

## Auditory Exclusion

### OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss resulting from claims regarding law enforcement Use-of-Force.
- Discuss CIRMA's and other resources on reducing liability associated law enforcement training.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

### INCIDENT BACKGROUND

On the date of the incident, the claimant was standing at his white pickup truck when the officer arrived on scene. After a brief interaction, the officer deployed his electronic control weapon striking the claimant in the chest. The claimant experienced a full, five-second electrical shock and fell to the ground, striking his face on the ground. While on the ground, the claimant began to complain of chest pain and an inability to catch his breath. Subsequently, the claimant became unconscious. The officer rendered aid and requested to have Emergency Medical Services respond to the scene.

### INVESTIGATION

- The claimant was a 35-year-old Hispanic male, wearing black jeans and a blue sweatshirt. He was approximately 6 feet tall and weighed 175 pounds.
- The claimant parked his vehicle at a shopping center. He exited his vehicle and entered the store.
- As the claimant was returning to his vehicle, he noticed that the back-passenger window was broken, the passenger door was open, and a black male was leaning into the passenger side of the vehicle.
- The claimant called 9-1-1 and informed the dispatcher that his vehicle was actively being broken into and that he was filming the incident with his cell phone.
- Dispatch asked for a description of the suspect, to which the claimant provided the below information:
  - Black male
  - Approximately 6'5" and 280 pounds.
  - No facial hair
  - Wearing a gray sweatshirt, blue jeans, white sneakers
- Three (3) officers were dispatched to the 9-1-1 call and responded with lights and sirens activated, arriving on scene in approximately four (4) minutes from the time the 9-1-1 call was placed by the claimant.
- Hearing the approaching sirens, the suspect reportedly ran off.
- The claimant then went over to his vehicle and began to look inside.
- When the first officer arrived on scene, he observed the owner (claimant) of the vehicle leaning into the passenger side of the vehicle.
- As the officer exited his vehicle, he began yelling at the claimant. At the same time, dispatch acknowledged his arrival and issued a description of the suspect.
- The claimant turned his head and stated, "This is my vehicle, I am looking inside..." The claimant is upset and then turns around and leans into the vehicle again.
- The officer draws his electronic control weapon and orders the claimant to "Step away from the vehicle".
- The claimant quickly turns around and faces the officer, with his cell phone in his right hand, which is still recording.
- The officer proceeds to deploy his electronic control weapon striking the claimant in the chest, delivering a five-second electrical shock.
- The claimant fell to the ground striking his face on the ground.

## INVESTIGATION - *continued*

- While on the ground, the claimant complained of chest pain and difficulty catching his breath, and ultimately lost consciousness.
- The officer rendered aid and requested Emergency Medical Services (EMS) to the incident location.
- When EMS arrived, they found the claimant unresponsive with a laceration to his cheek.
- Further evaluation by EMS found that the claimant was in an unstable heart rhythm and was rushed to the hospital with advanced life support measures provided.
- Body camera video is consistent with the claimant's description of event.
- During the investigation the officer stated that he:
  - Perceived the claimant's cell phone as a weapon
  - Did not hear the dispatchers verbal description of the suspect as he arrived on scene and exited the vehicle
  - Has received training in the proper utilization of an electronic control weapon

## INJURY AND DAMAGES

As a result of this incident, the claimant suffered the following injuries:

- A laceration to the cheek which required five (5) sutures to close, resulting in permanent scarring
- Ongoing anxiety
- In-hospital and out-patient cardiac rehab
- Ongoing follow-ups with a cardiologist

The plaintiff filed a notice of intent to sue, with an initial demand of damages for \$2,000,000. After successful pre-trial negotiations, this claim was settled for \$975,000.

## CONCLUSION

The human body is equipped with five (5) sensory systems that provide the brain with information. Under ordinary conditions, all five senses perform equally well; however, under stress, the brain will select the one sense that will provide the most relevant information at that particular moment.<sup>1</sup> Auditory exclusion is when an officer is under stress and as a result will sometimes not perceive noise that would be otherwise obvious.

The brain under stress focuses what it perceives to be critical at the exclusion of other stimuli. In times of high stress, caused by both visual and auditory triggers, a person's "fight or flight" response can be triggered as they descend into a state of hyper-arousal. This is an evolutionary response involving the sympathetic nervous system that is triggered as a reaction to a perceived threat to the individual's life to help increase the chances of survival. The adrenal gland is alerted, and as a result, adrenaline is released into the individual's bloodstream. This causes a number of physiological changes like increased heart rate, increased breathing and hyper-focus on the threat at hand.<sup>2</sup>

The brain, in an effort to help you make sense of what is happening in a high-stress, high-consequence situation, can also filter out what it perceives to be noise – those sounds your brain determines to be unimportant.<sup>3</sup> As a part of this, the processing of auditory information can be stopped completely, causing temporary hearing loss.

On September 30, 2009, the manufacturer, Taser International, issued "TASER Training Bulleting 15.0", recommending law enforcement agencies to aim shots below the chest center of mass or lower mass; as "avoiding chest shots with ECDs reduced the likelihood, or a possibility, that they may affect the rhythm of the heart".<sup>4</sup>

## KEY RECOMMENDATIONS/ACTION ITEMS

CIRMA Risk Management offers the following recommended best practices to help prevent these types of incidents from occurring:

- Utilize the CIRMA VirTra Law Enforcement Simulator to integrate training on auditory exclusion and how it effects officers' decision-making while on scene.

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<sup>1</sup> <https://www.ciddd.ca/documents/exhibits/P-0624.pdf>

<sup>2</sup> [https://en.wikipedia.org/wiki/Auditory\\_exclusion](https://en.wikipedia.org/wiki/Auditory_exclusion)

<sup>3</sup> <https://www.samatters.com/understanding-stress-part-6-auditory-exclusion/>

<sup>4</sup> <https://cops.usdoj.gov/RIC/Publications/cops-p202-pub.pdf>



### KEY RECOMMENDATIONS/ACTION ITEMS - *continued*

- Reinforce stress reducing exercises such as “tactical breathing”. Tactical breathing slows down the sympathetic nervous system, which typically directs the body’s response to dangerous or stressful situations, while engaging the body’s parasympathetic nervous system, which controls the body’s ability to relax.
- Consider re-issuing the TASER Training Bulletin 15.0, reviewing the recommended target areas when reasonably possible.

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.