

Risk Managers Network Minutes
June 15, 2011
9:00 a.m. to 12:00 p.m.
Helena Job Service, 715 Front Street
Helena, Montana

Advisory Council Attendees: Brett Dahl, Administrator, Risk Management and Tort Defense Division, Sheryl Olson, Deputy Director, Department of Administration, State of Montana, Alan Hulse, Chief Executive Officer, Montana Municipal Insurance Authority, Greg Jackson, Marketing Specialist, Montana Association of Counties, Jeff Shada, Director Safety & Risk Management, Montana State University, Tana Wilcox, Risk Management, Northwestern Energy, Jacquie Duhamel, Risk Manager, Montana Rail Link, Deb Lopuch, Administrative Assistant, Risk Management and Tort Defense Division.

Sheryl Olson opened the meeting by thanking the members for attending and sharing information. She stated the name of the council was changed to Risk Managers Network because in order for the group to be an advisory council, there has to be an executive order signed by the governor. The order is renewed every two years. The governor is directed that no advisory council member can be a registered lobbyist and one member is a registered lobbyist. Brett and Sheryl did not want to lose a member of the council, so they decided on the name change. No one objected to the name change.

Sheryl wanted to hear about any flooding other members have had to deal with this year and what the other members have encountered. Tanya stated that for them it has been very difficult and there are a lot of gas lines that are starting to float. She also said they have poles in marshy areas that have fallen over. She did say that so far, this has been occurring in the mountains, not in city areas. They are having a hard time getting the poles back in and up because of the water. Claim wise, they have not seen a lot, but that may change with time.

Jacquie said for Rail Link, it is a matter of logistics and property. She said this is the time of year that they go out and check tracks looking for water or log jams in low areas. Normally they have problems on the western side of the state, but this year it has been the eastern side. Employees have been working overtime to check tracks, bridges and culverts. So far, not too bad for flood claims.

The state has had four large flood claims. One of them is at the Montana State Law Academy. There are two large lakes in the front of the buildings that are not supposed to be there. There are also two bridges on the property and one is almost washed out. Brett stated there is an issue of whether bridges are covered property. So far, the septic system is alright. There is water in three of the buildings. One of them is the gymnasium.

Another claim is a museum in Pryor at the Chief Plenty Coups state park. Water is backing up into the building. The valuable artifacts have been moved out of the basement of the building and some artifacts have been sent to Cody, Wyoming, to the Buffalo Bill museum.

The office of Public Assistance in Billings had water damage from so much rain the roof started leaking. The paper files did not immediately get removed, so there has been some damage to some files.

Jeff said the University has not had any flood claims. He did mention that a lot of employees have flooding and have needed to take time off.

Greg said for the counties, the potential flooding is at fairgrounds. So far, they have not had any claims. There are three counties there may be claims from: Musselshell, Ravalli and Sweet Grass. If any of the fairgrounds do flood, they are not high value structures. Greg said there may be some claims for liability for DES not being proactive to give sufficient notice for potential flooding. They also insure water and sewer irrigation district systems and there is coverage for sewer backups. All things considered, he feels they won't come out of the flood season in too bad of shape. Sheryl asked him if the counties have insurance for mitigation efforts. Greg said they do and it does not have to be pre-approved.

Greg said with flooding, how does someone define an occurrence? As an example, Roundup has flooded twice this season. So if there were additional damage from the second flood, would that be another deductible?

Brett said with earthquakes, it is 160 hours after the first event that would trigger a second event.

Allen said they don't anticipate a lot of claims. They may have some pump houses and lift stations damaged because of the groundwater being so high. He also said the city of Lewistown had emptied their pool before the flooding hit and the groundwater filled up in the park and the pressure from that, without having the pool full, caused significant damage. Sheryl asked if a city sewer backed up into resident homes, could the resident could file a claim with the city. Allen said yes that happens, but there has to be negligence on the part of the city. The city has a duty of reasonable care to inspect and clean sewer systems. With the high level of ground water; if that causes flooding, that is not covered by insurance.

Risk Management & Tort Defense Division Financials:

RMTD's net premiums earned are set by legislation, less the discounts RMTD gives to agencies. From that, there are loss expenses which include settlement and judgments. Loss expenses also include attorney and adjustor fees. Then are operational costs and then there is commercial insurance premiums. That is essentially RMTD's funding model.

RMTD had about a 10 percent return on investments last year. He said investments earned are down based on the economy and other worldwide events. RMTD does attempt to subrogate on claims where another party is liable.

For FY10, RMTD ended up with an \$8.5M in reserves after paying out \$18M for total liabilities. In FY08, RMTD had less premiums and larger losses. FY09 was also a year with large losses.

Brett stated that he does targeted based rate setting. He tries to set the premium level to be able to project expenses three years out. Brett went over the three options he has been looking at for renewal. He is looking at having earthquake coverage at \$400M because of the buildings the state covers in earthquake areas.

Allen said they are very conservative financially with the amount of money they retain in their equity for reasons of stability. When there is a bad year for claims and then it comes time for re-insurance and you expect one thing and then out of the blue your re-insurance cost go up. Lexington raised their insurance rates by 19 percent as well as creating a \$500K cat loss deductible and it does not apply to the aggregate.

