Sexual Abuse & Molestation Settlements – California Now, Coming Soon to a State Near You

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Underwriting Issues Included

- What can happen to rates when a state enables SAM litigation
- Large loss drivers for K-12 AL/GL
- A methodology for evaluating SAM root causes and building mitigation strategies
- Loss and ALAE implications associated with plaintiff and defense firms
  - Certain plaintiff firms will drive costs up
  - Prudent to limit defense assignments to specific firms
- Specific actionable data found in the SAM study
- Avoidance strategies
- Developments in SAM related legislation by state
- Results of legislative change in CA
- Resulting underwriting climate
"You have a pretty good case, Mr. Pitkin. How much justice can you afford?"

"I shouldn't, but I'm going to have the garbage."
Overview

– Background on CA K-12 studies
– Phase 1
– Phase 2
– Nationwide Trends in SAM Related Legislation
– AB 218 as an Example
– Underwriting Concerns
CA K-12 Pools - Cumulative Percentage Rates 2015 - 2019

Pool A  Pool B  Pool C  Pool D  Pool E  Pool F
Pool G  Pool H  Pool I  Pool J  Pool K
Phase 1 - Objectives

Collect, aggregate, and analyze claims data from California schools to identify the causes of significant general liability claims with the end goal of reducing the severity of these claims and the resulting financial impact to California public schools.
Phase 1 - Data Overview

- 10 years of ground up losses collected
  - 14,000 + occurrences
  - $780 million of total incurred value
- Large losses over $1 million were then analyzed
- Data was aggregated to maintain anonymity of the participants
Overall Ground Up Claims Analysis

Loss Distribution by Size

0.8% of the total 14,000+ existing claims were over $1 million
They represent 50% of the $780 million incurred losses

Number of Claims

- 14,042, 99.2%
- 113, 0.8%

Incurred Losses (millions)

- $392, 50%
- $389, 50%
Occurrence Types: Over $1M Analysis

Number of Claims
- Molestation: 37
- Non-auto Injury: 30
- Auto Injury: 19
- Assault: 10
- Employment: 10
- Other: 7

Incurred Losses (millions)
- Molestation: $148
- Non-auto Injury: $97
- Auto Injury: $87
- Assault: $33
- Employment: $14
- Other: $10
Significant Findings on Over $1 Million K-12 Losses

- **37** SAM occurrences – average incurred $4 M
- **19** Auto occurrences – average incurred $4.5 M*
- **10** EPL claims – average incurred $1.4 M (no discernable trend on types)
- **7** football head injury claims – average incurred $3.3 M
- **2** bullying claims – average incurred $1.2 M

* includes one $16 million brain damage loss where a cheerleader fell from the back of a pickup during a parade; redacting that loss results in an average of about $3.9 million per occurrence on a catastrophic auto claim.
The Principal Driver - Sexual Abuse and Molestation (SAM)

- **37 occurrences; 96 individual claims** ($1.54 million per claim)
  - most of the large occurrences are associated with teachers
  - 5 involve aides; average incurred $1.7 million
  - 5 student on student; average incurred $1.9 million
  - 4 coaching related occurrences (31 claims); average incurred $1.2 million

- Seven plaintiff firms account for 2/3rds of the total incurred value in the study
Projected Ten-Year Total on California K-12 SAM Exposure

- $212,000,000 estimate on the data in the sample group
  (~60% of California ADA)

- $300,000,000 estimate for LAUSD based on anecdotal information
  (~10% of ADA)

- $106,000,000 estimate for the 30% balance for the rest of the State

- $618,000,000 over ten years or roughly $62 million per year
PHASE 2
Objectives

- Take a deeper dive on the data (“we don’t know what we don’t know”)

- Identify the root causes of SAM in K-12 to establish effective reduction and mitigation techniques.

- Establish the basis for regulatory relief from the State.

- Explore the concept of creating an arbitration system or victims a fund that can reduce the amount of money going to both plaintiff’s and defense firms.

- Develop specific protocols that schools can use to reduce their SAM exposure, possibly enabling them to gain preferential underwriting consideration if it is clearly validated they are using them.

