

State Risk Management Advisory Council
March 19, 2008
State Capital, Room 250
1:30 p.m. to 4:30 p.m.

Agenda Item 1 – Call to Order

Sheryl Olson called the meeting to order at 1:30 p.m. Kristie Rhodes, DOA/RMTD filled in for Brett Dahl, Administrator, DOA/RMTD. Advisory Council members present were: Sheryl Olson, DOA/Risk Management & Tort Defense; Allen Hulse, Montana Municipal Insurance Authority; Greg Jackson, Montana Association of Counties; Jeff Shada, Montana State University, Tana Wilcox, Northwestern Energy; William Price, First West Insurance; Jacque Duhamel, Montana Rail Link. Absent: Brett Dahl, DOA/RMTD.

Minutes taken by Deb Lopuch, DOA/RMTD.

Agenda Item 2 – Loss Prevention

a.) FY08 Training Activity

Kristie Rhodes advised RMTD conducted “Cover Your Assets” training to explain why RMTD requires information reported on properties by each state entity. John Duezabou is the training specialist for auto. John is teaching a “6 Hour Defensive Driving” class, a 2 hour “Preventing Distracted Driving” class and a “Van Safety” driving course. The “Van Safety” is primarily for the University System. John also taught “Preventing Violence in the Workplace”. Brett Dahl conducted a “Reducing Risk Exposure in Contracts” class for clients involved in contracts.

Greg Jackson inquired if anything has been developed by the state for fraud training because of the increase in employee embezzlement cases. Kristie said agencies are tightening internal controls and a task force is in place to address training for employees. Brett is having discussions with the state Legislative audit division.

Tana Wilcox said Northwestern has an online fraud and ethics training/testing program that every employee must complete annually. Employees must pass each segment of the testing with a certain percentage to go on to the next segment to receive the certification. Segments are tailored to specific areas and positions. Northwestern purchased the software package for the training.

Allen Hulse indicated MMIA has been looking for online training that is geared toward city operations. Allen believes online training does not replace face-to-face training, but is an enhancement for it.

Greg Jackson said that counties are trying to consolidate local transportation systems and they have 12 and 15 passenger vans. He wondered if RMTD has user/operational guidelines in place for van drivers. Jeff Shada said the University has developed a system wide policy.

Drivers can go online and take a training module. The University also has a “hands on” program where a trained instructor observes the drivers and uses a check off list.

b.) Loss Prevention

Kristie reiterated that the Governor has a task force for internal control policies/training. Administration’s accounting office has issued a guide book for internal controls. If anyone is interested in what DOA has implemented so far, contact Brett for a copy of the materials. Internal controls and training are still being developed.

Tana Wilcox stated Northwestern has very strict internal controls and has an internal audit department with 10 auditors. Claims and expense accounts are audited annually. Random audits are also conducted.

Jacque Duhamel said Montana Rail Link has an outside firm that does an external audit annually. Jacque feels they have been more thorough with the audits than in the past.

Sheryl Olson advised state agencies have Legislative auditors conduct financial audits every two years. Administration is looking into seeing if the department can have their own internal audits as well.

Greg Jackson said MACO has experienced that 75% of employee embezzlement cases found, have been found by new employees or new elected officials. He wondered if the auditors should be trained or the employees. Not sure what the issue is.

c.) Alcohol and facility use agreements – Round table discussion

Kristie Rhodes, RMTD – The state does allow third parties to use facilities. The party needs to show proof of insurance. Use of alcohol is dissuaded, but the University system does have a policy that allows alcohol. In that instance, RMTD recommends that the vendor carries a liquor vendor liability policy of \$1M/occurrence.

Greg Jackson deferred to Bill Price, First West Insurance. Bill said there is a strict policy in place for requiring an insurance certificate and they do set limits. He stated it is a risky area.

Jeff Shada, MSU-Bozeman – The University has an alcohol approval process that involves an RFP for the vendor and all the alcohol sales must utilize that vendor. The insurance coverage is set for the year. A risk management plan is part of the approval process. The vendor must clearly demonstrate that food and non-alcoholic beverages will be served at the function. The RFP must outline how the vendor will guarantee that underage people will not be served alcohol.

Allen Hulse, MMIA – They insure 21 cities and it varies with each city and each function. Some cities are strict and require vendors to carry vendor liquor liability; other cities do not require vendors to carry liability. MMIA has encouraged cities to transfer the risk/liability. Recently MMIA has worked with the independent insurance agent association to sponsor a

special events program with a carrier from California for third party liability insurance for events on city properties. MMIA does not sell the insurance, the independent agents do.

