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Member Owned, Member Driven

TORT CLAIMS AND RISK MANAGEMENT

IAC 2022

What is Idaho Counties Risk Management Program?

Public Entity

- Formed by Idaho Counties in 1985
- Alternative to Volatile Commercial Carriers

Licensed & Regulated Insurer

- Idaho Department of Insurance
- Regulated like Commercial Carrier

Member Benefits

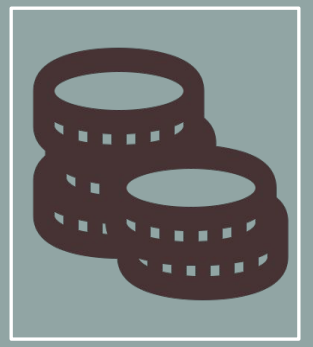
- ***Ownership***
- ***Local***
  - Boise, Kellogg, Idaho Falls
- ***Governance***
  - Board of Elected Officials
  - Direct Access to Board, Management
- ***Specialized Coverages and Trainings***

By the Numbers

$39 Million in Written Premium

998 Members Counties, Cities, Schools, & Special Districts

$19.5 Billion in Property Values



$2.3 Billion in Payroll Values

Coverages

Sexual Molestation

- ✔ Molestation & Abuse

General Liability

- ✔ Personal Injury
  - ✔ Bodily Injury (Slip & Fall)
  - ✔ Libel/Slander/Defamation
- ✔ Property Damage
  - ✔ Sewer Backup
  - ✔ Water Main Breaks

Auto – Property & Liability

- ✔ Property Damage
  - ✔ Repair/Replace Your Autos
- ✔ Liability - Citizens
  - ✔ Damage to their Vehicle
  - ✔ Driver & Passenger Injuries

Employment Practices

- ✔ Discrimination
- ✔ Retaliation
- ✔ Wrongful Discipline/Termination

Coverages

Law Enforcement

- ✔ *Personal Injury*
  - ✔ Bodily Injury
  - ✔ Wrongful Arrest or Imprisonment
  - ✔ Excessive Use of Force

✔*Property Damage*

- ✔ Damage to Others

Errors & Omissions

- ✔ Decision Making Liability

Employee Benefits

- ✔ Fail to Sign Up Employee Benefits

Chemical Spraying

- ✔ Weed Spraying
- ✔ Mosquito/Rodent Abatement

Coverages

City Property

- ✔ Buildings, Structures, Mobile Equipment
  - ✔ Snow, Wind, Hail, Fire, Theft
  - ✔ Terrorism
  - ✔ Earthquake/Flood

Additional Coverages

- ✔ Equipment Breakdown
- ✔ Attorney Consultation for Employment Practices
- ✔ Cyber Liability
- ✔ Crime/Embezzlement
- ✔ Aviation Liability

Today's Objectives:

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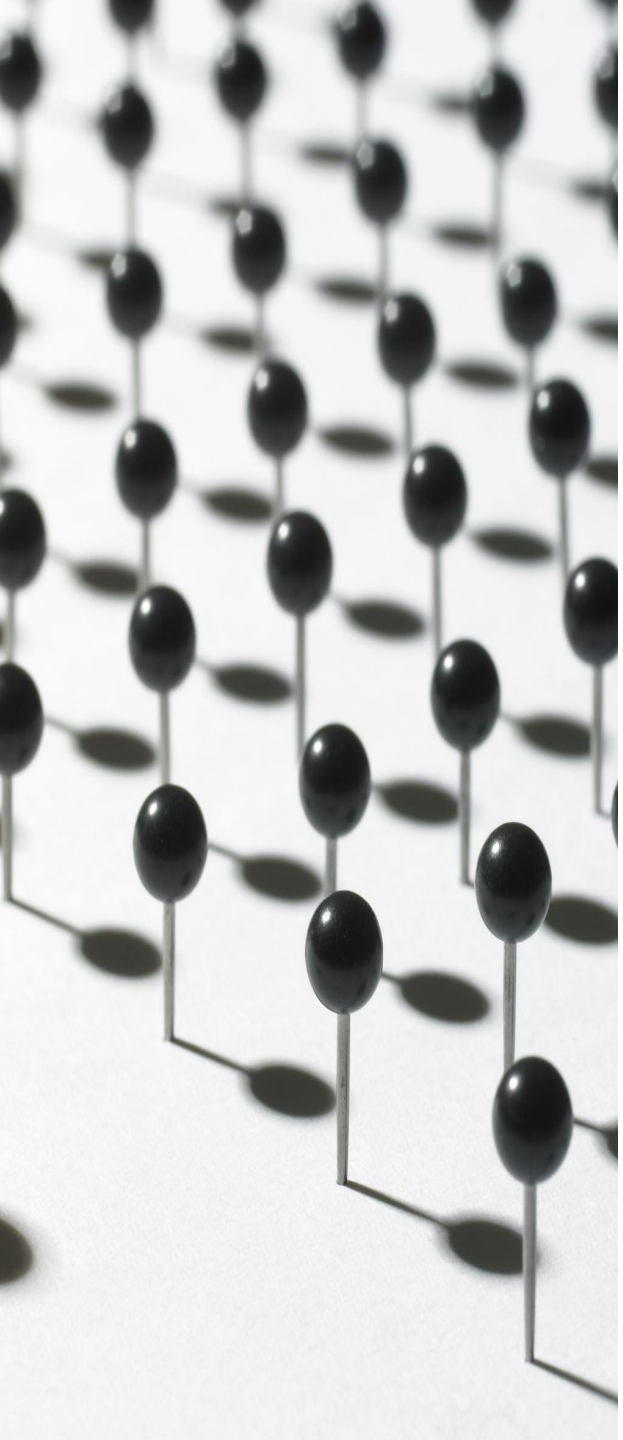
Realize public liability is something you need to care about.

