemic Sequel? What's the name of this movie, anyway?
  - "I Still Know What You Did Last Summer," "Down in the Delta," "Corona and Corona-er," "52 Weeks Later" -- ?
- Pandemic fatigue is real! We are all ready for it to be over, but is the pandemic ready to be over with us? Magic 8-Ball has not come through with any answers!

# What does all this mean for municipal leaders?

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- Risk management principles say that you should AVOID, TRANSFER, ACCEPT, or MITIGATE risks.
- How do these actions apply in the context of critical municipal services? Probably not very well!
  - In law enforcement as an example, running TOWARDS risk is the job, not avoiding it! And there are no or few other parties to whom to TRANSFER that risk. So ACCEPTANCE and MITIGATION are the only available strategies.
  - Likewise, many child-related services are accepted and expected municipal functions – in recreation, sports, daycare or after-school care, and many other contexts. So opportunities to TRANSFER or AVOID may be limited.
  - In contrast, in the burgeoning area of cyber threats, the need to effectively AVOID risks will require major investments in IT systems and training.

# So....

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- That means we all must be mindful of what risks we are ACCEPTING. Only by knowing the nature and the scope of risk can you properly accommodate, deal with, and potentially mitigate the risk of injury to citizens and the risk of liability to your entity and the people providing those services.
  - Child-related services require careful consideration of protection of children from the risks of misconduct.
  - Municipal budgets must be adequate to fully fund new services to a standard of excellence, not just adequacy – hiring, staffing levels, training, supervision, equipment, oversight, policy development, etc. “De-fund”? Maybe let’s talk about “fund properly”?
  - Are any of you considering a new “start-up” police department?? Underfunded, understaffed, ill-planned police department start-ups are a huge DISSERVICE to everyone involved or affected.
  - High-risk services will cost more to insure. This cost must be factored into planning and implementation.

# And what's CIRSA doing?

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- Increasing support for law enforcement has been a priority identified by our Board for the last several years. The current line-up of police-related services and coverages includes:
  - Devoting regional roundtables to current law enforcement issues
  - Training aimed at emerging issues (example: we're scheduling training on Alzheimer's issues for this year)
  - SIGMA Health initiative
  - Cordico mental wellness app
  - Law enforcement regional roundtables
  - Individual mental health services through Dr. Jaime Brower's office
  - Coverage for the up-to-\$25k personal liability faced by police officers
- Increasing support for cyber loss control via partnership with KnowBe4

# And what's CIRSA doing?

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- For 2022 and beyond, we want to keep doing more to assist you. “The best claim is a claim that doesn’t happen.” ~Mike Wagner, CIRSA Claims Manager.
- These are some of the ideas in the discussion/feasibility exploration stages:
  - LOSS CONTROL services will be an even greater priority going forward.
  - We want to up the specialization levels. The challenge: how do we find the “unicorns” – people with the right background, experience, and credibility levels to assist you in dealing with highly specialized topics?
    - All law enforcement liability topics, sexual misconduct issues, assisting with DOJ “pattern/practice” issues, **others?**
  - We’ve provided policy support for law enforcement via partial funding for Lexipol’s policy development and support service. **Should we reinstate that service?**
  - Should we assist with developing standards/methodology/professional consultation in **recruitment and selection practices** for law enforcement?
  - **How else can we be of assistance to you?**

# And what's CIRSA doing?

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- And, of course, coverage for your risks is the primary reason CIRSA exists. We will continue to do all we can to provide coverages that meet your needs, provide adequate limits, at a stable cost. But:
  - In a hard market, during a time when insurers are cutting back on limits, adding aggregates, requiring higher self-insured retentions, or leaving the market altogether, this will be a challenge.
  - We do not see the coverage and cost picture getting better in the foreseeable future for property or liability. We foresee that the cyber insurance market will get worse, too.
    - We recognize the possibility that we'll have to take on higher self-insured retentions. We'll fight against per-member or pool aggregates as long as we can. We'll continue to explore the addition of self-insured coverages.
  - We believe that for most lines of coverage, pooling is more attractive to the insurance market than individually covering municipalities on a one-by-one basis – in a hard market or crisis situation, pooling may put you in a better position than you would be as an individual insurance purchaser
    - But we need to ensure that our services are targeting high-risk areas effectively – because that's what you want, and that's what our reinsurers need to see.



# Concluding thoughts

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- It wouldn't be shocking to see the “threats” identified earlier converging into significant problems with availability and affordability of insurance, at least in some lines.
- Veteran managers may remember the “crisis” cycles in insurance in past decades, where insurance became not just unaffordable, but in some cases impossible to find – and services were shut down as local governments scrambled to find insurance.
- CIRSA was born out of the insurance crisis of the late 70s/early 80s and continues to be a tool and a resource for you in soft and hard markets.
- We look forward to continuing to be of service no matter what threats and challenges are in your future and ours. Thank you for allowing us to serve you.

# And what about YOU? What else is keeping you up at night?

- What issues are you confronting in your city or town?
- What questions can Magic 8-Ball help you with?
- How can CIRSA be of assistance?

