



NEW JERSEY COUNTIES
EXCESS JOINT INSURANCE FUND

NJCE 9TH Annual Best Practices Workshop

October 29, 2020



Agenda

- I. **Welcome and Introductions** - *Joseph Hrubash (NJCE Executive Director)*
- II. **Benefits, Success and Future Initiatives of the NJCE** - *Joseph Hrubash, Edward Cooney (Underwriting Manager) and Robyn Walcoff (NJCE Claims Manager)*
- III. **Risk Control – Past Successes and Future Initiatives, Including the BRIT Safety Grant Program** - *Glenn Prince (Assistant Director of Risk Control, J.A. Montgomery Consulting)*
- IV. **COVID -19 and its Impact on Workers Compensation Claims** - including discussion of the 2019 Thomas P. Canzanella Act (Firefighter's Cancer Presumption Act) and S2380 – the 2020 Essential Workers' Act - *Chris Saracino and Jim Pietras (Defense Counsel, Pietras, Saracino, Smith & Meeks, LLP)*
- V. **COVID-19, General Liability Claims and the Application of Title 59** - *Christopher Botta, Esq. (CB Claims, LLC) and Judge E. David Millard (Ret.) (NJCE Litigation Manager)*
- VI. **COVID -19 Return to Work Policies and Best Practices** - *Paul Shives (Vice President, J.A. Montgomery Consulting) and Anne E. Walters, BSN, JD (Director, Camden County Dept. of Health and Human Services)*

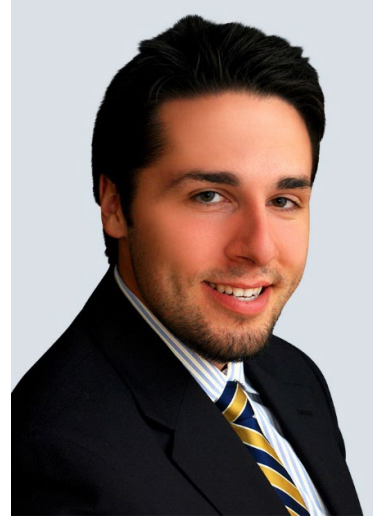
Introductions



Joseph P. Hrubash
Senior Vice President
NJCE Executive Director
PERMA Risk
Management Services



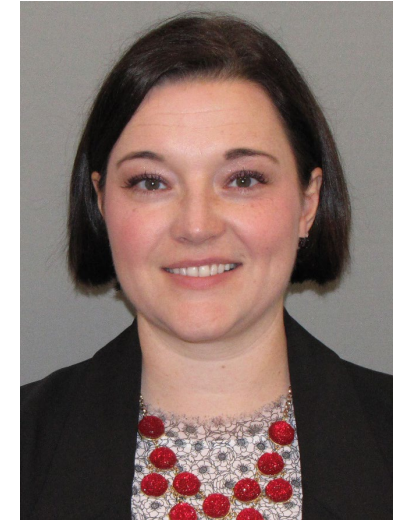
Robyn Walcoff, Esq.
Vice President, Claims
Manager
PERMA Risk Management
Services



Edward J. Cooney
Vice President
NJCE Underwriting
Manager
Conner Strong &
Buckelew



Glenn Prince
Assistant Director
J.A. Montgomery
Consulting



Jennifer Conicella
Senior Associate Claim
Consultant
PERMA Risk
Management Services

Board of Fund Commissioners
NJCE Executive Board

Executive Director / Administrator
PERMA Risk Management

FUND ATTORNEY
Laura Paffenroth, Esq.
Camden County Counsel

Litigation Manager
Judge E. David Millard, J.S.C. (retired)

**Excess Workers' Comp and Liability
Claims Administrator**
AmeriHealth Casualty Services

Excess Property Claims Administrator
Qual-Lynx

Managed Care Provider
AmeriHealth Casualty Services

Auditor & Payroll Auditor
Bowman & Company

Actuary
The Actuarial Advantage

Website Service Provider
Spark Creative

Underwriting Manager
Conner Strong & Buckelew

Treasurer
David McPeak, CFO Camden County

Safety Director
J.A. Montgomery

Risk Management Information System
Origami Risk, LLC

NJCE SUB-COMMITTEES

Claims Committee

Finance Committee

Coverage Committee

Cyber Committee

BRIT Safety Grant
Committee



NJCE Membership

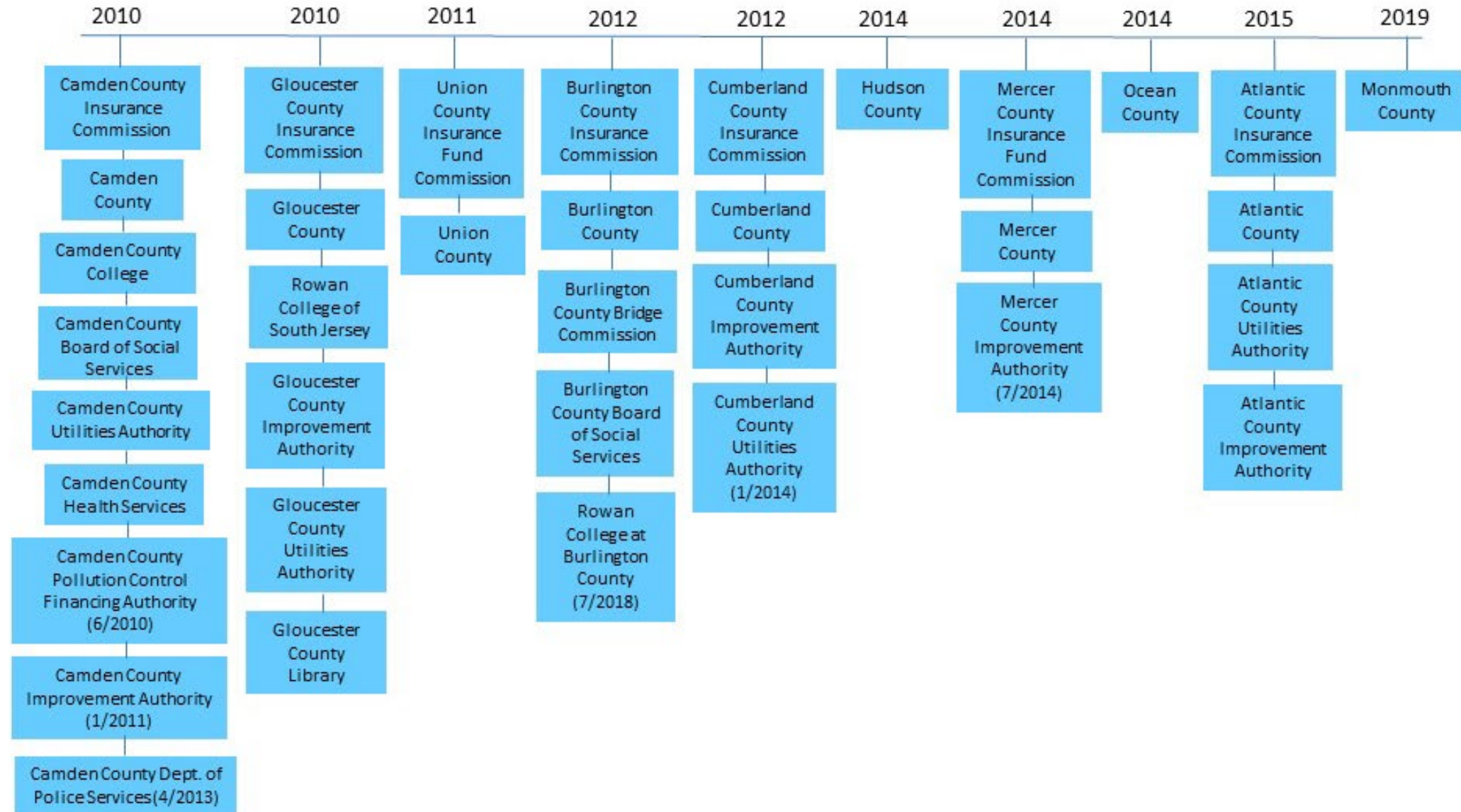


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Current NJCE Membership

- Gloucester County Insurance Commission: 3/1/10
 - Rowan College of South Jersey: 7/1/19
- Camden County Insurance Commission: 3/1/10
- County of Union: 3/1/11
- Burlington County Insurance Commission: 1/1/12
 - Rowan College at Burlington County: 7/1/18
- Cumberland County Insurance Commission: 10/4/12
- Mercer County Insurance Fund Commission: 1/1/14
- County of Hudson: 1/1/14
- County of Ocean: 6/1/14
- Atlantic County Insurance Commission: 1/1/15
- Union County Insurance Commission: 1/1/18
- County of Monmouth: 4/1/19

New Jersey Counties Excess Joint Insurance Fund



Consideration for Membership

“A shared services concept formed by NJ Counties for NJ Counties”

Counties who have inquired about membership in NJCE:

- County of Sussex – 2021
- County of Warren – 2022

Member Counties Considering Commission Structure:

- County of Ocean
- County of Hudson



Benefits of the NJCE JIF Model



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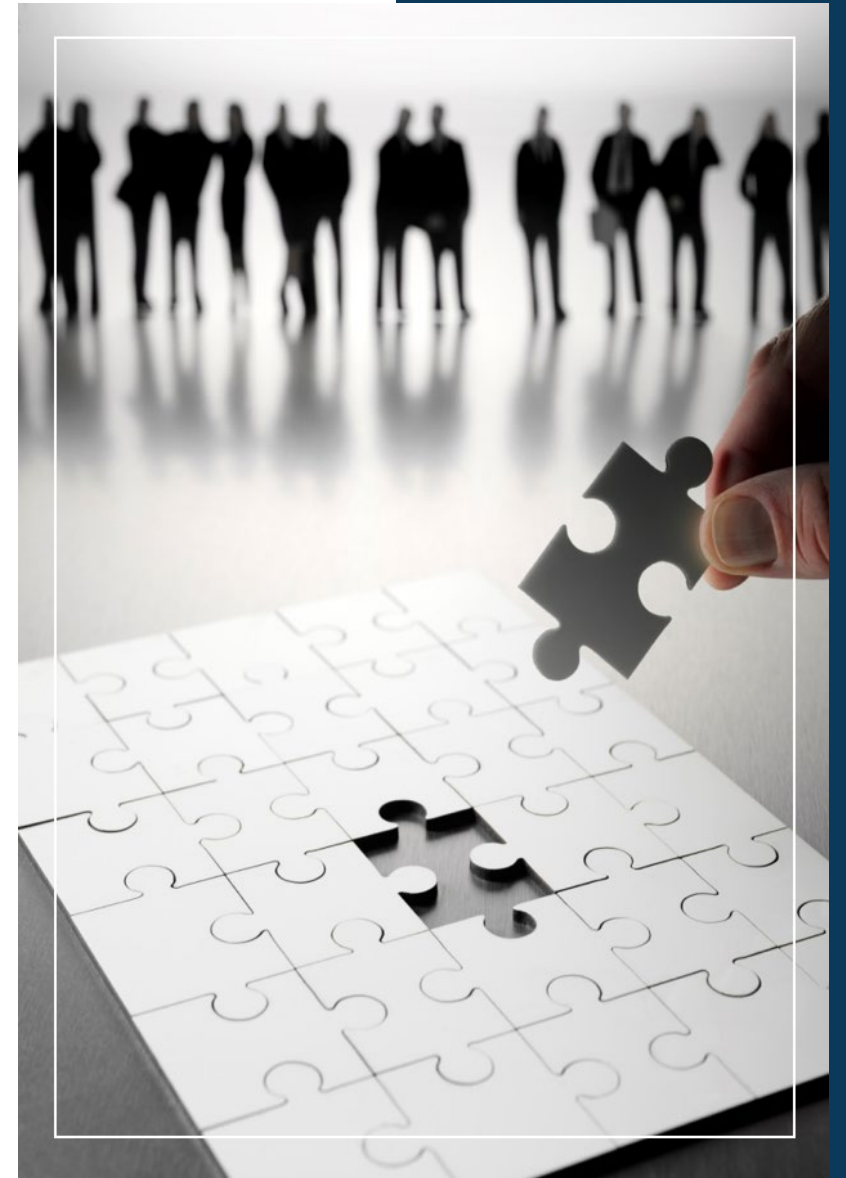
Benefits of the NJCE Model

The NJCE JIF Model has enabled member Counties and their affiliated entities to effectively “take control” of their “total cost of risk”:

- Modernized Approach to Managing Risk
- Efficient Method of Insurance Procurement
- **Improved “Buying Power” and better insulated from adverse insurance market conditions for loss experience**
- Proven Model Used By Municipal JIFs and now the NJCE as well
- **Successful Shared Services Concept**
- Inter-County, County to County and Shared Purchases of Miscellaneous Ancillary Coverage
- **Improved Claims Management**
- **Focused Safety/Training/Loss Prevention**
- It is a shared services concept formed by NJ Counties for NJ Counties