Things you can do to keep out of trouble and protect your reputation.

Idaho Tort Claims Act Title 6-901

- Claims Against Entity, Elected Officials, Employees, Volunteers
- Seeking Money Damages
- Employer Provides Defense
- Employer Pays Damages –capped at $500,000 or amount of insurance



Tort Claim Procedural Requirements

- File Claim w/in 180 days
- Claim must describe circumstances
- Must file lawsuit within 2 years of date of injury
- Damages - $500,000 or insurance

You could get tort claims for....

Failure to provide medical care to an inmate

Slip and falls, auto accidents

Deny, refuse to issue, suspend or revoke a permit, certificate, approval or similar

Any decision, act or omission by city, county or board when carrying out your duties and business

Lawsuit vs. Tort Claim

A lawsuit is a formal case that has been filed in the appropriate court of law, while a tort claim is usually an informal notice of claim that may trigger an informal resolution without the cost of litigation.

Not every tort claim becomes a lawsuit. In fact, more than 90 percent of personal injury cases are resolved before going to court. This is usually a good thing for all parties involved since litigation can be expensive and time consuming.

Civil Rights Act of 1871
Title 42, Section 1983, U.S.C.

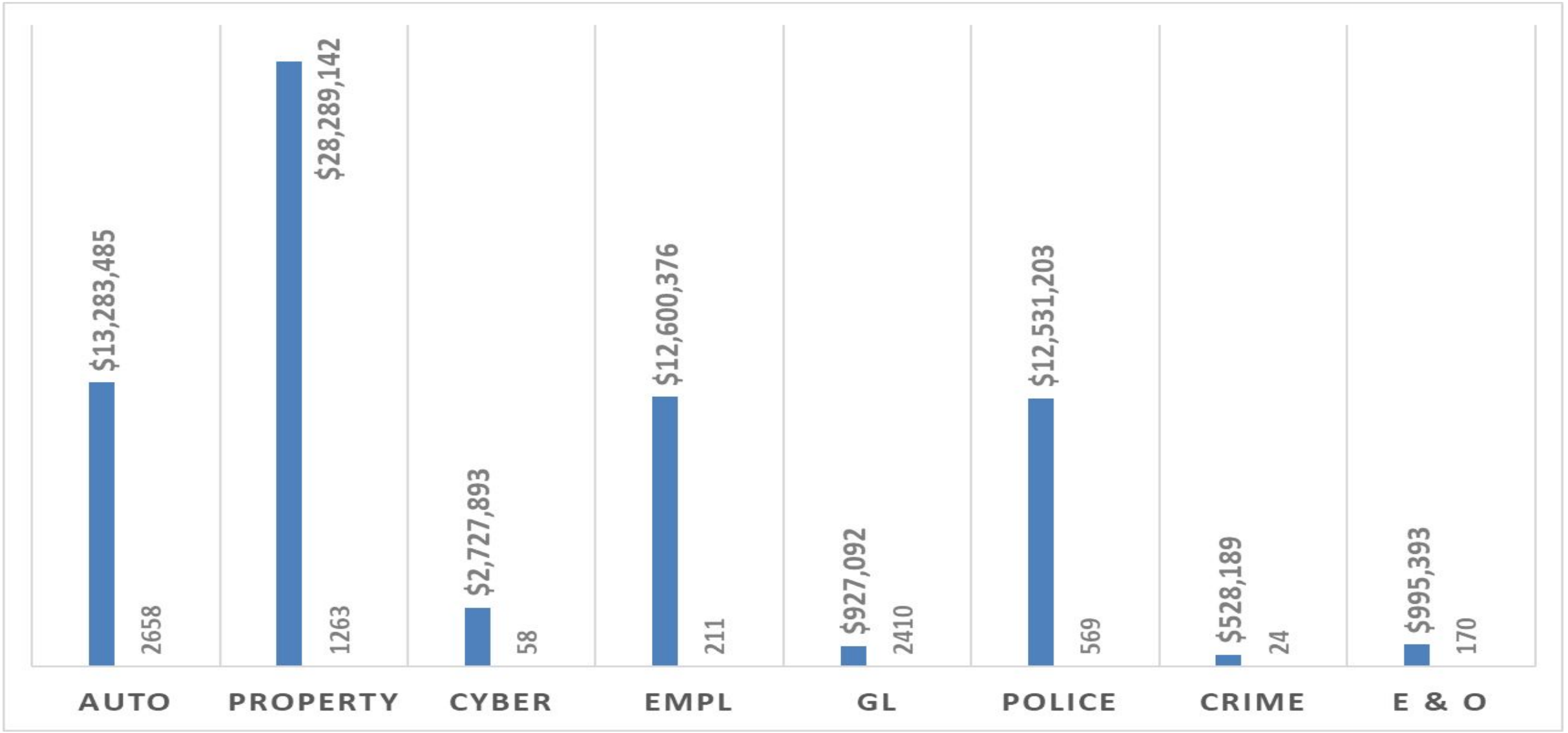
Typical 1983 claims would be (FEDERAL COURT):

- Police misconduct
- First amendment freedom of speech
- Due process connected with employment

Many employment discrimination claims fall under a federal law called Title VII. That law prohibits several types of discrimination and harassment in the workplace.

What areas have the most risk?

4 Year History – All Members



Law Enforcement

Patrol /Detention Training Areas

- Emergency Vehicle Operations

  - High Speed Pursuits
  - Spike Strips
  - PIT Maneuvers
  - U-Turns
  - Policy & Procedure Review

Patrol Training Areas

- Use of Force
  - Deadly
  - De-Escalation Tactics
  - Less than Lethal
  - K-9, Tasers, Choke Holds

Law Enforcement Risk Manager
Chad Sarmento

- P.O.S.T Certified Training
- Facilities & Operational Assessments
- Policies & Contract Review

Employment

Recurring Employment Claim Themes

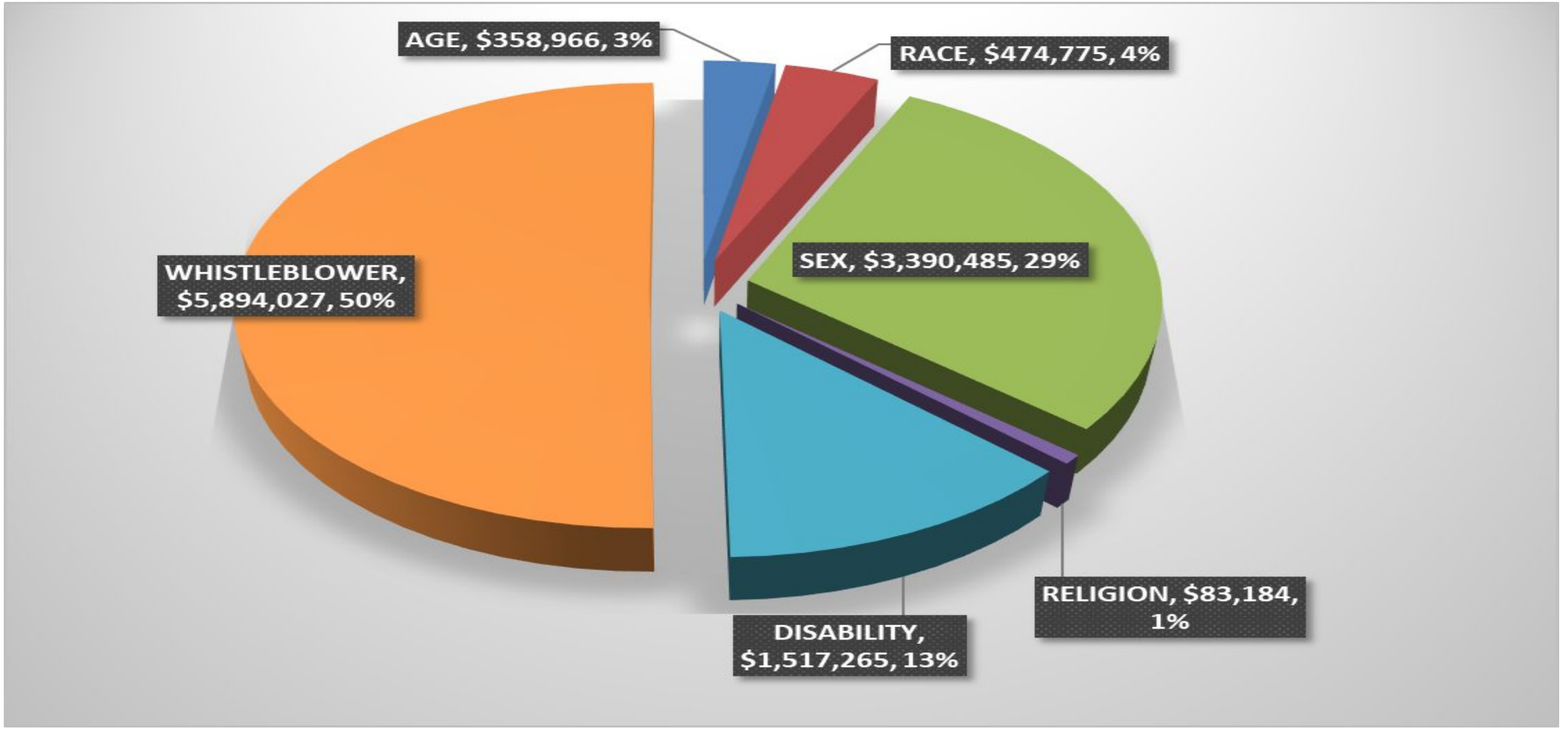
Poor Supervision Practices

- Failure to timely address employee issues
- Failure to discipline
- Poor or no written documentation

Failure to manage ADA and FMLA appropriately

Actual Harassment, Discrimination, Retaliation

By Cause


AGE, $358,966, 3%
RACE, $474,775, 4%
SEX, $3,390,485, 29%
WHISTLEBLOWER, $5,894,027, 50%
DISABILITY, $1,517,265, 13%
RELIGION, $83,184, 1%

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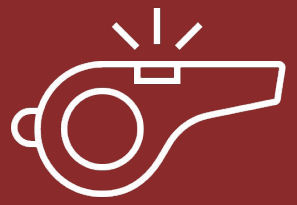
Ada County

Rich Wright



A former Ada County employee who filed a whistleblower lawsuit alleging he was retaliated against and wrongly fired has been awarded him $1.7 million.

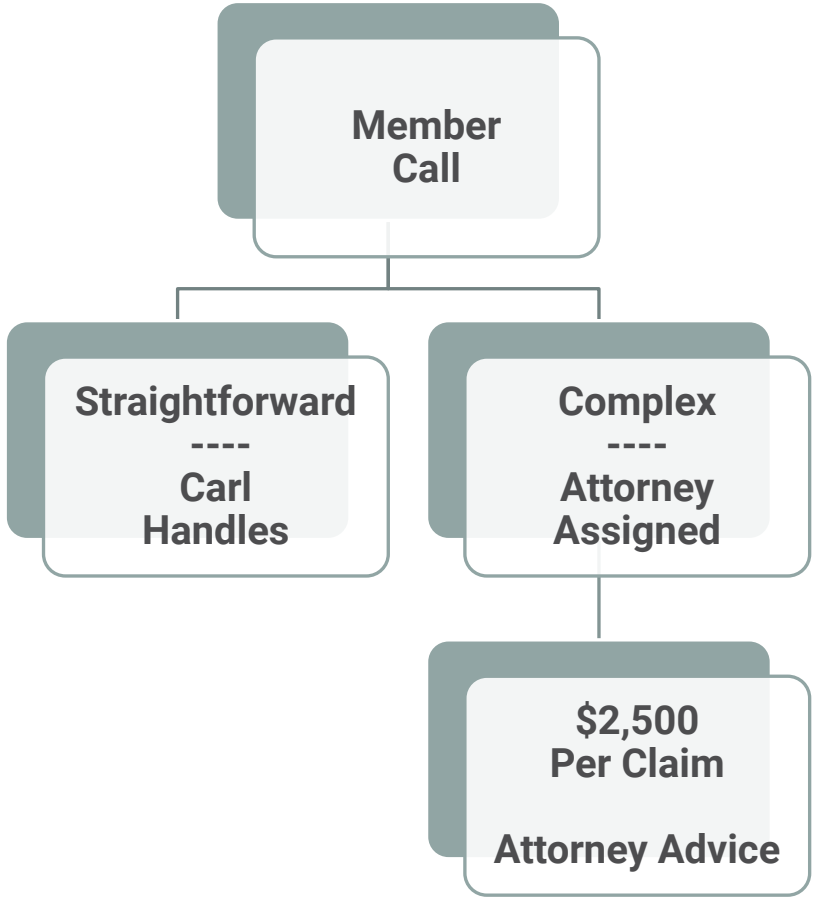
Human Resources Risk Manager
Tammy Middleton

- Training
  - Online
  - Virtual
  - In-Person
- Consultation
- Policies, Forms

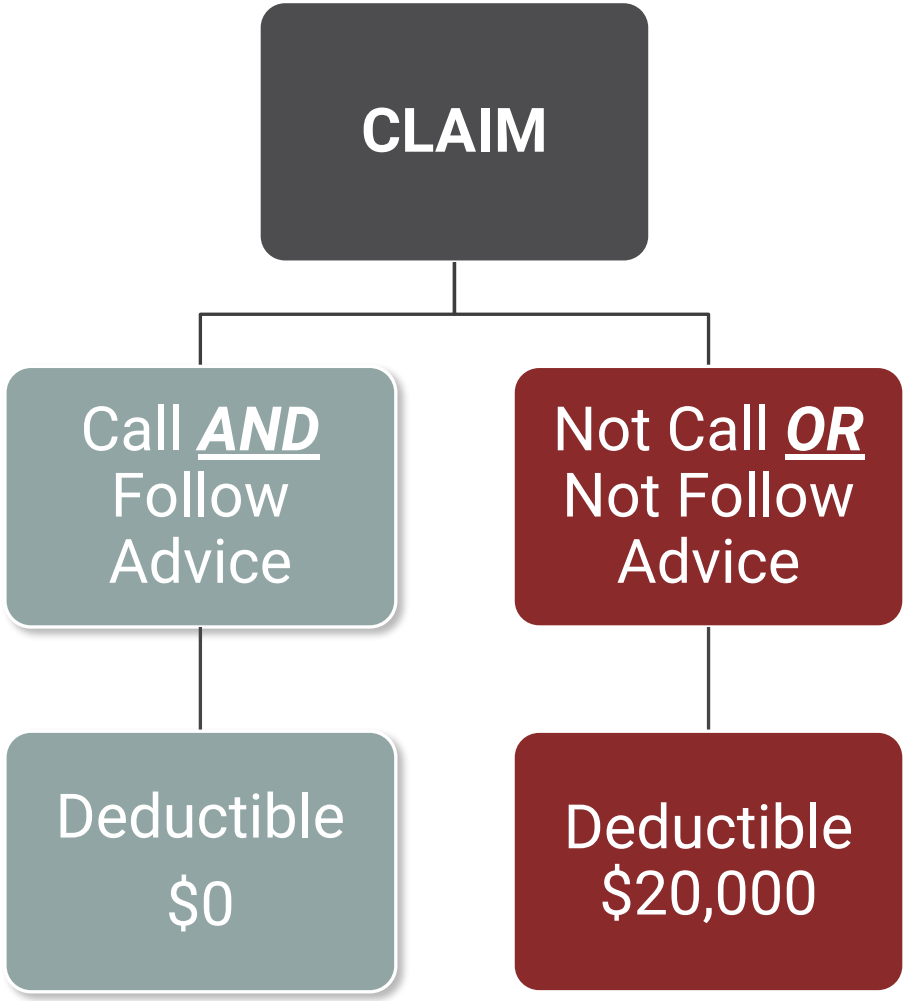
Carl Ericson

Risk Management Legal Counsel

Employment Practices Attorney Consultation



Employment Deductible



Property

Fire

Flood

Wind

Earthquake

Snow

Roof collapse in Payette 2017

artners Produce in Payette. JASON BRAINERD *RAPID AERIAL LLC*

Windstorm wreaks havoc in county

January 2021

NORTH IDAHO COLLEGE - CDA

911

Where are you pushing all that snow?

Auto Liability

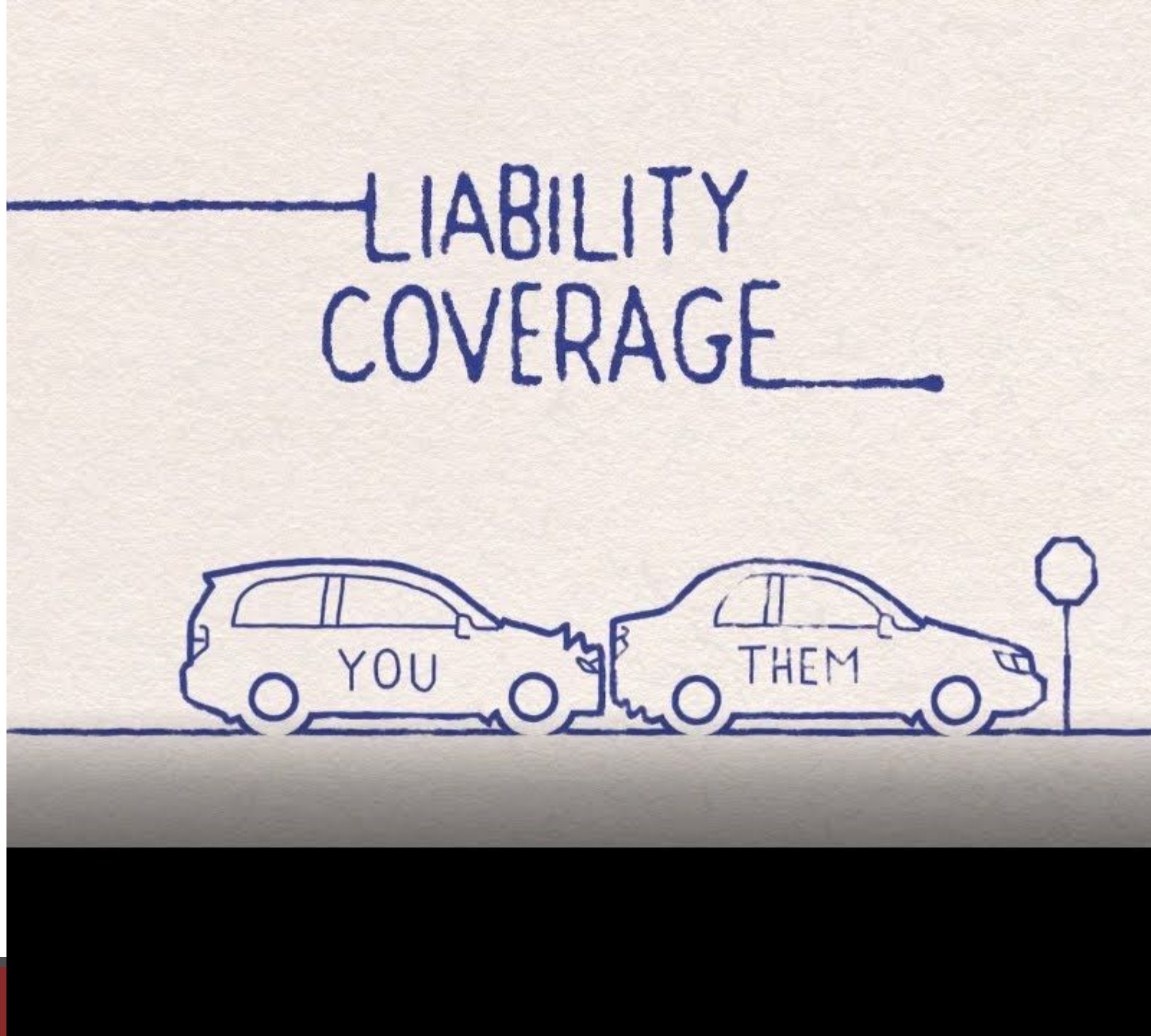
Damaged cars

Accidents and injury

Windshields

Snowplows

Emergency vehicles



Distracted Driving

- “Infotainment” systems
- Inattention (backing)
- Mind wandering
- Cell phone use

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Risk Management for Driving

TRAINING

VIDEOS

DISTRACTED DRIVING POLICY

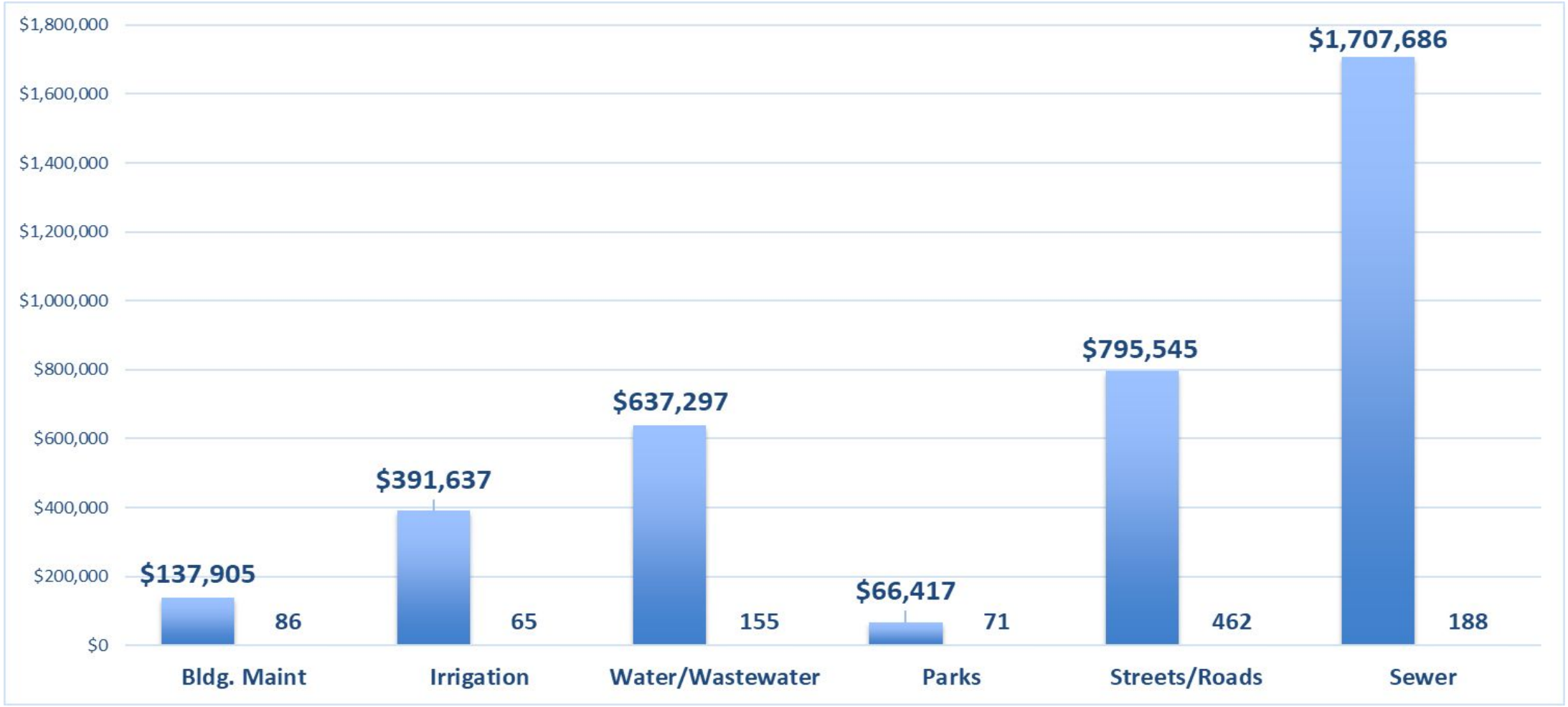
MVR CHECKS

WHAT'S THE CORRECTIVE ACTION

General Liability

- Sewer back ups
- Third party property damage
- Potholes
- Slips and falls
- Everything else you can think of!