Greg Jackson advised the counties will also be talking to the insurance carrier. They tried to get a master policy on their own but found out they were too small and they could not afford the premiums. They have established some boiler plate user agreements that include the insurance requirements. It was put together by a facilities user group (FUG) which is comprised of agents. Per Greg, most counties have adopted the agreement. Prior to two legislative sessions ago, county fair boards were able to be issued temporary liquor licenses so the fair boards could have the beer gardens and the profits from them. When they could no longer obtain the license, they were forced to find vendors with a license to sell alcohol. That put the responsibility for the liability on the vendor, not the fair board. This has been in place for 3-4 years and is working pretty well.

Tana Wilcox, Northwestern Energy – They do not lease any of their facilities out to private parties and they also have a strict policy of no alcohol allowed on premises.

Jacque Duhamel, Rail Link – Their facilities are not available to third parties. For the Rail Link passenger train, they hire a vendor.

Agenda Item 3 – Enterprise Risk Management

In the fall, Brett Dahl, RMTD, put together an enterprise risk map. He looked at every state agency and what activities each agency was involved in and what the possible risks might be with each agency/activity. From that, Brett looked at the likelihood and what the impact of each risk category and quantified it. There are approximately 70 activities that state agencies are involved with. Kristie advised this is an initial map and is a work in progress. One of the next steps is to track claims and the monetary value of them over the next few years to do the actual mapping to see where the risks fall and then work with the agencies to see what RMTD and the agency may be able to do to minimize the risks.

Tana said Northwestern hired an enterprise risk manager. The manager and his assistant are working with the heads of each department. Tana said one of the highest risks for them right now, is the flu. People come to work sick and pass the virus to others. They are talking to employees about the possibility of taking laptops home to work from home when they are sick. Another risk is the age of the workers. Northwestern is trying to get an apprenticeship program in place for linemen and gas service positions. Tana said the enterprise risk management department helps the departments identify their risks and works with them to mitigate the risks.

Jeff believes a crucial key to enterprise risk management is commitment from the top down. He said there should be people dedicated specifically to risk management, not just an added duty for someone.

Bill said the quantitative and qualitative analyses have been in place for a long time and the grading system for risks continually changes. Risks that are fours may become ones and ones can become fours.

Agenda Item 4 – Claims issues

a.) Web portal modifications

Kristie went over the web portal modifications RMTD did. Each agency can obtain reports online. Departments can run reports to show loss runs on automobiles and properties. Reports can be broken down to the entities in each agency. The reports will also indicate what the cause of the loss was. This enables agencies to look at trends and can indicate where they need to put focus on loss prevention. There is a detailed report agencies can look at to see more specifics on claims. Agencies can run monthly reports to see any changes in claims. RMTD used to run the reports quarterly to send to agencies. For the past four years, agencies have the capability to run their own reports when they need to.

Greg asked if agencies can see what their loss ratio is to compare their premiums based on losses per line item. Kristie advised RMTD can get that information for the agencies thru an internal report. There is an online system agencies can access that shows the property values and the premiums.

b.) Large claims – Round table discussion

Kristie, RMTD – The state had a property claim in September from a fire at the Montana Wildlife Rehab Center. A young male started the fire with a homemade cannon like device. The claim is around \$450,000. The Pattern House which is a historic building was burned in the fire and will be demolished as a result. Another large claim was based on employee embezzlement for about \$739,000. There was a tort claim (Jimmy Bromgard) that was based on fabrication of evidence. This recently settled with the state but there is a pending case with Yellowstone County.

Greg Jackson said they have one large property claim in Libby for \$2.3M. The claim is for a collapsed roof because of the large snow accumulation on a Port Authority building. They did have contractors that were shoveling snow off the roof when it collapsed. On the liability side, there was a claim for \$2.8M. It was based on sexual abuse by a sheriff's deputy. Eight boys were involved. Greg said that based on the way the tort limits are set, the mediators viewed each boy as a separate occurrence. He said there is no cap on multiple occurrences and it could have been looked at that each time the deputy sexually abused one of the boys it was separate occurrence. Greg said deputies are supposed to have a mental and physical exam when they are hired. In this case, the deputy had worked at the prison and was a foster parent, so the exams were not done. This resulted in the case not being defensible. He also said the mental evaluation is to be signed off on by a licensed physician and most physicians are not willing to sign off on mental evaluations. Some of the incidents took place at the karate school the deputy ran. The Supreme Court ruled that officers are on duty at all times. Rather than go to court because the county would have difficulty defending the case, the

county settled the case. The association is trying to find coverage for multiple occurrence situations such as this one.