Benefits of the NJCE Model

- The NJCE JIF Model has enabled member Counties and their affiliated entities to effectively “take control” of their “total cost of risk” (continued):
- Control of Program Parameters and Management
- Communication to Membership via:
 - Risk Management Plan
 - Limit/Retention Schematics
 - Bylaws – NJCE and Insurance Commissions
 - Monthly Executive Committee Agendas
 - Sub-Committee Meetings, i.e., claims and safety
- Retention of Underwriting Profit – Financial Impact
- Moderate Insurance Price Fluctuations
- Investment Income



Financial Impact



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Financial Impact – Past Successes

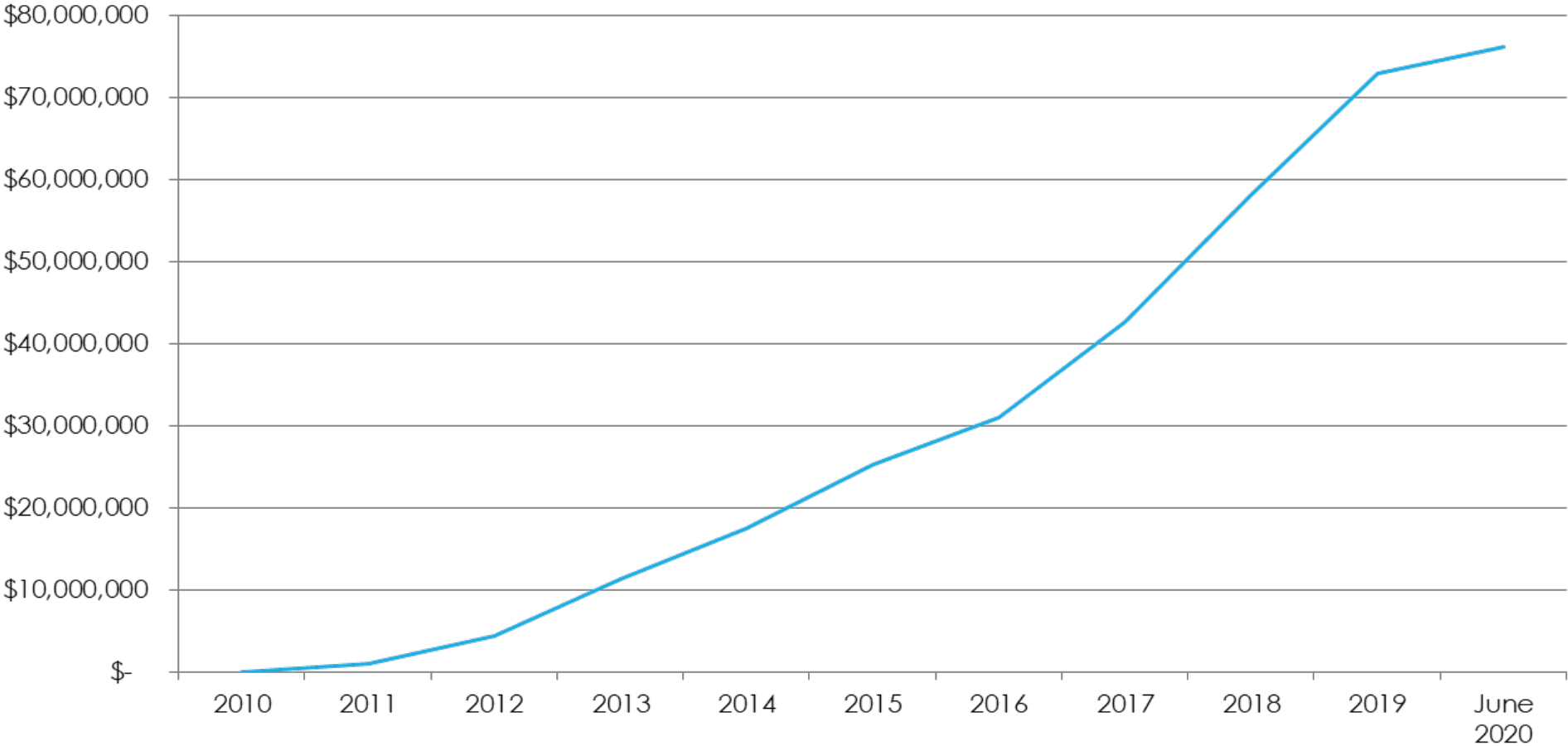
Statutory Profit as of 6/30/20

- Insurance Commissions - \$56.4 Million
- NJCE - \$21.2 Million
- Total Statewide - **\$77.6 Million**

(Surplus Before Dividend Distributions)

New Jersey Counties Excess Joint Insurance Fund and Insurance Commissions Statutory Profit

Surplus before Dividend Distributions



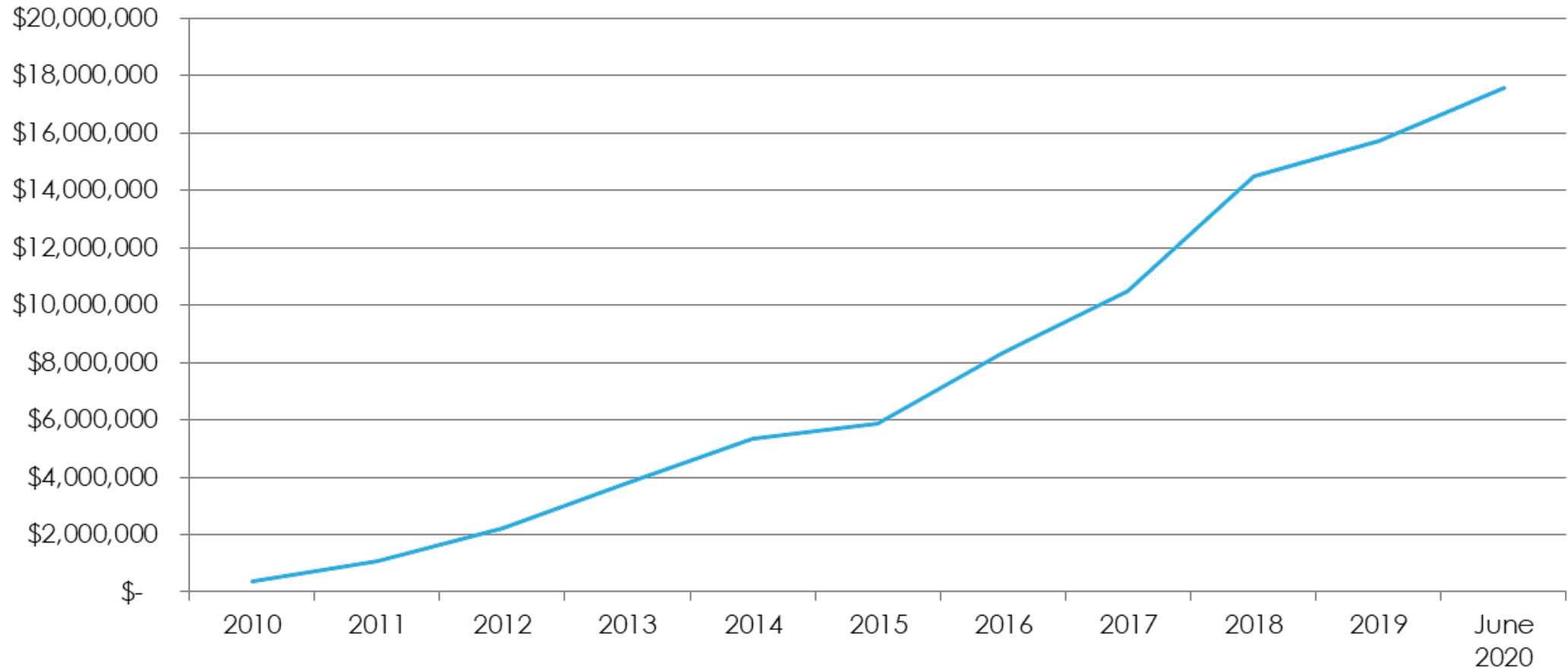
Financial Impact – Past Successes

Surplus as of 6/30/20

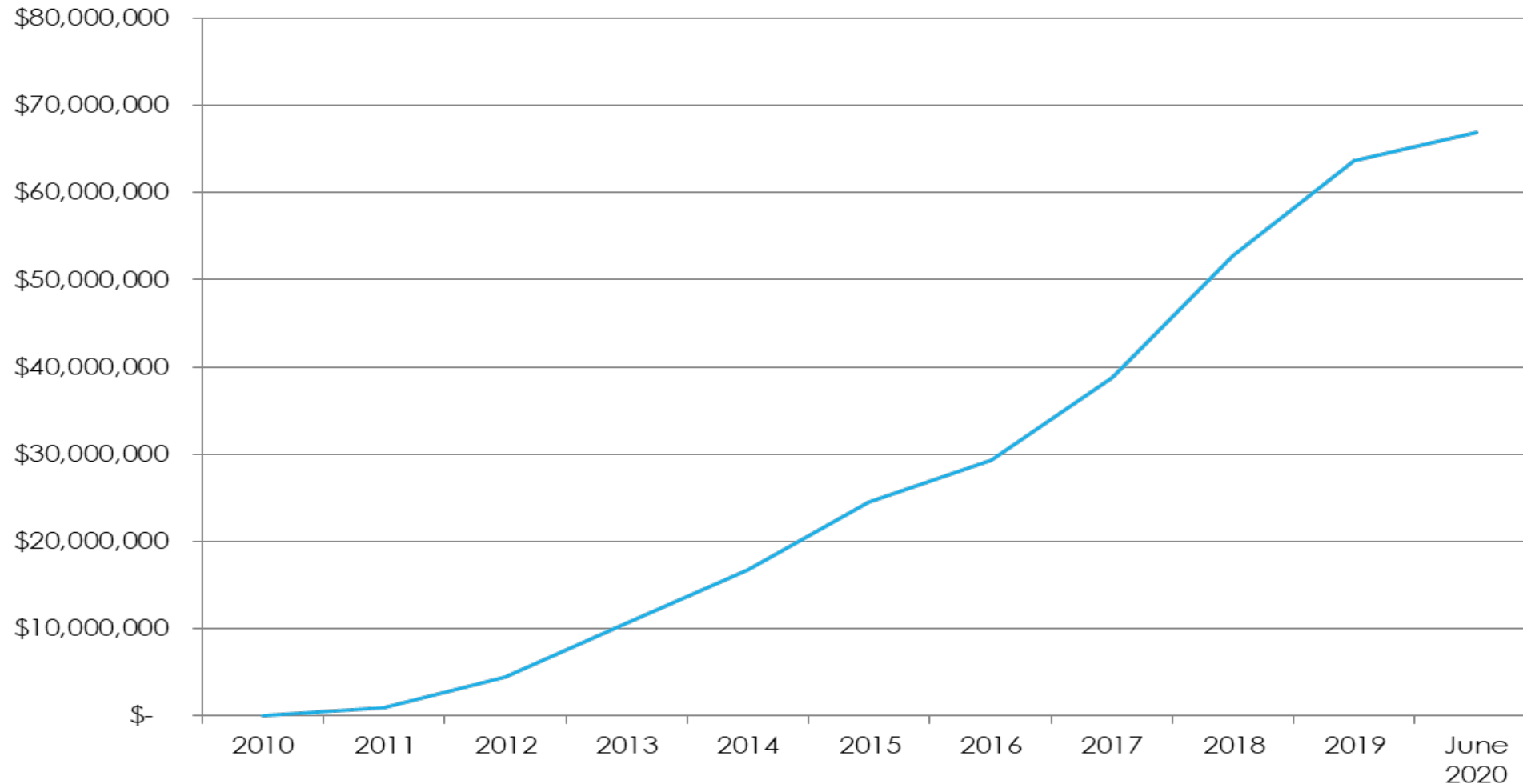
- Insurance Commissions - \$49.2 Million
- NJCE - \$17.6 Million
- Total Statewide - **\$66.8 Million**



New Jersey Counties Excess Joint Insurance Fund: Surplus



New Jersey Counties Excess Joint Insurance Fund and Insurance Commissions: Surplus



