

Risk Management Advisory Council Minutes
March 25, 2010
9:00 a.m. to 12:00 p.m.
State Capitol Building - Room 250
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, John Cummings, Human Resource and Risk Management Programs Manager, Greg Jackson, Marketing Specialist, Montana Association of Counties, Jeff Shada, Director Safety & Risk Management, Montana State University, Tana Wilcox, Risk Management, Northwestern Energy, William Price, First West Insurance, Jacquie Duhamel, Risk Manager, Montana Rail Link, Deb Lopuch, Administrative Assistant, Risk Management and Tort Defense Division.

Opening Remarks

Sheryl had everyone reintroduce themselves. John Cummings attended the meeting with Alan Hulse. Sheryl thanked all members for attending and stated how valuable she feels the Advisory Council is. It allows for the opportunity for everyone to share their expertise and bounce ideas off one another.

Sheryl wants to add under Item 3 on the agenda Cyber Liability.

Risk Management & Tort Defense Division Financials

Brett said that 2007 and 2008 were rough years with claim losses and that affected in part, the State's reserve position. There are four programs RMTDD administers for state agencies and the university systems. These are the programs that go into House Bill 2 budget. The four programs are Auto, Aviation General Liability and Property. There are few claims for Aviation, so the cost is the reinsurance. Brett stated that RMTDD has changed the way financial statements and projections are done. He said RMTDD is taking kind of an insurance approach. That allows RMTDD to do ratio analysis and benchmarking.

For Auto insurance, there is a discount offered for agencies. Currently the state is not buying commercial excess auto liability insurance. Brett said earnings from investments are down. Insurance recovery is from claims the state subrogates. The total assets minus the total liabilities are what the reserve is. In 2008 and 2009, auto losses were high. Brett said there were three claims that accounted for the losses. One was a 15 passenger van that involved a basketball student from Northern. The driver of the van had not taken the Van Safety class offered by RMTDD. Brett said the state is in the process to phase out 15 passenger vans within four years. Brett and Mike Manion, the Department of Administration Attorney, have started the process over a year ago. If agencies do not get rid of 15 passenger vans by 2014, they will be charged a higher premium. Bill wanted to know what they will be replaced with. Brett said 12 passenger vans are allowed and there are mini vans.

Auto liability premiums will not increase in the next biennium. Brett said this is not the time to increase rates because state agencies and universities have been asked to implement budget cuts.

For General Liability, there was a \$3.6M settlement in 2008. A prisoner, Jimmy Bromgard, was wrongfully incarcerated and when they did DNA testing, which was not available when he was sent to prison, the DNA test proved he did not commit the crime. Because it was a Civil Rights claim, the settlement did exceed the State's tort cap amount. So far, things are steady for FY2010.

Property losses for 2008 and 2009 were large. There was a fire at Spring Meadow Lake and the earthquake damage in Dillon claims were still been completed. Things look good so far in 2010. Greg wondered if everyone else thought property claims were cyclical; things go well for several years and then property claims go up. Greg said he is trying to get the excess carriers to average all the years. Brett agreed that property claims do seem to be somewhat cyclical. A lot of property losses are caused by catastrophic weather. Sheryl said she has heard that stated in the health care arena, that claims seem to go in cycles. Alan added that it is not just weather related losses but also losses because public institutions have aging facilities without deferred maintenance plans or funds. He said it is hard to get levies passed by the public because times are tough for everyone.

Sheryl said the department has tried to bring up the issue of deferred maintenance to the legislature and have not been able to make progress. In fact, with recent budget cuts there were cuts to the maintenance budget. Greg said MACO is to the point of condemning buildings and not insuring them.

Greg wanted to know how the state insures personnel claims, such as discrimination claims. Brett told him that personnel claims fall under the general liability insurance.

Brett wanted to know what cost cutting measures the other members were looking at. The state will not be doing appraisals on properties at this time because of the expense. Training and travel expenses have been decreased.

Per Tana, Northwestern Energy is looking at raising their self-insured retention. They have not done this in the past. They now have 1M retention and are looking at raising it to 2M retention. This will be all across the board for all lines of insurance. They have put a committee together to look at how the company can reduce costs.

Jacque with Rail Link said they have turned railroad cars that the lease was up back to the lessor. Some of the older cars are being scrapped rather than being re-done. This has affected maintenance personnel. They now use handheld computers, rather than people.

Greg said MACO increased their SIR on property from 50K to 100K. They also hired two in-house litigators and that seems to be working to save money rather than hire outside counsel at \$200.00 an hour. He also said that they are not getting newer cars for the eight vehicles they do have, they will keep the ones they have. MACO is going to do a lot more training on loss control; specifically on the property end of things. They will not upgrade their IT system at this time as they had planned.

Alan with MMIA said they have been putting a lot of effort into training for risk management. They did twelve regional trainings with newly elected mayors and city officials, from December until March of this year. MMIA is holding their rates flat and they are trying to keep their operational budget the same.

Alan wanted to know if the state has an aggregate. Brett said they do not. Brett did say he is checking into having one, but because of the risks it may be too costly for the state to purchase. Tana said Northwestern has always had an aggregate, but with the losses they had last year it is being taken away

on general liability. Tana said they have not had a property loss claim for years. Their poles and lines are not insured, otherwise, they would have property loss claims.

John said MMIA has developed a Worker's Compensation program. They try to identify the areas of loss and have check off sheets and policies for the communities to adopt to hopefully avoid claims. Brett asked if anyone would consider cutting their training budgets. Everyone said no; training is too important. John said if even one phone call comes in because of the training they have done, it can save a lot of money. People are more aware of the issues and that they should check further before they take actions that could lead to a general liability claim.

Jeff said they did ask for suggestions for cost cutting measures. They have a committee that reviews them. Each department is looking at what they can do to cut costs. Most of their losses are property losses from hail and water.

Brett asked Bill if he was seeing a change in the way people are buying insurance; higher deductibles, less coverages, anything along that line. Bill said because he is in the private sector insurance business and the private sector employment has been decimated it has made a difference. He said the good side of it is that carriers recognize that safety and risk management is essential. Bill said the basis of premiums for private sector insurance is payroll and gross sales. The exposures have greatly reduced but the carriers are cognizant of watching the frequency curve. Bill said that risk and claims management is one of the last things private industry would cut.

Claims

On the claims side, Brett said RMTDD is down from 2009 and 2008. Since 2005, claims have been trending downward. Brett attributes that to the loss prevention programs and training RMTDD has. Because the Department of Transportation is so large, and covers roads and highways, RMTDD has provided support and resources for DOT to develop their own internal loss prevention staff. There have been huge reductions in DOT claims.

Since 2004, auto claims have been trending downward but the costs are up and down. Brett attributes part of that to the driving classes John Duezabou has been conducting all around the state.

General liability claims were trending downward until 2008 and 2009. Greg asked if the agency RMTDD insures has remained the same. