Utah Public Entity Litigation Trends (2025–2026)

Presentation by: Heather White

Why This Matters for Risk Managers

- **Risk decisions drive litigation outcomes**
  - Courts focus on procedure, not just results
  - Documentation separates early dismissal from prolonged exposure
  - Risk managers are upstream of claims severity

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Trend 1: Immunity Is No Longer Presumed

- **Utah courts are narrowing immunity through fact analysis**
  - Legislative fixes lag claims behavior
  - Plaintiffs exploit gaps and gray areas
  - Immunity must be proven through records

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Risk Impact of Immunity Shifts

- **Higher defense costs early**
  - More motions denied at threshold stage
  - Greater scrutiny of employee role and scope
  - Poor documentation defeats immunity

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Trend 2: Notice of Claim Requirements

- **Statutory amendments clarified service and timing**
  - Routing errors create waiver arguments
  - Notice fights increase defense costs

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Risk Manager Actions: Notice of Claim

- **Audit intake procedures annually**
  - Centralize claim receipt
  - Train clerks and department heads
  - Involve counsel immediately

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Trend 3: Discretionary Function Under Pressure

- **Courts demand proof of policy judgment**
  - Operational acts less protected
  - Process documentation is decisive

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What Courts Expect to See

- **Meeting minutes and deliberation**
  - Budget and resource tradeoffs
  - Expert or consultant input
  - Contemporaneous written summaries

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Trend 4: Civil Rights Claims Drive Severity

- **Qualified immunity denied more often early**
  - Parallel state constitutional claims
  - Defense cost escalates quickly

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Operational Risk Controls

- **Complete incident packets**
  - Policy-aligned narratives
  - Early internal review of serious events

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Trend 5: GRAMA

- **Systemic non-compliance claims increasing**
  - Boilerplate responses create exposure
  - Workflow scrutiny by courts

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High-Performing Risk Programs

- **Immunity treated as documentation exercise**
  - Routine audits of workflows
  - Coordination between risk, departments, counsel
  - Post-incident reviews preserve defenses

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Action Items for Risk Managers

- **Strengthen Front-End Processes**
  - Centralize and audit notice of claim intake
  - Standardize GRAMA workflows with individualized responses
  - Implement early internal review for serious incidents
- **Document Decision Making, Not Just Outcomes**
  - Ensure discretionary decisions are recorded at the policy level
  - Preserve minutes, memo, and prioritization criteria
  - Tie operational actions back to approved plans

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Action Items for Risk Managers (cont.)

- **Improve Documentation Quality**
  - Align reports with video evidence
  - Require policy citations in incident narratives
  - Verify training records are current and accessible
- **Audit and Test Risk Controls**
  - Periodically review immunity-sensitive workflows
  - Identify patterns before plaintiffs do and remedy them

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Action Items for Risk Managers (cont.)

- **Coordinate Early and Often**
  - Involve legal counsel early for claims, notices, and high-risk events
  - Ensure consistency across departments
  - Maintain a single, coherent record

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QUESTIONS

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