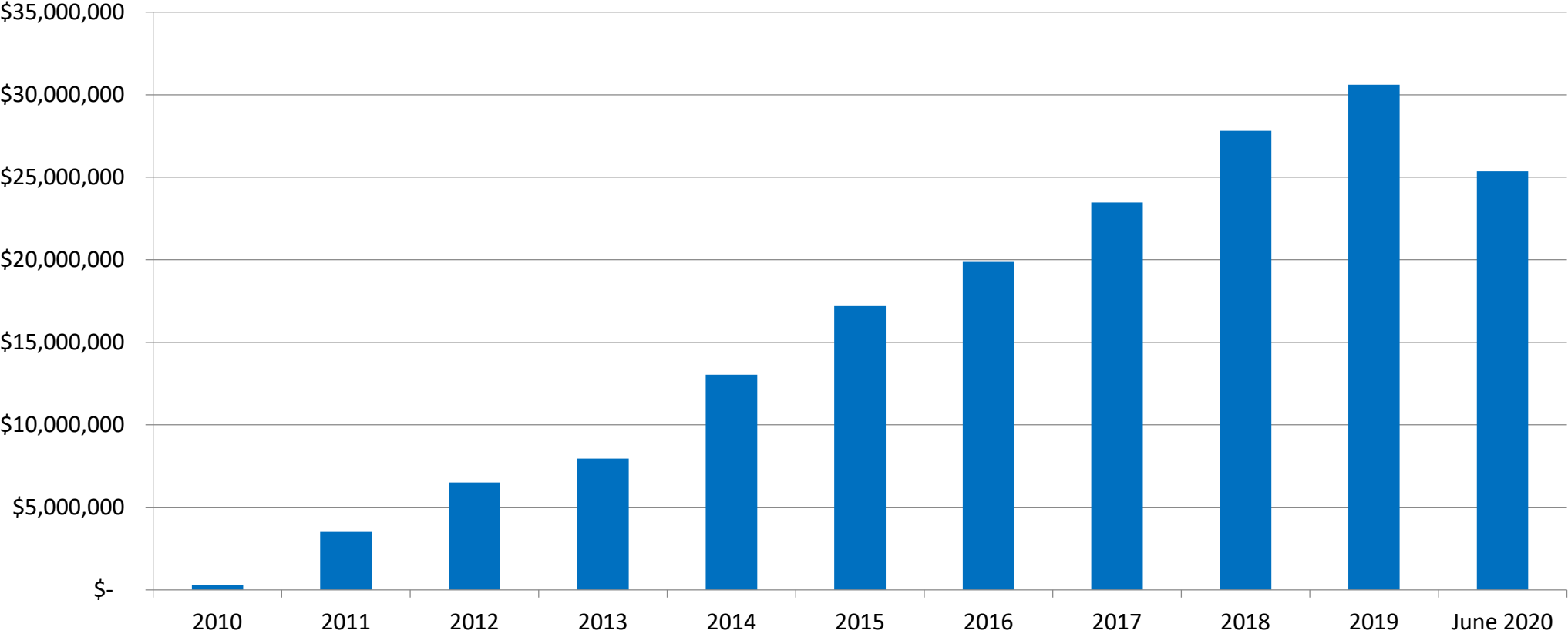
Financial Impact – Past Successes

Cash Balances as of 6/30/20

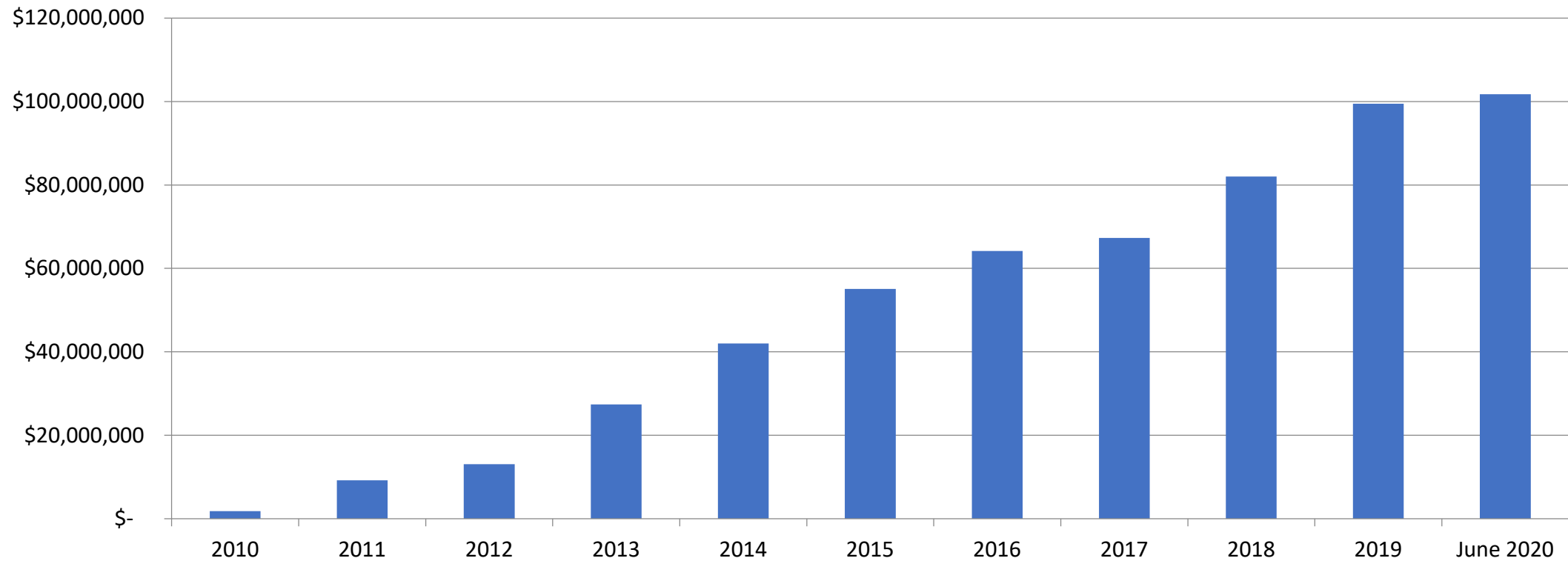
- Insurance Commissions - \$76.3 Million
- NJCE - \$25.4 Million
- Total Statewide - **\$101.7 Million**



New Jersey Counties Excess Joint Insurance Fund: Cash



New Jersey Counties Excess Joint Insurance Fund and Insurance Commissions: Cash



Financial Impact

Financial Fast Tracks

- Report to monitor financials on a monthly basis.

Financial Audit Reports

- The NJCE has received “clean” audits with no findings and no recommendations for all fund years 2010 through 2019.



2021 Budget

2021 Budget

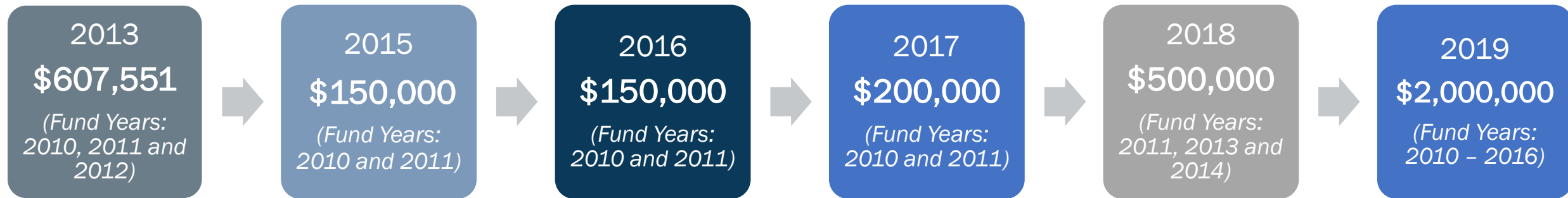
Finance Committee met 10/16/20. Strategy will be:

- Delay budget introduction by 30 days.
 - Introduce budget on November 19.
 - Adopt budget on December 18.
- Widespread marketing of all excess and ancillary insurance
- Explore options to increase NJCE retentions for excess liability and excess workers compensation
- Consider offering 2nd layer of excess property and excess liability on an optional basis.
- Consider dividend options prior to November meeting.

Statutory							
\$260,000,000							
\$150,000,000	Quota Share \$150,000,000						
\$110,000,000		Excess Flood & Earth Movement \$50,000,000 annual aggregate					
\$100,000,000							
\$50,000,000							
\$26,000,000							
\$21,000,000	Zurich American Insurance Company Policy #ERP980616208 Property: \$110,000,000 Earth Movement: \$100,000,000 Flood: \$50,000,000		Equipment Breakdown \$100,000,000	Old Republic Union Insurance Company Policy # 8220009777582 Layer Options: \$5m occ. / \$5m agg. \$10m occ. / \$10m agg.	Statutory Limit Old Republic Union Insurance Company Policy # 8220009777582 Layer Options: \$5m occ. / agg. \$10m occ. / agg. Underwriters at Lloyd's Policy #PK1019020 Layer Options: \$9,550,000 occ. / agg. \$9,800,000 occ. / agg. \$10m occ. / agg. \$5,000,000 Safety National Policy #SP4059717 Underwriters at Lloyd's Buffer (if applicable) \$Various NJCE JIF \$250,000 Commission/County SIR \$Various		
\$16,000,000							
\$15,000,000							
\$11,000,000							
\$10,000,000				Underwriters at Lloyd's Policy #PK1019020 Layer Options: \$10m occ. / \$20m agg.			
\$9,000,000							
\$6,000,000							
\$5,025,000							
\$4,050,000							
\$1,000,000							
	NJCE JIF \$750,000						
\$250,000	Commission/County SIR \$250,000						
\$25,000	Member Deductible \$Various		Member Deductible \$25,000				
	Property	Equipment Breakdown	Casualty	Workers' Compensation	Employers' Liability	Public Officials / Employment Practices	

Financial Impact

Dividends paid by New Jersey Counties Excess Joint Insurance Fund



Note: 2020 - TBD

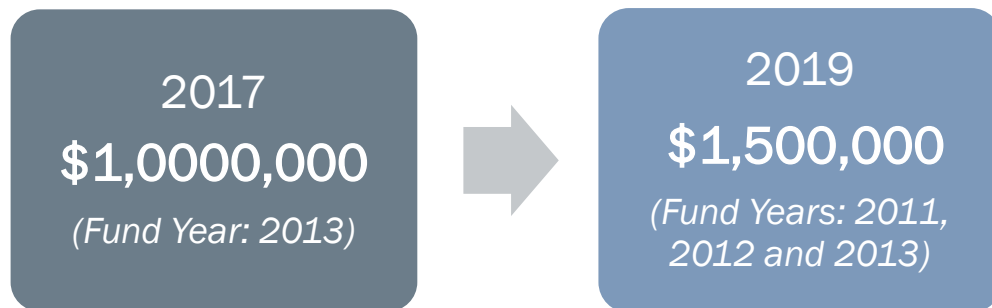
Financial Impact

Dividends paid by Member Insurance Commissions

Gloucester Insurance Commission - \$3,207,000



Camden Insurance Commission - \$2,500,000



MEMBER FINANCIAL PERFORMANCE

Valued as of June 30, 2020

COMMISSION SURPLUS	NJCE SURPLUS	TOTAL SURPLUS	DIVIDENDS PAID	COMPOUNDED PREMIUM SAVINGS	TOTAL SAVINGS
\$49,648,472	\$17,196,889	\$66,845,361	\$10,719,441	\$26,968,833	\$104,533,636

Ongoing and Future Initiatives



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Ongoing and Future Initiatives

- **Annual Review**
 - Dividend Distribution
 - Program Coverage Structure
 - Market for New Membership
- **Claims Committee**
 - TPA Oversight
 - Consistency in reporting
 - Expand Litigation Management
- **Coverage Committee**
 - Review coverage
 - Address emerging exposure issues
- **Underwriting Data Validation**
 - Payroll Audits (2017-2018)
 - Risk Management Information System (RMIS) Data Collection (2019)
 - Claims System (2020)
 - Data Analytics (2020)
 - Property Valuations (2020)
- **Cyber Task Force**
 - Member cyber security plan and training
- **NJCE Learning Management System (LMS)**
 - Increase training opportunities and tracking attendance.

Underwriting

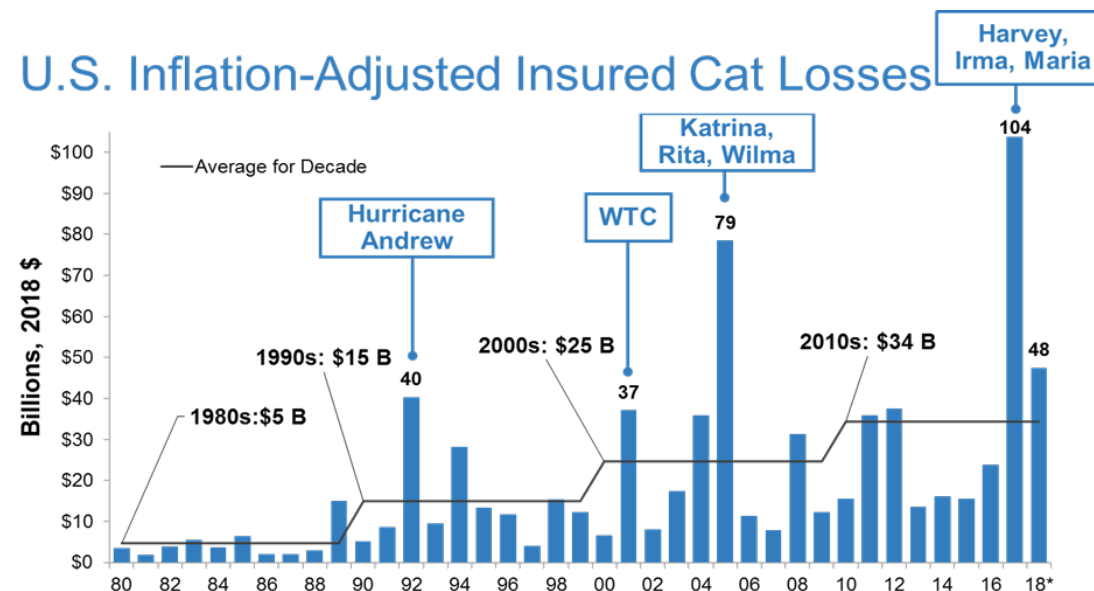
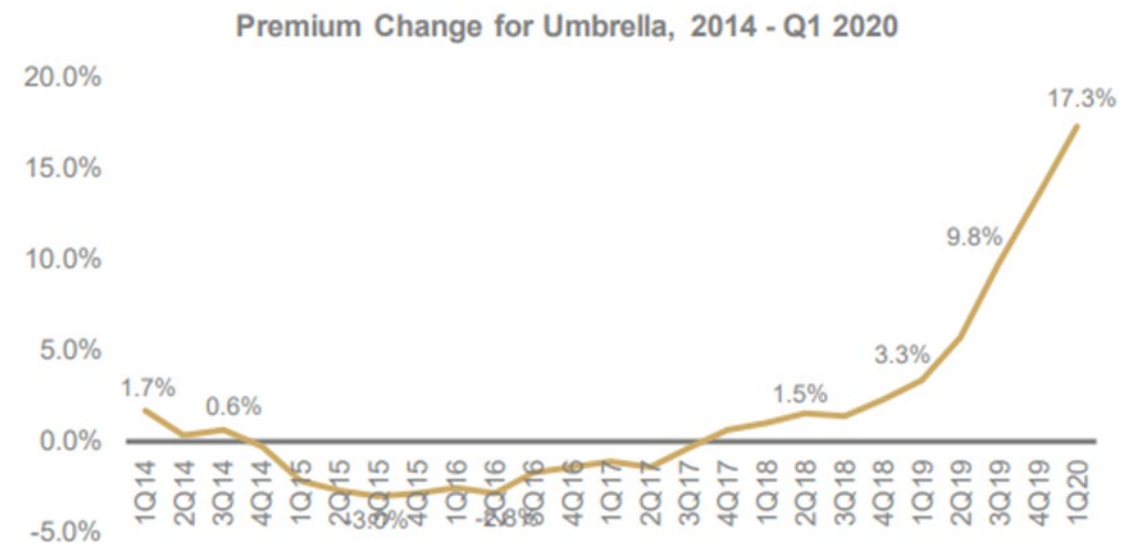
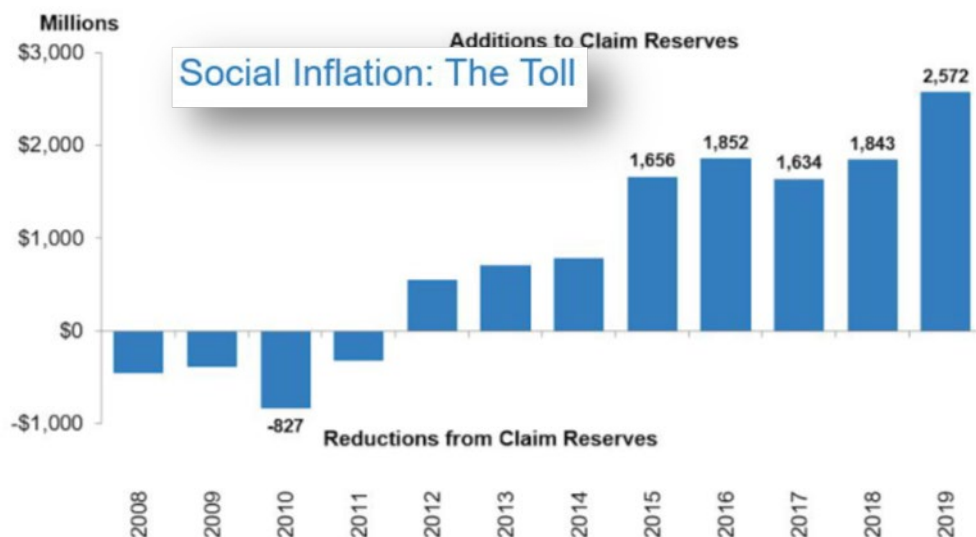
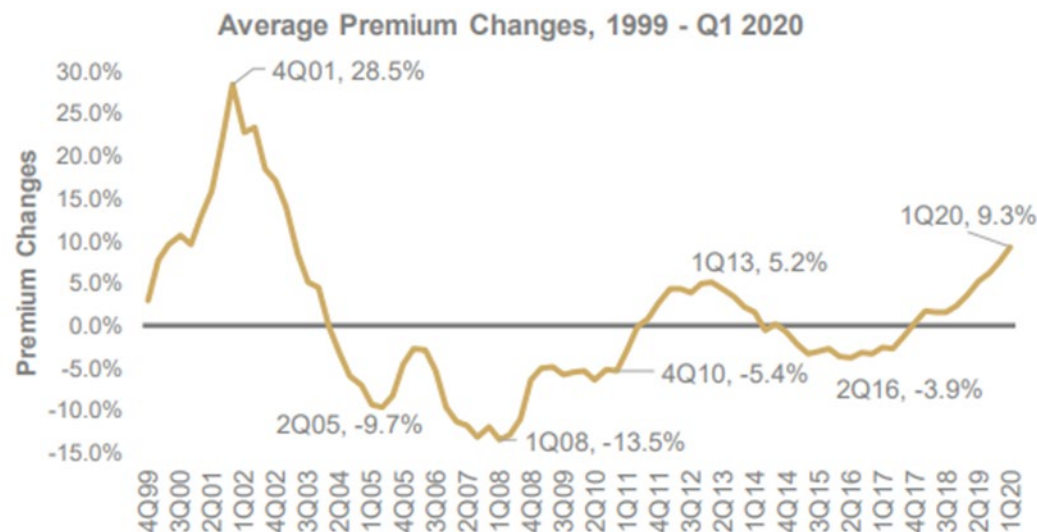
Historical Overview & The Future



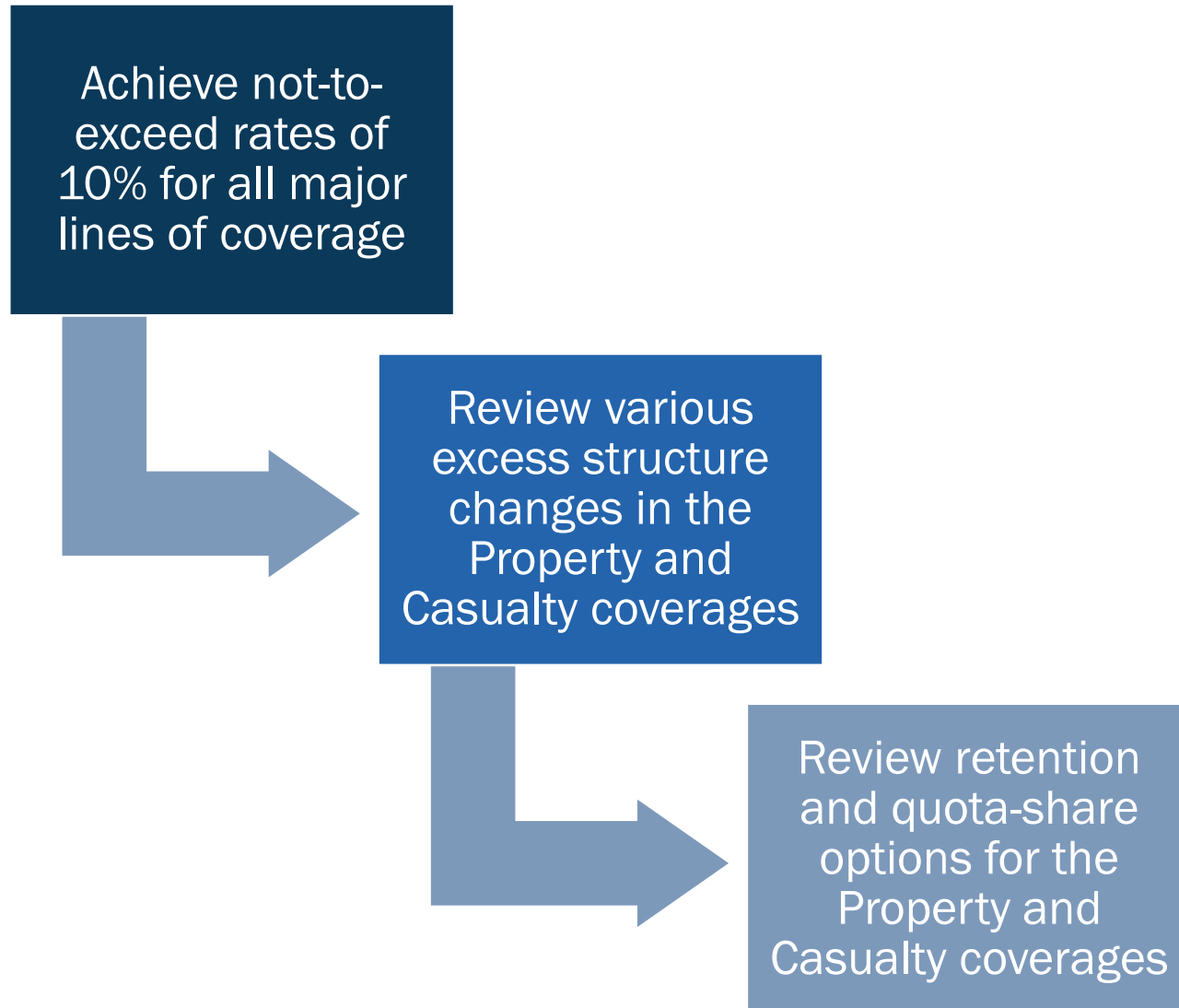
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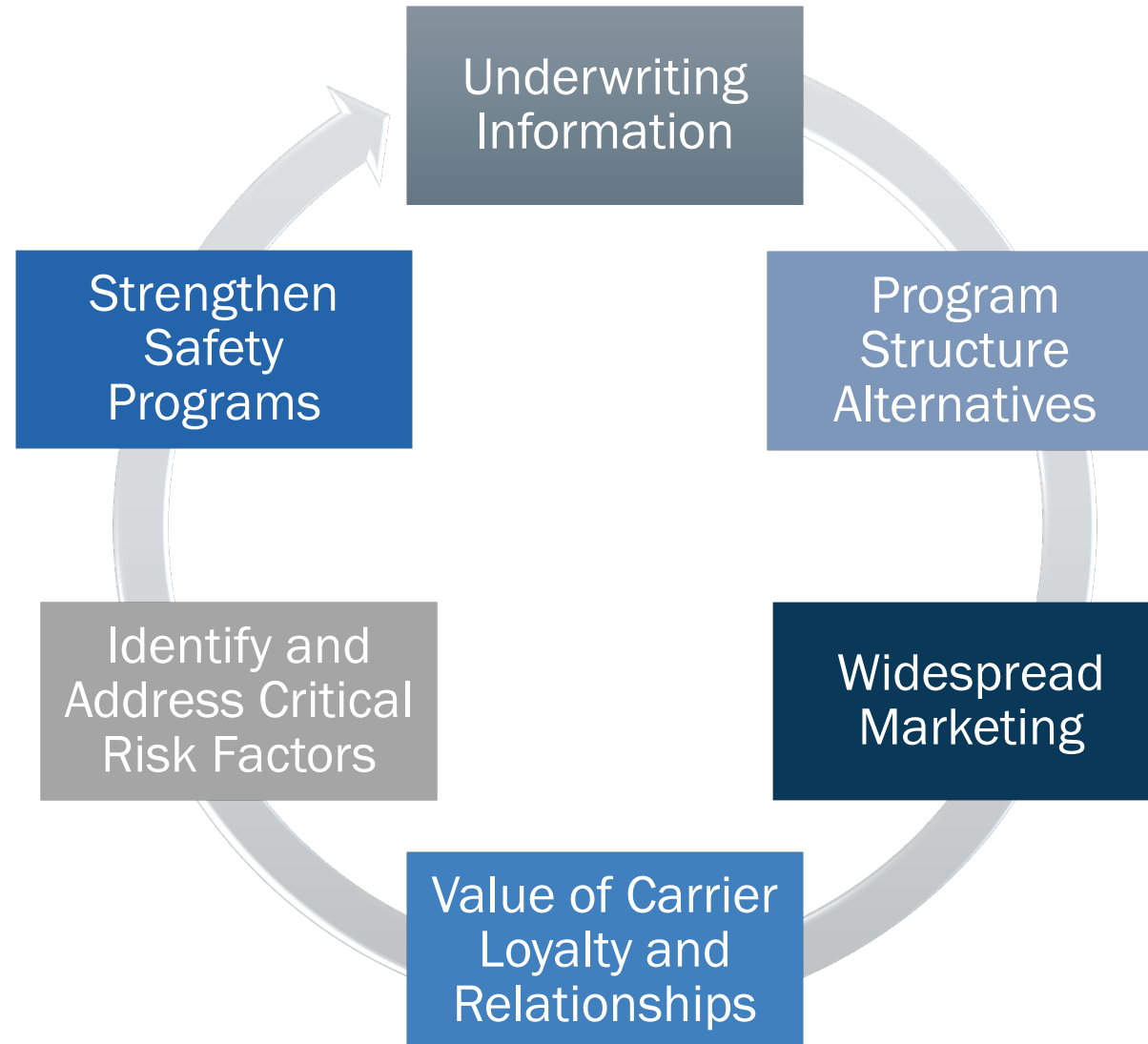
Marketplace Overview



Renewal Goals



Renewal Strategy for the Hard Market



Underwriting Renewal Strategy

- Property renewal, deductible options, NJCE TPA
- Retention changes / goals
- Cyber coverage, resources and risk control
- NFIP expiry
- Brit safety grant



Emerging Issues

- Cyber Attacks
- Nanotechnology
- Concussions
- Automation / Robotics
- 3D Printing
- Self-Driving Vehicles and Assisted Driving Innovations
- Internet Communications– Personal Injury Claims
- Hydraulic Fracturing
- Drone Use
- Food-borne Illness
- BPA / BPS
- Marijuana
- Internet of Things
- Food Flavorings and Coloring Litigation
- GMO's
- The Share Economy
- Hazardous Imported Products
- E-Cigarettes
- Artificial Turf
- C8 / PFOA
- Endocrine Disrupters
- Counterfeit / Imported Medicines
- Legal Highs
- Epigenetics
- Judicial Reformation of Policy Defenses

SO
MANY
ISSUES,
SO
LITTLE
TIME

Claims Management



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Claims Management

- Serve as Claims Resource and Provide Technical Claims Support on all lines of coverage, including General Liability, Workers' Compensation, Property, Public Officials, Medical Malpractice and Cyber claims
 - Coordination with Excess Carriers and Litigation Manager for litigation strategy and settlement
- COVID-19
 - Coordination and management of COVID-19 claims throughout the NJCE
 - Engaged expert defense counsel to assist with management of claims
 - Distributed guidelines and resources for COVID-19 claims reporting and management
- TPA Summit – March 6, 2020
 - Brought all TPAs together to share information and foster uniformity throughout the NJCE counties/commissions

Claims Management

PERMA Coordination of Primary and Excess Claims Oversight:

- **Robyn D.H. Walcoff, Esq**, Vice President, Claims Manager, PERMA
- **Jennifer Conicella**, Senior Associate Claims Consultant,
- **Jacqueline Cardenosa**, Claim Analyst,

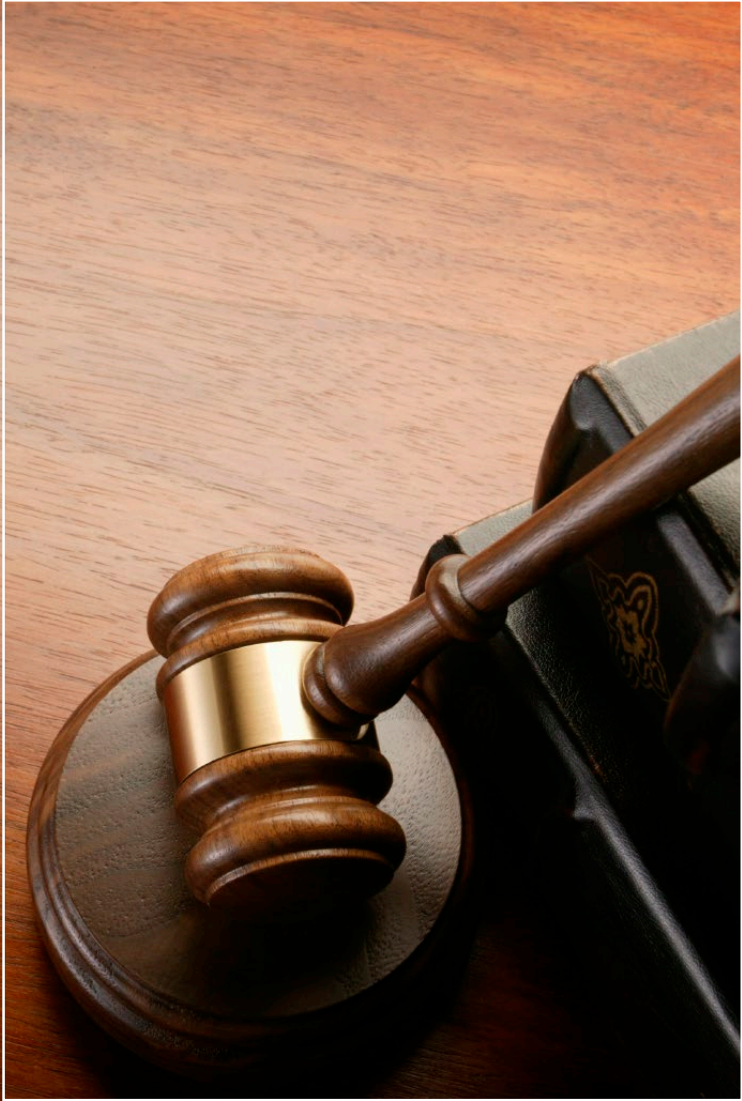
Conner Strong & Buckelew Claims Consulting Services - Support

- **Michelle M. Leighton**, AIC, Vice President, Conner Strong & Buckelew
- **Alexander Clemmer**, Senior Claim Assistant
- **Christine M. Baroudi**, Associate Claims Consultant

Scope of Services

- Active TPA Oversight and Litigation and Claims Management
- Claims Resource and Technical Claims Support
- Coordinate Claims Strategy Meetings for County and Commission Members
- Coordination with Excess Carrier
- Implementation and ongoing maintenance of Origami Risk Claims System
- TPA Claim Reviews and audits

Claims Management – Past Successes



- Conducted Best Practices Workshops, Annually since 2012
- Served as Claim Resource and Provided Technical Claims Support on Property and Cyber claims.
 - E.g. Bordereau Report and Breach Coach
- New Member and New Commission Onboarding
- Coordination with Excess Carriers and Litigation Manager for litigation strategy and settlement
- Implementation of Property TPA for Commissions and NJCE

Claims Management – Past Successes

- Consolidation of Claims Oversight – PERMA Claims
- Origami Risk– Implementation of State of the Art Risk Management Information System
- Active Litigation Management working with Claims Committee, Excess Carriers, Commissioners and Judge Millard
- Managed Care Provider Network Strength Analysis
- Regular Claim Updates - New Jersey Counties Excess Joint Insurance Fund
- Formation of NJCE Claims Committee
- Property Claims Management – introduction of a TPA to handle all property claims.
- Coordination with Risk Control Services
- Coordination and Collaboration with the Municipal Excess Liability Joint Insurance Fund (MEL)
- Coordination between Commission TPAs and NJCE
- Utilization of NJCE Managed Care Network for improved Medical Cost Savings
- Assist with RFQ Analysis for TPA and Managed Care Services

Claims Management – Past Successes

- Coordinate Claims Committee Meetings
- Claims Management and Procedure Review
- Effective Communication among Members
- Coordination with Underwriting Manager
- Participation in Coverage Committee
- **Aggressive Claims Advocacy**
- Insurance Carrier/TPA Partnership
- Onboarding of New Commissions and Members
- **Review & Analysis of Insurer Reserving Practices**
- Claims Charter
- Coordinate Claims Audits and Reviews
- **Assistance with Claim Reporting**
- Provide Regular Updates at Commission Meetings
- Online TPA/Insurance Company Access
- Emergency Claims Response Protocols
- **My Pocket P&C**
- **Partnership with Commissions' Risk Managers**
- Strategies to Maintain Effective Relationships with Medical Providers
- **Loss Summaries/Trending Analysis**
- **Cyber Claims Reporting/Coordination of Resources**

Risk Control



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Risk Control

Key Accomplishments/Past Successes

Risk Control continues to be a key component in the success of the NJCE JIF and we continue to focus on safety, training and accident prevention. These goals are met by participating in a variety of initiatives, which included:

- OSHA 30 program
- Risk Management for Police Officers
- Risk Management for Police Supervisors
- Dealing With Difficult People
- Below 100 Program
- Workstation Assessments to decrease musculoskeletal injuries and claims in various departments and organizations
- Focused / Customized Safety Training
- Protection From Abuse Training Provided Via Webinar Format
- Emergency Action Plan training and assistance
- MEL Safety Institute Webinars



Risk Control

KEY ACCOMPLISHMENTS/PAST SUCCESSES

- Continued participation in Safety and Accident Review Committees
- Attendance in Claims Committee meeting to monitor trends and make appropriate recommendations
- Customized training to address unique exposures
- BRIT Team Platform
 - TEAM (Train, Educate, and Manage)

2020 Risk Control Initiatives

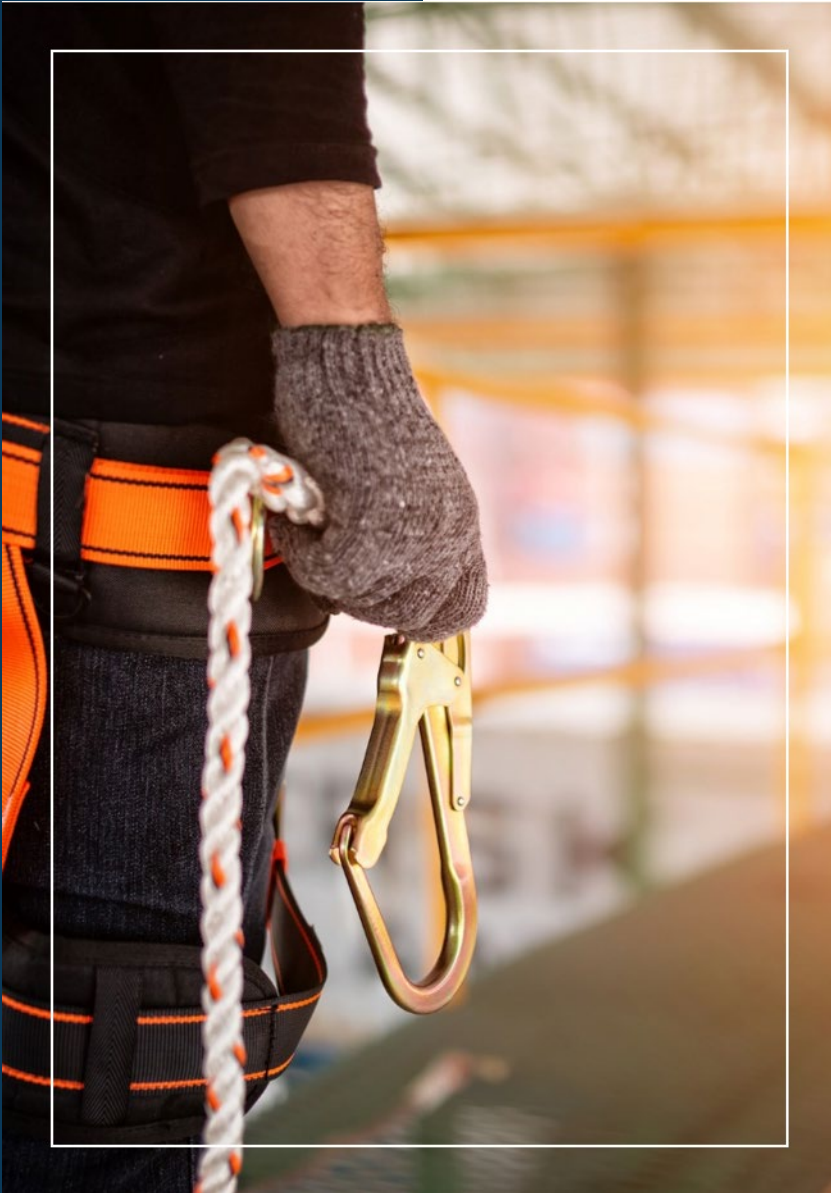
- Safety Video Streaming Service
- Instructor Led Training Programs
- Webinar Training Programs
- Learning Management System
- www.njce.org



2021 Webinar Training Initiatives

- Flagger / Work Zone Webinar Program
 - Temporary Traffic Control
 - Temporary Traffic Control for Supervisors
 - Flagger Best Practices
- Landscape Safety
 - Mower Safety
 - Chainsaw Safety
 - Chipper Safety
 - Utility Cart Safety
- CEVO





Risk Control

BRIT SAFETY GRANT

- BRIT Safety Grant Committee Established in 2019
- 50% Cost-Sharing for Approved Purchases
- Designed to Address General Liability Risks
- Past Safety Grant Projects and Awards:
 - Body Worn Cameras for Law Enforcement
 - Dash Mounted Cameras
 - Specialized Tactical Training for Law Enforcement
 - Bariatric Beds for Rehabilitation and Long Term Care Facilities
 - Specialized Mental Health First Aid Training for Law Enforcement
 - Guidance Laser Equipment for Department of Public Works Snow Removal Operations
 - Truck Mounted Attenuators for Work Zones
 - Traffic Devices



THANK YOU

Questions? Comments?



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PERMA

J.A. Montgomery
CONSULTING





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The Thomas P. Canzanella First Century First Responders Protection Act

Presented by:

CHRISTOPHER J. SARACINO, ESQ.

Partner

Pietras Saracino Smith & Meeks LLP

*Certified by the New Jersey Supreme Court as a Workers'
Compensation Law Attorney*



Background

- Signed into law by Gov. Murphy on July 8, 2019
- The law is named after Deputy Chief Thomas P. Canzanella, a former Hackensack firefighter and advocate who served at Ground Zero after 9/11. Canzanella died as a result of a heart condition **medical experts linked to toxic exposure sustained while working in the cleanup of Ground Zero following 9/11.** The law is set forth a N.J.S.A. 34:15-31.2, et. seq.
- Under previously existing law, first responders and firefighters had the burden of proving causation for their illnesses, which often required a significant expense of time and resources. This new law reforms New Jersey's workers' compensation law to create a rebuttable presumption of compensability for public safety workers for certain illnesses including cancer.

Background

- Since the terrorist attacks of September 11, 2001, and the subsequent discovery of terrorist use of anthrax against American citizens that year, millions of dollars of State and federal funds have been spent, and many thousands of man-hours dedicated, to train and equip public safety workers in New Jersey regarding the management of terrorist attacks and other man-made or natural disasters;
- Public safety workers are required by necessity to take great personal risks of serious injury, illness and death in their duties to protect the people of New Jersey from the dangers of catastrophic emergencies, including, but in no way limited to, terrorist attacks and epidemics;

Background

- The risks of exposure to carcinogens, communicable diseases, radiation and related hazards to health, already especially high for fire, police, emergency, medical and other public safety workers, is further increased by the duties of such workers in response to catastrophic emergencies, epidemics, and terrorist attacks which may involve materials related to biological or chemical warfare, or industrial chemicals or other hazardous materials released in connection with terrorist attacks against military, governmental, industrial, infrastructural, and other vulnerable facilities; and
- Many of the severe, painful and even fatal diseases and health conditions which afflict these workers because of those exposures and duties, such as cancer, may take long periods of time to manifest themselves;
- It is therefore an appropriate public policy to modernize the workers' compensation system in this State to ensure the meeting of the critical needs of public safety workers who are New Jersey's first line of defense in the event of catastrophic emergencies, epidemics and terrorist attacks, and assure that those workers are not denied a level of support which is commensurate to the sacrifices they and their families make for the safety and wellbeing of the citizens of this State and the nation.

Who Does It Apply To?

- There are many aspects of the new law. The single most onerous provision in the bill for municipalities, counties and the State is the provision covering firefighters for a wide range of cancers that will now be presumed to be compensable.
- For firefighters, both paid and unpaid, those with seven or more years of service who suffer an injury, illness or death caused by certain types of medical conditions would not be required to demonstrate causation or exposure before receiving medical benefits and financial compensation.
- Other first responders, including first-aid or rescue squad members, police, corrections officers, nurses, medical technicians, and other medical personnel, are also not required to demonstrate causation of illnesses, but are required to provide evidence of exposure.

Who is a “Public Safety Worker”?

- "Public safety worker" includes a member, employee, or officer of a paid, partially-paid, or volunteer fire or police department, force, company or district, including the State Police, a Community Emergency Response Team approved by the New Jersey Office of Emergency Management, or a correctional facility, or a basic or advanced medical technician of a first aid or rescue squad, or any other nurse, basic or advanced medical technician responding to a catastrophic incident and directly involved and in contact with the public during such an incident, either as a volunteer or member of a Community Emergency Response Team or employed or directed by a health care facility.



What Is a “Serious Communicable Disease”?

- "Serious communicable disease" means any disease which is characterized by the interruption, cessation or disorder of body functions, systems or organs which may result, if not treated, in disability, chronic illness or death, and is transmittable by association with, or proximity to, sick, infected or colonized individuals, including airborne transmission, or is transmittable by contact with their bodily fluids, secretions or excretions. "Serious communicable disease" includes, but is not limited to, meningitis, tuberculosis, viral hepatitis, human immunodeficiency virus infections, acquired immunodeficiency syndrome, cholera, hemorrhagic fever, plague, smallpox, or other disease identified as a serious communicable disease by the Department of Health, and also includes diseases caused by antibiotic resistant organisms.

Requirements for a Public Safety Workers to Receive Compensation

- If a public safety worker can demonstrate that in the course of his or her employment, the worker is:
- a. exposed to:
 - (1) the excretions, secretions, blood or other bodily fluids of one or more other individuals or is otherwise subjected to a ***potential*** exposure, by the other individual or individuals, including airborne exposure, to a serious communicable disease and anyone of the other individuals is diagnosed with a serious communicable disease, or is otherwise determined to be infected with ***or at significant risk of contracting the serious communicable disease***, or
 - (2) any pathogen or biological toxin used in, or related to, biological warfare or epidemics, including airborne exposure
- b. If it is ascertained that the public safety worker has contracted a serious communicable disease or related illness under the circumstances set forth in subsection a. of this section, ***there shall be a presumption that any injury, disability, chronic or corollary illness or death of the public safety worker caused by, attributable to, or attendant to the disease is compensable under the provisions of R.S. 34: 15-1 et seq.***
- ***This prima facie presumption may be rebutted by a preponderance of the evidence showing that the exposure is not linked to the occurrence of the disease. The employer may require the worker to undergo, at the expense of the employer, reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the exposure is linked to the occurrence of the disease, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation or monitoring.***



Injury, Illness, Death Resulting From Administration of Vaccine Eligible for Compensation

- N.J.S.A. 34:15-31.6 also makes any injury, illness or death of any public safety worker compensable if it is related to the administration to the worker of a vaccine to prepare for, or respond to, any actual, threatened, or potential bioterrorism or epidemic, as part of an inoculation program.

Cancer Claims: Public Safety Workers in General

- There is a **presumption of compensability for cancer** for public safety workers who can prove *exposure* to a known carcinogen, cancer-causing radiation, or radioactive substance pursuant to N.J.S.A. 34:15-31.7;
- The cancer must **manifest** during the public safety worker's employment
- The presumption can be rebutted by a preponderance of the evidence that the exposure is not linked to injury, illness, or death.
- Employer may require the worker to undergo reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the exposure is linked to the occurrence
- The employer must maintain records in which any public safety worker is deployed to a location which could result in exposure to carcinogens.

Cancer Claims: Firefighters (Paid and Volunteer)

- Firefighters do not need to prove exposure and/or causal relationship. Cancer is presumed to be compensable pursuant to N.J.S.A. 34:15-31.8 provided that:
 - The firefighter has completed 7 years of service;
 - Is not yet 75 years old; or
 - Has not been out of active service for more than 20 years.
- The presumption can be rebutted by a preponderance of the evidence that the cancer did not arise out of and in the course of employment.
- Employer may require the worker to undergo reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the cancer arose out of and in the course of employment
- The type of cancer must be caused by exposure to heat, radiation, or a known or suspected carcinogen as defined by the International Agency for Research on Cancer.

Cancer Claims: Firefighters (Paid and Volunteer)

- Firefighters with less than 7 years of service are subjected to N.J.S.A. 34:15-31.7 (Public Safety Workers in General)
- There is no need for a firefighter with more than seven years of active service under age 75 to identify specific exposures or fires that he or she fought. **The burden of proof does not rest on the firefighter to prove his or her case. Rather, the employer will lose unless the employer can disprove the case by a preponderance of the evidence.** To defeat the presumption created by this law, the employer has to prove that there is a greater than 50% chance that the cancer is not due to work exposure.

Cancer Claims: Firefighters (Paid and Volunteer)

- Does this include all forms of cancer, even common cancers such as prostate cancer, skin cancer, and colon cancer etc.?
- The problem is that some articles in the medical literature say there is no link between firefighting and common cancers like prostate cancer and colon cancer, but others make the connection.





Intent of Canzanella Act

- N.J.S.A. 34:15-31.9 specifically states that this law is intended to affirm the rights of public safety workers and shall not be construed as reducing, limiting, or curtailing any rights of any other worker or employee to compensation including claims initiated prior to the effective date [July 8, 2019] of this act.

Best Practices in Defending Against Cancer Claims

- Public employers are strongly encouraged to perform post-offer medical examinations of public safety job applicants to make sure they do not already have cancer.
- The law makes no mention of documenting use of PPE but it will obviously be advisable to employers to include this information in documentation. Whether or not the public safety worker used respiratory protection, the new law requires the employer to document every public safety worker who appears at a fire, spill or explosion or other potentially hazardous event.
- Firefighters age 75 or younger are protected so long as they have not been out of active service for more than 20 years. This means that employers will be getting claim petitions for cancer-related conditions from firefighters who have long departed from active service. Therefore, it is important to maintain records.
- It will be imperative to hire oncologists who specialize in complex occupational disease claims as experts. Since there has not been any special discovery authorized related to these claims, it is important that the experts use questionnaires designed to assist in the defense of the case.
- This law **does not mention or eliminate the provision that an employee has two years to file from the date when the employee knows he or she has a cancer condition and thinks it is related to work. Therefore, it will be imperative to perform a full medical investigation.**



THANK YOU

Questions? Comments?



Pietras Saracino
Smith & Meeks LLP
Attorneys at Law



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Essential Employees Act & COVID-19

Presented by:

JAMES G. PIETRAS, ESQ.

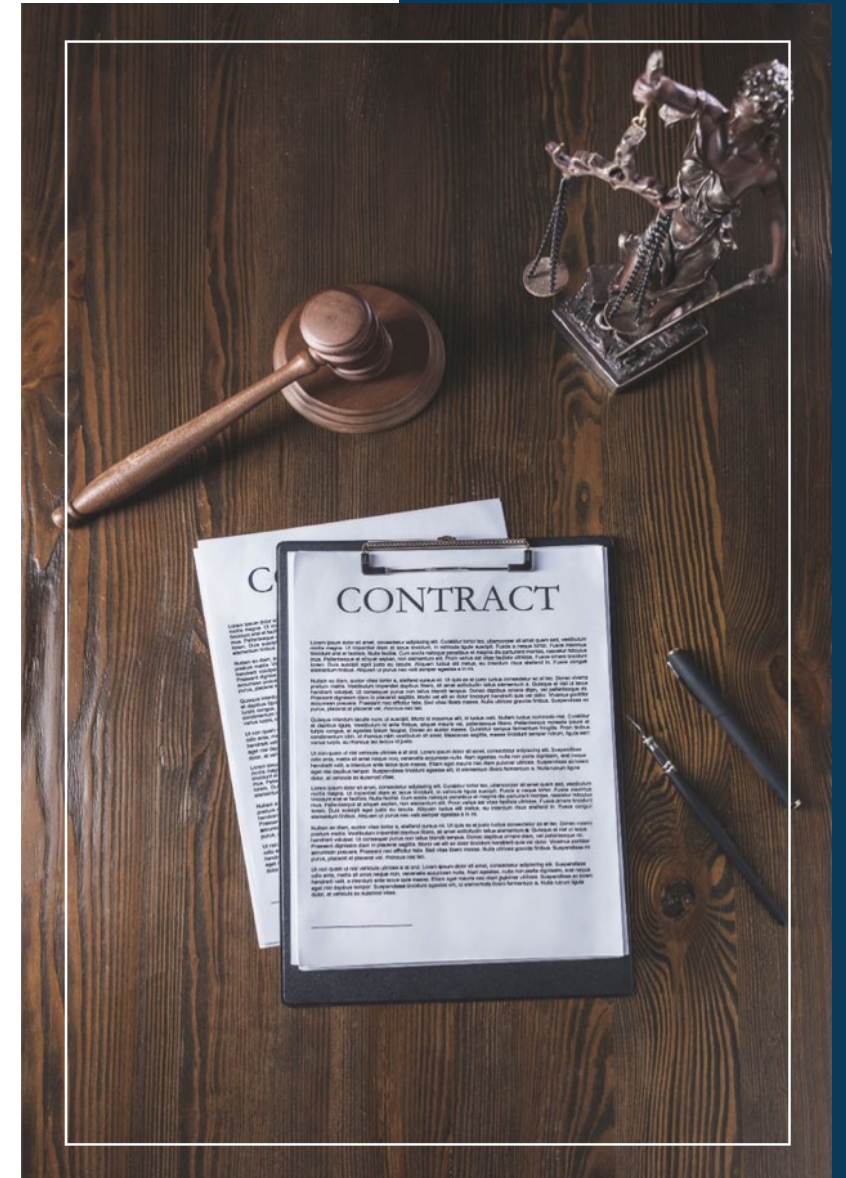
Partner

Pietras Saracino Smith & Meeks LLP



Background

- Signed into law by Gov. Murphy on September 14, 2020
- Codified at N.J.S.A. 34:15-31.11 to -31.14, which is an extension of the Occupational Disease part of the statute
- New law is specifically retroactive to all claims from March 9, 2020 when Gov. Murphy first issued the State of Emergency related to COVID-19
- Law passed with Financial Statement that it's impact is "Indeterminate!"