Allen Hulse said the statutory requirement for testing officers is a huge issue. He said the statutory requirement for officers to undergo mental and physical evaluations is not always held to. It makes police departments vulnerable and leaves them open for negligence if a similar situation happens. Allen does not believe that a cursory mental evaluation would have uncovered the fact the deputy was a sexual abuser. However, if the department had done a mental evaluation on the deputy, they would have had somewhat of a defense. In this case, they were negligent as a matter of law for not adhering to their statutory obligation.

Greg said MACO changed the coverage document that states if there is a multiple occurrence situation. They will pay a cap of \$3M and the counties will have to pay the rest of the cost of the judgment.

Jeff Shada said the biggest issue for the University is property loss based on water damage from the sprinkler systems.

Allen Hulse said they had a \$1.7M employment claim with a police officer. The officer was being retaliated against for being a whistle blower. The city had a chance to settle the claim prior to it going to trial. The settlement was considerably less than what the jury awarded. They did have a \$1.1M property claim for the East Helena swimming pool. The pool had a pipe that was leaking under the pool and the pool was a total loss. Based on that claim, they are taking a look at their property values since they did not anticipate how much the replacement cost would have been for the pool.

Kristie advised the state also does appraisals on a rotating three to five year cycle. The insurance carrier also trends and adds an inflation factor for properties not appraised in the last 18 months. RMTD has an employee that does property inspections.

Allen mentioned the hail storms in Glasgow and buildings that had not been on a schedule for being appraised were damaged and claims were filed on them. He said it is up to cities to have properties on a schedule for appraisals. They pay a higher premium for scheduling appraisals.

Tana Wilcox said they had a large property loss in South Dakota. An elevator cable broke in the main corporate office. There were no injuries but the elevator has been shut down since October 2007. They have had to relocate employees that are not able to climb stairs. There was a \$600,000 office fire at another location. There have also been some large automobile accidents with serious injuries.

Jacque Duhamel with Montana Rail Link said 2007 was the best year they have encountered as far as property claims went. She did mention the recent derailments Rail Link has experienced and how expensive they are with the equipment and damage to the goods involved. Fortunately, there were no chemical spills involved with the derailments. The one in Bozeman was a coal train and coal went into Spring Creek. Jacque said there are values

for rail cars which are determined by the Association of American Rail Roads. Rail Link notified DEQ of the coal in the water and is waiting to see what DEQ advises them to do. Jacquie said they have some claims that are in litigation involving current employees. Because they are still employees, it is difficult to navigate through the claims. The largest third party exposure they have is based on an employee at an industry Rail Link services. Employees of the industry manually move the trains on Rail Link's tracks. Rail Link employees are not involved, the tracks are. Jacquie said there was a communication error between the person moving the car and the person securing the car. The industry employee ended up with a double amputation.

Sheryl Olson mentioned that the one embezzlement case involved a family member that was also a state employee. The insurance company advised DOA that because there was another family member involved, they would not insure the other family member.

c.) Loss Trends

Greg Jackson said they have two main areas with an increase in trends. They cover defense costs for new subdivisions and zoning and land use planning. The second area is automobile liability. Two recent large automobile claims involved employees using cell phone while driving. Both claims were about \$300,000.

Jeff Shada said their losses involve maintenance issues. He also said the aging workforce and finding replacement employees is a concern. People don't want to take entry level positions. Bozeman is also an expensive community to live in so it is difficult for people to take a job that does not support the cost of living. Often, employees work two jobs and that can lead to more on-the-job accidents and work performance problems.

Tana Wilcox said that she has had an increase in customers tripping or falling. She has six claims at the present time where customer have tripped or fallen when entering a Northwestern building.

MMIA is seeing land use, employment practice issues and aging infrastructures (sewers, sidewalks, etc.) Allen said they are seeing more trip and fall claims because of the older sidewalks. He said at this time of year, pot holes are an issue and the investment for infrastructure work has not been as much as it should have been.

Tana Wilcox also said the aging workforce is an issue for Northwestern Energy. The average age of their employees is 47. They have implemented an exercise/stretching program in the morning for employees which the union has agreed to. They have a trainer that works with employees. This has been in place for about one year. She stated employees have been very receptive to the program and say how much it helps them and improves their attitude. She said they are seeing more claims because of their aging infrastructures also. Their general liability is not so much customers coming into buildings but power surges in homes.

Jaquie Duhamel said Rail Link also has a stretch and flex program that is part of their work rules and is mandatory. She said they are having fewer employee accidents but it seems the severity of them has increased.

Kristie Rhodes advised that the state has seen a decrease in auto liability in both the number of claims and the monies paid on claims. In FY05 there were 239 claims, FY06 219 and in FY07 211. The majority of the claims involve autos being hit by rocks or objects. She said RMTD attributes a lot of the decrease in auto and comp/collision claims because John Duezabou was hired as the loss prevention training specialist for just auto. On general liability claims, the state is down in numbers from the past. Most of the general liability claims are contractor claims and the state does not pay anything on those. Property claims average about 45 a year, and are mostly missing property and water damage claims. For comp/collision claims the number is staying flat, but the cost of claims has increased. The reason that has occurred is because more agencies are choosing to carry the comp/collision insurance which is optional for them. Agencies can choose to insure a vehicle on a daily basis, so the numbers fluctuate. Agencies can change the value of their vehicles as they devalue based on age/mileage.

Agenda Item 5 – Insurance Issues – Kristie

a.) State of Montana Insurance Renewal

RMTD eliminated eight carriers from the previous policy year and raised Lexington from a \$10M participation to a \$25M participation. Other changes included increased limits for errors and omissions. It is now \$40M limit. There is no longer a sub-limit for off premise vehicle coverage.

b.) Property/Casualty Market Outlook

Brett wanted everyone to have a copy of what Willis of Seattle was anticipating for the insurance market. The outlook is favorable and the market seems to be softening. RMTD is looking at a 5-10% rate reduction which they can pass on to agencies. Kristie asked Bill Price his view on the insurance market. He said the property side of insurance is soft and getting softer. He also said don't worry about what is going on at Wall Street, it is just temporary and won't affect the property market. He said on the Worker's Compensation it is hard to determine because Montana has a small impact on the country and whatever NCCI recommends, State Fund never takes it. State Fund trends to Montana standards. They have a lot of good data now.

c.) Mid-Year Renewal Strategies – Round table

Kristie said the state is looking at raising their earthquake limit from \$200M to \$400M. RMTD is also evaluating any cost savings by raising the deductible on property.

Greg said they have increased their earthquake insurance from 25M to 50M which would cover about 60% of their properties within the quake zones. July 1 is also their renewal date and they are increasing their self-insured retention on property, boiler/machinery, fidelity, and crime coverage. They are also looking at increasing the member's maintenance deductibles for each line of coverage. They have approximately 250 special districts. He feels they are pretty flat as far as any exposure increases.

Tana advised that Northwestern Energy just renewed their property insurance and it went down 6%. They focused on property values. They did an extensive line by line check of all properties and were able to decrease the values of some properties. In Montana, they were able to reduce the values by approximately \$100M. They have a \$2M deductible and some buildings are low in value so they took some of them off the schedule. They did leave Montana buildings on the property schedule because of earthquakes.

Jeff said their coverage is RMTD's, except for Worker's Compensation and they are self-insured thru the university system. The university is also looking at their foreign coverage because it is becoming a big issue. He said there is a lot more travel to foreign countries. They are looking at having a third party to carry coverage if someone incurs a medical claim in a foreign country. Jeff would like to set up a foreign travel registry program. Right now, if a faculty member wants to travel, they just go and the university does not have a lot of control over that.

Greg said they have not raised deductibles for the past six years and will have to look at increasing them. They might include a buy back option to stay at the lower deductible.

Jaquie said Rail Link implemented a quarterly report for all their claims which makes it easier at renewal time.

d.) State of Montana Flood Plain Study – Kristie

A few years ago, RMTD contracted with Intermountain Hazards from Salt Lake to conduct a flood plain study for all state owned properties. They identified 36 locations that are in flood zone A. At the time, the state had Travelers as their carrier and they did not have coverage on the properties in zone A. RMTD went to the agencies that had those properties and advised them RMTD could purchase National Flood Insurance coverage. Most agencies decided not to purchase the insurance since they were smaller buildings with lower values. RMTD did purchase insurance for about six properties. The state now has Driver Alliant insurance and flooding is covered. RMTD is in the process of updating the database with the flood plain information.

e.) Business Interruption – Kristie

RMTD has agencies enter their income and expenditures on the Property/Casualty Insurance Information System. Agencies have the option to enter ordinary payroll information.

Agenda Item 6 – Continuity of Government (Lessons learned by Louisiana from Hurricanes Katrina and Rita)

In January, Brett Dahl and RMTD staff had a conference call with Bud Johnson, Louisiana's risk manager and his key staff. Bud advised that if there is a catastrophe, FEMA is flexible, so the state needs to take the driver's seat. Bud also said to identify a private FEMA consultant to hire. Keep in mind; you can negotiate with FEMA on funding issues. Try and set up a claim area to centralize the claims from various entities so claims go through one office. Have the risk management office work with FEMA on claims. Bud stated that when it comes time to renew contracts for adjustor services, put a clause in the contract that the contractor will also do adjustment services for a catastrophic or emergency event.

Be sure and schedule the properties and values. Louisiana had their values scheduled, but did not separate between the structure and content values. This caused a lot of problems. Think about alternate locations if there is an emergency. Bud said to have a media policy in place.

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