General Liability by Department



Risk Mitigation for General Liability

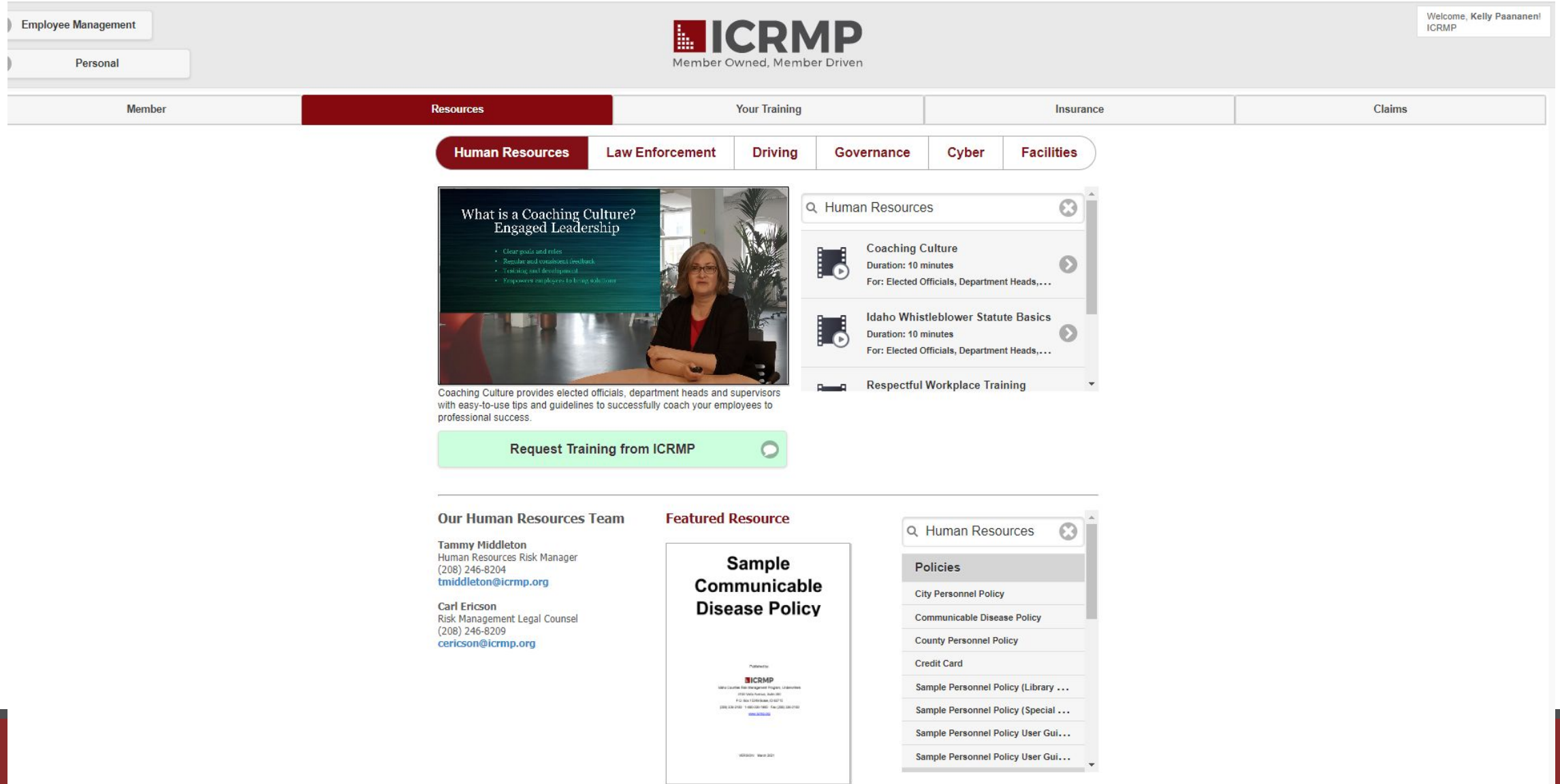
- Inspect
- Remove hazards
- Snow removal plan?
- Maintenance
- Lighting

Failure to do so is “negligence”

Good Risk Management

- Visiting your agency
- Working with departments and stakeholders
- Seeing first-hand the success and struggles
- Forming achievable improvement plans
- Reducing the risk through training

ICRMP Member Portal



Thank You

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