Who Does It Apply to? – Category 1

- Category 1: An “essential employee” means an employee in the public or private sector who, during a state of emergency is a public safety worker or first responder, including any fire, police or other emergency responders.
- Overlaps benefits provided by Canzanella Act for Public Safety Workers



Definitions Related to Category 1

- "Public safety worker" includes a member, employee, or officer of a paid, partially-paid, or volunteer fire or police department, force, company or district, including the State Police, a Community Emergency Response Team approved by the New Jersey Office of Emergency Management, or a correctional facility, or a basic or advanced medical technician of a first aid or rescue squad, or any other nurse, basic or advanced medical technician.

Who Does It Apply to? – Category 2

- "Essential employee" means an employee in the public or private sector who, during a state of emergency, is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes.

Definitions Related to Category 2

- "Health care facility" means any non-federal institution, building or agency, or portion thereof, whether public or private, for profit or nonprofit, that is used, operated or designed to provide health services, medical or dental treatment or nursing, rehabilitative, or preventive care to any person. Health care facility includes, but is not limited to: an ambulatory surgical facility, home health agency, hospice, hospital, infirmary, intermediate care facility, dialysis center, long-term care facility, medical assistance facility, mental health center, paid and volunteer emergency medical services, outpatient facility, public health center, rehabilitation facility, residential treatment facility, skilled nursing facility, and adult day care center. Health care facility also includes, but is not limited to, the following related property when used for or in connection with the foregoing: a laboratory, research facility, pharmacy, laundry facility, health personnel training and lodging facility, patient, guest and health personnel food service facility, and the portion of an office or office building used by persons engaged in health care professions or services.
- "Health care worker" means an individual employed by a health care facility.

Who Does It Apply to? – Category 3

- "Essential employee" means an employee in the public or private sector who, during a state of emergency, performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home.
- No definitions provided to cover the various employees covered in Category 3



Who Does It Apply to? – Category 4

- "Essential employee" means an employee in the public or private sector who, during a state of emergency, is any other employee deemed an essential employee by the public authority declaring the state of emergency.
- No definitions provided to cover the various employees covered in Category 4.

Coverage Provided by Essential Employees Act

- If, during the public health emergency declared by an executive order of the Governor and any extension of the order, an individual contracts coronavirus disease 2019 during a time period in which the individual is working in a place of employment other than the individual's own residence as a health care worker, public safety worker, or other essential employee, there shall be a rebuttable presumption that the contraction of the disease is work-related and fully compensable for the purposes of benefits provided under R.S.34:15-1 et seq., ordinary and accidental disability retirement, and any other benefits provided by law to individuals suffering injury or illness through the course of their employment. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease while working in the place of employment other than the individual's own residence.

Impact on Future WC Premiums

- Any workers' compensation claims paid according to section 2 of this act shall not be considered in calculating an employer's Experience Modification Factor, pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the Compensation Rating and Inspection Bureau established by section 2 of P.L.1995, c.393 (C.34:15-89.1) and section 1 of P.L.2008, c.97 (C. 34 :15-90.1).
- Thus, despite stating that the Financial Impact is “indeterminate,” carriers cannot use benefits to calculate future premiums and never used the potential benefits to set current premiums.



Construction With Other Laws

- This act is intended to affirm certain rights of essential employees under the circumstances specified in this act, and shall not be construed as reducing, limiting or curtailing any rights of any worker or employee to benefits provided by law.
- Means Public Safety Workers still get enhanced protection under Canzanella Act while claim is being investigated for purposes of TTD benefits while under quarantine.

Best Practices in Defending Against Essential Employee Claims

- To rebut the presumption, investigation as to the employee's activities outside of work is key
- Look to other members of the household (i.e., living with someone already diagnosed with COVID-19)
- Investigate Social Media – Retain an outside investigator to perform a Social Media search of claimant and all household members to demonstrate lack of use of masks when not working
- If formal Claim Petition is filed, serve Special Interrogatories related to COVID-19 claims



THANK YOU

Questions? Comments?



Pietras Saracino
Smith & Meeks LLP
Attorneys at Law



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EMERGING LIABILITY TRENDS & TITLE 59 IN THE AGE OF COVID-19

Presented by:

CHRIS BOTTA, ESQ.

Supervisor of Claims
Municipal Excess Liability JIF

JUDGE E. DAVID MILLARD (RET.).

NJCE Litigation Manager



Liability Claim Trends

- With people staying at home through the early months of the pandemic, notifications of slip and fall and auto accidents, which are some of the major causes of liability claims, temporarily slowed.
- However, with re-openings continuing, more claims are now being filed.
- Also, we are seeing some novel claims brought by third-parties for injury or property damage due to failure to adequately protect against the coronavirus, as well as employee action against employers who did not appropriately protect them.
- The coronavirus outbreak has reduced risk in some areas while, at the same time, changing and heightening it in others. The wider changes in society and industry brought about and accelerated by the pandemic are likely to have a long-term impact on claims patterns and loss trends in the public entity risk management.
- Nevertheless, overall, we have not seen an avalanche of claims against public entities to date relating to COVID-19.

Claim Snapshots

Examples of recent claims filed against public entities:

- Nursing home wrongful death claims
 - *Most denied on basis of lack of jurisdiction*
- First responders/exposure to third party claims
 - *Most can be defended with immunities under Title 59*

Examples of potential claims:

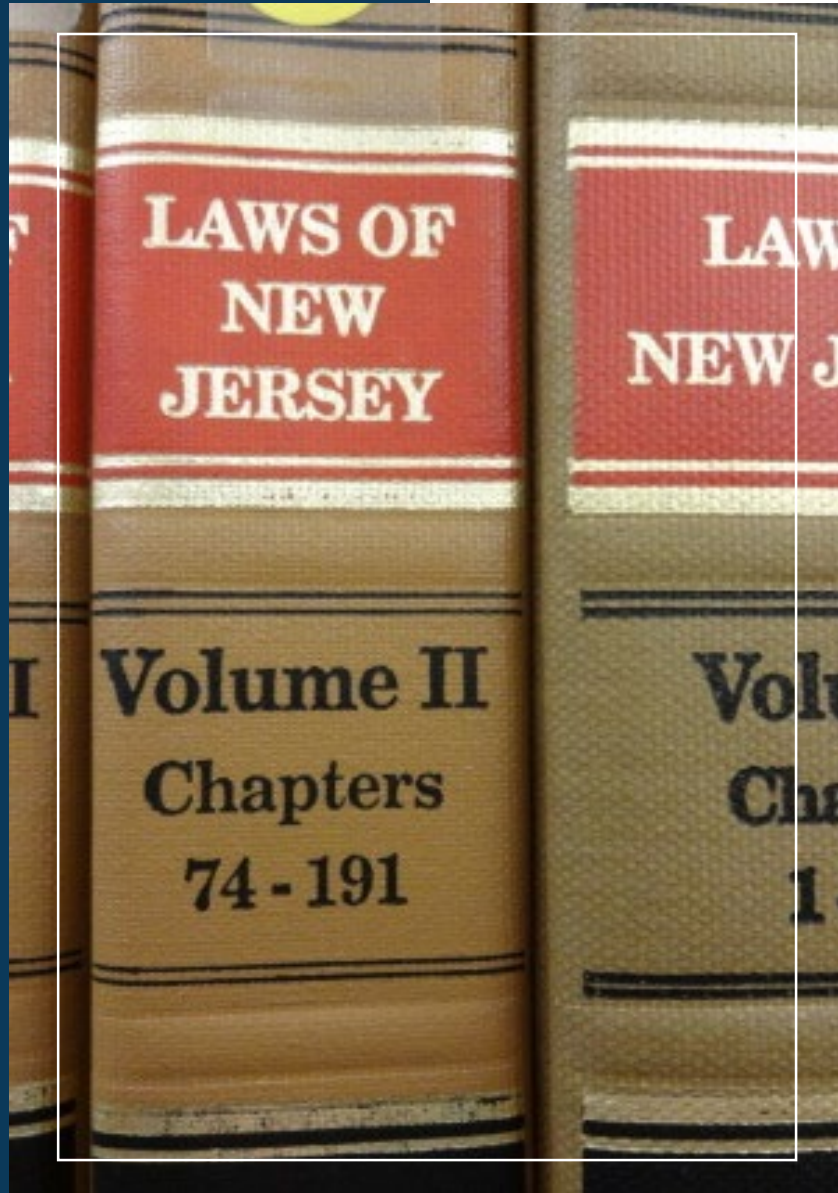
- Negligent Infliction of Emotional Distress (fear/concern of potential exposure at public event
 - *Immunities should be available for defense in most situations*
- Delay/mistake in medical care
 - *Immunities should be available for defense in most situations*
- Recreational exposure (summer camps, public pools, etc.)
 - *Immunities should be available for defense in most situations*
- Public health decisions made by elected officials or public entity employees
 - *Immunities should be available for defense in most situations*
- Prisoner Claims

General COVID-19 Liability Considerations

- The most likely scenario for a potential liability claim may be alleged negligence from failing to protect a public entity invitee or guest from being exposed to the virus by a public employee or at a publicly owned facility.
- These claims could arise from exposure due to the public entity's alleged failure to use reasonable care to protect the invitee.
- Protecting a public entity from COVID-19-related liability exposures should necessarily include a complete examination of your present practices regarding how your public entity interacts with third parties, both in terms of public premises and direct contact.
- The focus of any enhancement to process and policy should be centered on protecting your organization from your potential negligence.
- While any third party impacted by this disease through interaction with your public entity can make allegations, taking the appropriate steps to insulate the public entity from being found negligent is the key to affirmatively defending any related claims.

Considerations/Precautions

- As a general principle, public entities have substantial immunities from lawsuits in public emergencies so long as they act in *good faith* and take *reasonable precautions*.
- Therefore, the emphasis is to make sure the emergency orders are being followed and participants understand and acknowledge the new risks that are inherent in activities.
- The NJ MEL has created a model acknowledgement that should be considered for use with municipal recreation programs and use of municipal facilities. www.njmel.org/covid-19-updates.
- General advice is to have the participants assume the risk and take responsibility for compliance.
- Use of facilities form in which the organization using the public facility or field agrees to adhere to all safety guidelines issues by CDC and NJDOH.



Title 59 Immunities & Defenses

- Title 59 is the statutory name for the New Jersey Tort Claims Act (“TCA”) which controls liability claims against public entities in New Jersey.
- The Tort Claims Act provides protection for public entities against claims from individuals, as well as provides a detailed framework within which any of those claims must be pursued.

In Connection With COVID-19, What Defenses Could the Tort Claims Act Provide?

- Discretionary Immunity/Legislative Immunity
- Immunity for Good Faith Execution of Law Enforcement Activities
- Recreational/Public Property Immunity
- Allocation of Resources Defense
- TCA Verbal Threshold – Permanent Injury requirement
- Notice within 90 Days of Claim Occurrence



Discretionary Immunity

Title 59 extends immunity to public employees for a wide range of discretionary activities including:

- Good faith execution or enforcement of law;
- Failure to enforce any law;
- Issuance, denial, suspension or revocation of permits or orders, or the failure to do so;
- Failure to inspect, or negligent inspection of property; and,
- Institution or prosecution of any judicial or administrative proceeding within the scope of employment.



Legislative Immunity

- Discretion begins with legislative powers exercised by the State Legislature, Freeholder Boards, municipal councils and Boards of Education, and even a JIF Executive Committee.
- A public entity is not liable for legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature.

Exception to Discretionary Immunity

- Nothing in the act shall exonerate a public employee from liability if it is established that his conduct was outside of the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

Police Liability

- Neither a public entity nor a public employee is liable for failure to provide police protection or, if police protection service is provided, for failure to provide sufficient police protection service.
- A public employee is not liable if he acts in good faith in the execution or enforcement of any law.
- Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

Question: What is the future of qualified immunity for the police?