- Enable collaborative discussions with insurance and reinsurance markets on a risk that is approaching an uninsurable status.
Data Overview

- Conduct a thorough analysis of all SAM claims over the past 10 years
  - Determine principal root causes
  - Develop standard characteristics of SAM claims
  - Evaluate types of losses and related cost allocation
  - Evaluation of plaintiff counsel
  - Evaluation of defense counsel

- 11 years of ground up SAM losses were collected
  - Resulted in 708 claims; 549 occurrences
  - **$243 million incurred values** (the Phase one “guesstimate” was $212,000,000)

- Data aggregated to maintain anonymity of participants
Occurrence and Claim Counts

549 Occurrences; 708 Claims
Total Incurred Loss and Expense – By Policy Year

$443,000 Average by Occurrence; $341,000 Average by Claim

Expense

Litigated Claim Statistics

- 267 occurrences encompassing 406 claims in the sample are litigated
- Of the $243,347,000 in total incurred values for all SAM data collected, the following represents litigated claims:
  - Paid losses = $143,868,000
  - Loss reserves = $57,868,000
  - Incurred losses = $201,736,000
  - Total incurred on claims not yet subject to litigation = $41,611,000

- The average defense cost per claim is about $110,000
Plaintiff Firms – Can We Identify Trends?

- Seven plaintiff firms have been identified as prolific
- These seven firms are involved in 152 (21%) of the individual claims
- These seven firms account for $91,261,000 of the total existing payments (63.4%)
- These firms account for $134,656,000 of the total incurred losses (66.7%)
- The average “prolific firm” settlement or award on 105 closed cases is $855,000 per claim
- The average loss reserve on one of the 47 open “prolific firm” cases is $603,000

- It is probable that the trend to see SAM specialist law firms will be replicated in other states, or exported to other states
## Prolific Plaintiff Firm Details

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<tr>
<th>Firm</th>
<th># of cases</th>
<th>Paid Losses</th>
<th>Reserved Losses</th>
<th>Incurred Losses</th>
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<td>$3,005,000</td>
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<td>Daniel Rodriguez</td>
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<td>$3,657,000</td>
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<td><strong>Total For These Firms Only</strong></td>
<td><strong>152</strong></td>
<td><strong>$91,261,000</strong></td>
<td><strong>$43,395,000</strong></td>
<td><strong>$134,656,000</strong></td>
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<td><strong>All Files in the Sample</strong></td>
<td><strong>714</strong></td>
<td><strong>$143,868,000</strong></td>
<td><strong>$57,868,000</strong></td>
<td><strong>$201,736,000</strong></td>
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Defense Counsel Expense & Loss – Closed Files Only
Defense Firms – Can We Identify Trends?

- The “top ten” firms shown on the preceding two exhibits were involved in about 170 of all claims, or 43% of the 406 claim sample.
- 57% of the claims were therefore handled by other firms, many handle only one SAM claim every few years.
- SAM claims are dangerous, and require a specific understanding of strategy and execution.
- Reptile: The 2009 Manual of the Plaintiff's Revolution – David Ball & Don Keenan
- It is possible to reduce SAM exposure through a well conceived approach to a case.

The principal conclusion we reach is that there are too many defense firms being used to handle SAM litigation. A “panel” approach makes the most sense. California K-12 is now moving in that direction.
Age and Gender of Victims

Claim Count by Age and Gender

- Female
- Male

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AON
Empower Results®
Loss Descriptions

![Loss Cause Groups: Claim Count](image_url)
Loss Descriptions – Elementary only
Loss descriptions and values
Location – All Claims

Location: Claim Count and Total Incurred

- Count of Claim #
- Total Incurred
Location – Special Ed Only

Location: Claim Count and Total Incurred

- Administration offices
- Athletics
- Bus
- Classroom
- Gym
- Hall
- Home
- Locker room
- Other/unknown
- Playground
- Restroom

Count of Claim #  Total Incurred
Special Education

- 133 of the 708 claims (19% of the claims count)
- Over half of these are student on student, and many of those are Special Ed on Special Ed
- Total incurred on Special Ed is $38,094,000 (16%)
- Average total incurred per claim is $286,000
- Restroom and bus incidents are common
- The most common root cause is lack of supervision
Root Causes by Claims Count

- One on One
- Failure to follow other
- Failure to report
- Lack of Supervision
- Background Check
- Should Have Known
- Other
Root Causes by Incurred Value

- One on One
- Failure to Follow Other
- Failure to Report
- Lack of Supervision
- Background Check
- Should Have Known
- Other