Brett then started the discussion on cyber liability. He stated cyber liability is an emerging risk. Sheryl and Brett have been discussing insurance for cyber liability for over a year. Brett has researched insurance coverage and has gotten three quotes. Data/Information security liability covers the release of information that results in damages (libel, slander, etc.). RMTD already has this coverage because they are self-insured. There are three other components related to cyber liability coverage: Privacy notification, regulatory defense and fines, and website media content. Under data/information security liability an agency would have a \$1,000 to \$5,000 deductible and RMTD would pay in excess of \$100K of the \$5,000 deductible. RMTD currently has free coverage under Beazley Insurance, so Brett is looking at coverage above what Beazley covers. Chartis quoted \$5M in excess of \$2M. These limits are per occurrence subject to an annual aggregate of \$2M.

The privacy notification also covers credit monitoring for one year. Chartis would not give any quote for the website media content and did not give Brett any reason why.

Sheryl stated that recently some information was posted on the internet that was a HIPAA violation. The only reason the state was not fined for the release was because the number of names/information released was not enough to incur fines. The human element for error is a big factor.

Allen said cyber liability is a reality we all have to face. As everyone becomes more electronically driven, the release of information will continue to occur, so cyber liability is an issue.

Brett said not just electronic data can be released, but also paper files can be released.

Tanya said Northwestern Energy looked at cyber liability for the first time this year. She said the premiums were very high. Her brokers told her that because their casualty program is "silent" on some issues, there could potentially be coverage for cyber liability. There is no exclusion or endorsement in the policy in regard to cyber liability.

Brett said that to file a tort claim, there must be monetary damages. If there is a release of information and no one suffered monetary damages, there is not a tort claim.

Allen wondered if there has been any litigation for the release of a person's name and they are claiming pain and suffering from worrying about what may happen. Brett said there has not been any litigation on that. He said that cyber liability insurance is relatively new.

The second option Brett looked at did not have the regulatory defense and fines included. That was only a savings of \$9,000.00. Sheryl said that individual agencies may not be able to pay the fines if there was a large breach.

Under Option 3, Beazley did the quote and the limits were higher and so was the premium.

The state has had two data breaches, but no one filed a claim on either breach.

Claims, loss trends and retention levels:

For claims and loss trends, Allen said that the Worker's Compensation claims staying open much longer. As claimants get older and the medicals don't get closed, they end up paying for services not related to the original claim. Sheryl said the state has seen a 20 percent reduction in fees from State Fund. Allen said they are looking at a 10 percent reduction in claim experience for the next year's claims and they also got an 8 percent rate reduction based on the claims going down. There has been a reduction in the fee schedules for medical claims. They are at 150 percent from 170 percent of Medicare schedules. Allen said there is also an 8 percent reduction for choice of treating physician. In Montana, there is already a problem with treating physicians. The employer has a choice in choosing the treating physician rather than the employee using their own family doctor. Time will tell how much the new laws will end up saving on Worker's Compensation claims.

Allen said their target for retention is ten to one, for every dollar of retention he wants ten dollars in surplus. They have a \$1.5M retention in their liability program. They are right on target. He said for their property program, they are well beyond their targets. They have a \$100,000 retention for property. Every year, they do look at increasing the retention.

Greg will send Brett his information on the property assets and liability.

Jacquie said they are privately owned.

Tana said they are having a difficult time in Butte trying to find doctors to treat a person that filed a Worker's Compensation claim. They want to know if the claim/service will be covered prior to treatment. Tana said they cannot tell at first. She also said that physicians are not willing to train on the new treatment and utilization guidelines.

Jeff said they are now looking at a revised actuarial report based on the new Worker's Compensation laws legislation enacted. Right now, he does not know if the rates will go up or down. The university is self-insured separately.

Insurance renewals:

Brett said he has a separate policy for crime insurance because the state has a high level of bonds and cash as well as a high level of fidelity exposure. There is a \$10M limit on the crime policy. Brett has pushed his brokers for a lower limit because the maximum amount the state has at any one location is \$5M. Allen said they also have a separate crime policy.

The state also purchases a separate fine arts policy because they have a lot of fine arts. AXA Art Insurance Corporation is the fine arts carrier for the state. The limit is \$300M. The Historical Society has a lot of artifacts in the basement of the building. Jeff said the Museum of the Rockies shipped some replicas to Japan.

Brett said for the property insurance, Lexington carries the first \$200M that is above a \$500K retention. The next layer between \$200M and \$300M is through Great American, the next layer goes through Lloyds of London; \$300M-\$500M. The total limit is \$1 Billion. There is a \$400M limit for earthquakes. The state has had nine large property loss claims in the past five years for a total of \$12M. The state only paid \$2.5M on those claims. Based on that, Lexington wanted the state to have a \$1M deductible for property losses instead of \$500K. The increase in premium is 1.86 percent.

Allen said he was glad he was not the only one that had an increase in property rates.

Loss prevention training:

Allen said they are doing a program called HR Century. He had John Cummings, his HR manager check into it. It is an online website that is state specific and they are offering to his members as a resource tool. It has human resource forms, employment practices and is a very detailed website. If anyone is interested, let Allen know.

Jeff said that there is an online computer program that is a risk assessment tool to determine and identify if someone is a danger to others.

At the conclusion of the meeting, everyone agreed an annual meeting is very useful. Brett said on RMTD's website under advisory groups, there is a Lyris list and members can send information to all members if they have anything they would like to share.