Recreational Immunity

- A public entity is not liable for failure to provide supervision of public recreational facilities; provided, however, that nothing in this section shall exonerate a public entity from liability for failure to protect against a dangerous condition...
- While there is no obligation to provide supervision, a municipality, employee or even a town volunteer can be sued for negligent supervision when it is provided.
- *Questions: Could the failure to enforce COVID-19 safety precautions such as social distancing, mask wearing, failing to take temperature, excluding participants with symptoms, be considered “negligent supervision”?*
- *Whose responsibility is it to undertake these precautions?*

Liability for Events on Public Property

In order to prevail, a claimant must establish all of the following:

- The public property was in a dangerous condition;
- The dangerous condition was the proximate cause of the accident;
- The dangerous condition created a reasonably foreseeable risk of the kind of injury that was incurred;
- A public employee created the dangerous condition, or the public entity had actual or constructive notice of the dangerous condition; and,
- The action or inaction of the public entity or employee was palpably unreasonable. The courts have defined palpably unreasonable to mean “Actions or inactions that no prudent person would approve”.
- *Question: Is the awareness of COVID-19 symptoms, or failure to take reasonable precautions, enough to at least get a case to a jury?*

Allocation of Resources

- “A public entity is not liable for the exercise of discretion when, in the face of competing demands, it determines whether or not to utilize or apply existing resources... unless a court concludes that the determination of the public entity was palpably unreasonable.” NJSA 59: 2-3d
- In the COVID age, it is likely that scarce resources immunity could be a viable defense.
- *Question: If resources to protect the public are not available, and the public entity goes forward anyway, could that be considered “palpably unreasonable” conduct?*

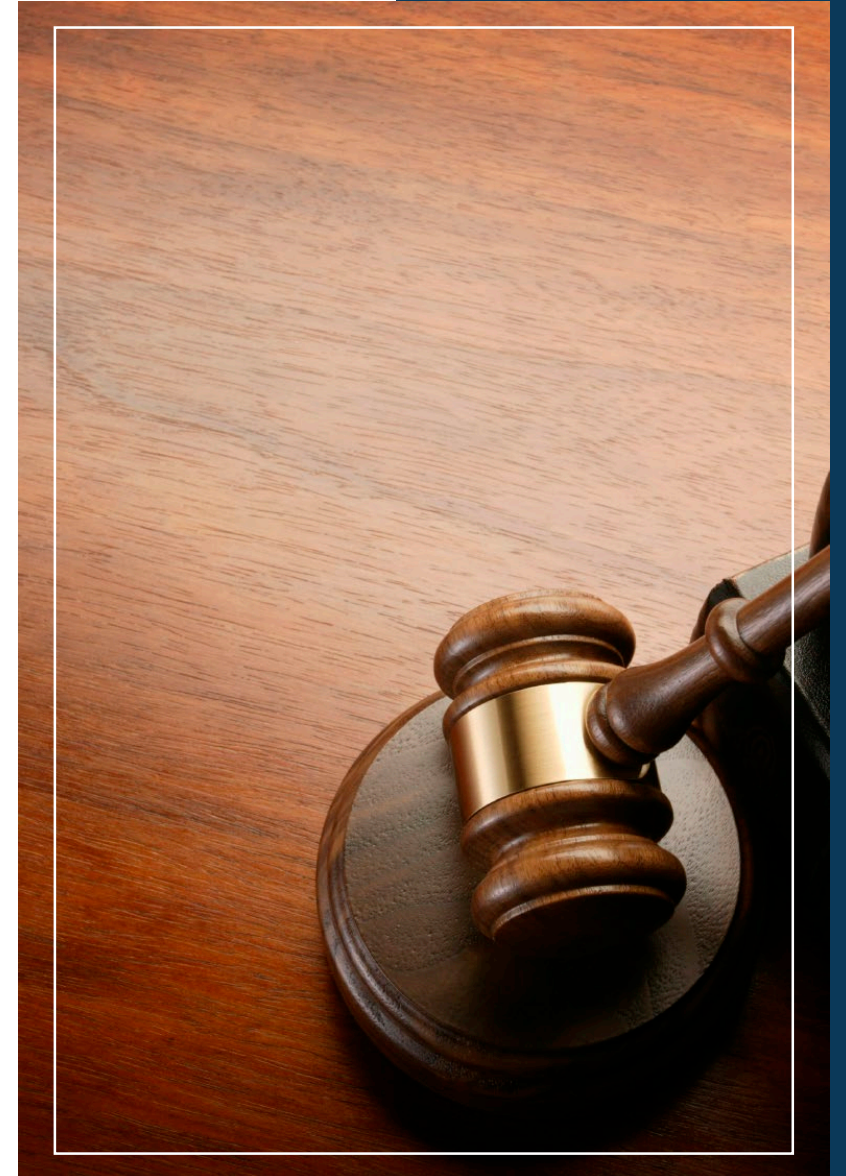
Title 59 Injury Threshold

Injury Threshold

- To prevent minor claims, lawsuits against public entities under Title 59 are subject to a tort threshold which requires claimants to show that they suffered a permanent loss of a bodily function, permanent disfigurement or dismemberment and also incurred medical treatments in excess of \$3,600.
- The claimant's burden to meet the threshold of the TCA is significant.
- Without a showing that the loss caused a permanent limitation of claimant's ability to work or enjoy recreational activities, even surgery may not be enough to overcome the requirement.
- *Question: If you have "recovered" from COVID-19, will you meet this threshold?*

Title 59 Time Limitations

- Tort Claim Notice required to be filed within 90 days of the claim accruing (with some exceptions)
- Public entities may adopt a detailed claim form to reveal the facts so that the governmental entity has an early opportunity to evaluate the case.
- Claimants are barred from filing suit for 6 months and are limited to the standard statute of limitations requirements for filing suit (generally 2 years for casualty claims).



Potential for Legislative Action

To address concerns of what may happen as public facilities and private business reopens, the New Jersey Legislature is currently considering several bills that would provide liability protection to businesses. The bills, Senate Bill 2634, Senate Bill 2628, and Assembly Bill 4377, all establish general immunity for certain entities against legal actions relating to the COVID-19 pandemic.

The proposed bills would establish general immunity for business entities, including non-profits, and institutions of higher education, and their officers, employees, agents, and volunteers, as well as public entities, including primary and secondary schools, and their employees, against actions relating to a person's exposure to COVID-19.

The immunity would be based on “good faith reasonable compliance” with or exceeding applicable health and safety measures in effect at the time of an alleged exposure.

The immunity would bar civil lawsuits. Despite the broad liability protection, it would not grant immunity for an entity's or person's willful, wanton, or grossly negligent act of commission or omission.

Editorial comment: Given the influence of trial attorneys in NJ, we believe it is unlikely any such sweeping immunity law will pass in NJ.



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Questions? Comments?



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Returning to Work Policies and Best Practices during Covid-19

Presented by:

PAUL J. SHIVES

VP and Director of Safety Services
J.A. Montgomery Consulting

ANNE WALTERS, BSN, JD

Director
Camden County Dept. of Health and Human Services



Return to Work Issues and Best Practices

- “COVID-19 Fatigue”
- Pandemic numbers appear to be surging again in New Jersey and across most of the States.
 - New Jersey has experienced over 6,500 new cases in the past week, and over 224,000 cases since the pandemic began
 - Over 16,000 people have died as a result of COVID-19 in New Jersey since March
- Until a safe vaccine is widely available for distribution, it is important keep in mind that we cannot lose sight of responsibility local officials have to protect the public and their employees.
- County officials must continue to be diligent in continuing to employ “best practices” as recommended by the CDC to keep the workplace, public buildings and facilities, employees, and the public safe.





Preparing a Safe Workplace

- Evaluate the building and its mechanical and life safety systems to determine if the building is ready for occupancy. Check for hazards associated with prolonged facility shutdown such as mold growth, rodents or pests, or issues with stagnant water systems, and take appropriate remedial actions.
- Ensure that ventilation systems in your facility operate properly. For building heating, ventilation, and air conditioning (HVAC) systems that have been shut down or on setback, review new construction startup guidance provided in *ASHRAE Standard 180-2018*, Standard Practice for the Inspection and Maintenance of Commercial Building HVAC Systems.

Preparing a Safe Workplace

- Increase circulation of outdoor air as much as possible by opening windows and doors if possible, and using fans. Do not open windows and doors if doing so poses a safety or health risk for occupants, including children (e.g., a risk of falling or of breathing outdoor environmental contaminants such as carbon monoxide, molds, or pollens).
- To minimize the risk of Legionnaires' disease and other diseases associated with water, take steps to ensure that all water systems and features (e.g., sink faucets, drinking fountains, decorative fountains) and water-using devices (e.g., ice machines, cooling towers) are safe to use after a prolonged facility shutdown.

Preparing a Safe Workplace

- Conduct a thorough hazard assessment of the workplace to identify potential workplace hazards that could increase risks for COVID-19 transmission.
- Identify work and common areas where employees could have close contact (within 6 feet) with others — for example, meeting rooms, break rooms, the cafeteria, locker rooms, check-in areas, waiting areas, and routes of entry and exit.





Preparing a Safe Workplace

- Include all employees in communication plans — for example, management, staff, utility employees, relief employees, janitorial staff, and maintenance staff. Make sure you make provisions in your plans for employees with underlying health conditions.
- If contractors are employed in the workplace, develop plans to communicate with the contracting company about changes to work processes and requirements for the contractors to prevent transmission of COVID-19.

Guidance is Available

- The CDC has extensive information available on the website to assist you:
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- The Safety Director's office issued several bulletins to assist you as well including guidance on the following topics. All bulletins can be found on the NJCE Website: <https://njce.org/covid-19-updates/>
 - [Protecting EMS Responders – March 13, 2020](#)
 - [Parks and Recreation Guidance Re-Opening Parks – April 30, 2020 \(UPDATED\)](#)
 - [Guidance for Cleaning Surfaces – March 19, 2020](#)
 - Families First Coronavirus Response Act – March 26, 2020
 - [Guidance for Jr. Firefighters & EMS Cadets – March 31, 2020](#)
 - [Guidance for Law Enforcement on Exposure to COVID-19 – April 15, 2020](#)
 - [Guidance for Fire & EMS on Exposure to COVID-19- April 15, 2020](#)
 - [Guidance for Solid Waste Industry Operations – April 8, 2020](#)
 - [Guidance for Taking Employee Temperatures – April 21, 2020](#)
 - [Guidelines for Reopening Beach Operations – May 7, 2020](#)

Return to Work Issues and Best Practices

- [Guidance for Cleaning & Disinfecting Public Places- May 18,2020](#)
- [Guidance for Preparing Workplaces for COVID – May 18, 2020](#)
- [Reopening Public Facilities – May 27, 2020](#)
- [LE Bulletin: Ford Releases Sanitizing Software for Cars/SUV's – June 1, 2020](#)
- [LE Bulletin: Identifying Unseen Victims of the Pandemic – June 1, 2020](#)
- [Updated Guidance: Reopening Outdoor Activities/Facilities – June 4, 2020](#)
- [Hurricane Preparedness During the COVID Crisis – June 23, 2020](#)
- [LE Bulletin: Guidance for Challenges of Expanded Outdoor Dining – June 26, 2020](#)
- [Guidance for Reopening Playgrounds – June 30, 2020](#)
- [Guidance for Holiday Celebrations/Halloween – Oct. 5, 2020](#)
- [LE Bulletin: Guidance for Police – Responding to emergencies during online school learning](#)
- [Guidelines for Emergency Remote Meetings – Oct. 6, 2020](#)

Return to Work Plan

For Camden County Dept. of Health and Human Services



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Pandemic Fatigue is on-going danger – *Anne Walters, BSN, JD*

- With a steady increase in COVID-19 cases and cold weather approaching, “pandemic fatigue” is becoming an alarming issue.
- The so-called “second wave” is hitting at the same time many are experiencing a sense of apathy and a loss of patience.
- Fear has been replaced with fatigue.
- Ways to deal: increasing education; employee assistance program to deal with stress/anxiety.
- Pandemic fatigue affects continuing safe operation of workplace.

Return to Work Plan

For Camden County Dept. of Health and Human Services

- Employees Entering the Workplace
- Daily Health Checks (Temperature & Symptom Screening When Entering)
- Visitors Entering the Workplace
- Cleaning and Disinfecting
- Facility Procedures
- Social Distancing Practices & Procedures
- Personal Protective Equipment
- Attire
- COVID-19 Health Liaison



Return to Work Plan

For Camden County Dept. of Health and Human Services

- OEM Liaison
- Protection of Higher Risk Employees
- Breaks/Lunch Spaces
- Vehicles
- Travel & Training
- Field Contacts
- COVID Response/Reporting Illness
- Returning to Work

Return to Work Plan

For Camden County Dept. of Health and Human Services

- Sick Leave Policy
- Action Plan for Facility Suspected/Confirmed Cases
- Return of Public Functions
- Mail Delivery
- Resiliency – availability of Employee Assistance Program



Reopening Plan

For Camden County Boathouse & Driving Range

- Reopening Plan for the Camden County Boathouse
 - Prior to your arrival
 - Parking
 - In the Bay
 - On the Docks
 - On the Water
- Reopening Plan for Driving Range
 - Social Distancing
 - PPE for Staff





THANK YOU

Questions? Comments?



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