Incurred Values:
- $0
- $20,000,000
- $40,000,000
- $60,000,000
- $80,000,000
- $100,000,000
- $120,000,000
Phase 2 Summary

- 549 occurrences and 708 individual claims were identified and evaluated
- Average cost by occurrence = $443,000; by claim = $341,000; this includes zero value claims ("near misses") in the study
- 7 plaintiff firms represented 21% of the individual cases accounting for 66% of the incurred losses
- Too many defense firms are engaged
- Plaintiff attorneys will always go for “should have known”
- In spite of well known best practices, “one on one” still exists
- Claim types seem to indicate heavy internet influence
SAM Related Changes in Laws in 2019

- Alabama
- Alaska
- California
- Connecticut
- Hawaii
- Illinois
- Iowa
- Maine
- Montana
- Nebraska
- New Jersey
- New York
- North Dakota
- Rhode Island
- Texas
- Utah
- Washington
- Washington DC
How a Bill Becomes a Law

Bill is introduced

Committee Hearings

Floor Action

Returned to original house

If passed without amendments

Bill goes to Governor

If not vetoed

Most bills become law January 1 of the next year

If passed (sent to other house)
How a Bill Becomes Law

As Introduced.....
As Amended in Committee...
As Amended on Second Reading....
As Funded by the Appropriations Committee...
As Enacted....
As Implemented by the Regulatory Agency....
As Understood by the Media....
As Understood by the Public...
What was Actually Needed...
An Actual “Result” - Assembly Bill 218

- Current reporting filing age limit on a sexual abuse claim in California is the plaintiff’s 26 birthday or within three years of the date the plaintiff discovers or should have discovered the psychological injury or illness
- Expands the definition of childhood sexual abuse, which would instead be referred to as childhood sexual assault
- Increases the reporting age limit from 8 to 22 years (40th birthday) or within 5 years of the date the plaintiff discovers or should have discovered the psychological injury or illness
- Provides for treble damages against certain defendants and would revive time-lapsed claims in certain circumstances
- Changes the current requirement to demonstrate both (1) knowledge or constructive knowledge of “unlawful sexual conduct” and (2) failure to take reasonable preventative action, into a requirement to demonstrate either (1) knowledge or constructive knowledge of “misconduct that creates a risk of “childhood sexual assault or (2) failure to take reasonable preventative actions.
Assembly Bill 218 – The Author’s Message to the Legislature

The bill’s author opined that AB 218 would pose “no significant financial impact” to the State of California.
Assembly Bill 218 – The True Fiscal Impact

The data in the K-12 SAM project was shared with Mark Priven at Bickmore Actuarial for analysis. His findings were used to slow the progress of and hopefully modify, AB 218. Some of his findings:

- There will be an increase in the number of people eligible to file claims – and a projected $590 million increase in awards over the last 12 years
- Treble damages are likely to increase the overall payouts; if 25% of the claims included treble damages there would be an additional $1.9 billion payout over existing values
- Changing the liability standard will likely increase the number of claims filed

In combination, these changes are estimated to increase what would have been a historical 0.8 billion payout to something in the $3.0 billion – 3.3 billion range. Once there is no coverage left for SAM K-12 and schools go into bankruptcy, the State of California will end up paying some or all of the future costs associated with this exposure.
General Underwriting Comments

- Does the member have specific SAM related protocols
  - Overarching teacher training
  - A focus on mandatory reporting
  - How good are background checks
  - Creative approaches like RTW on Special Ed busses
  - Rapid response capabilities focused on control and mitigation

- How is litigation managed?
  - Internal or external counsel
  - Does the firm understand how to handle a SAM case?
  - Early resolution is key if possible
  - Venue is a critical factor

- Legislative changes can significantly affect exposure
  - Clearly understand the implications of SAM related changes in the law
  - Multiple claims are likely after a change in reporting periods
  - Understand the legislative environment and engage your peers
  - Educate senior staff and elected officials
General Underwriting Comments

- SAM activity is creating significant pricing pressure in some states
- There is a move towards claims made coverage in some venues
- Carve out SAM as an option?
  - There are stand-alone markets
  - SAM only excess is available
- IBNR can be a significant concern
  - Make sure you have copies of policies old enough to encompass reporting periods
  - Depending on your venue, consider retrospective coverage solutions
  - Loss Portfolio Transfers?
  - Adverse Development Coverage?
Discussion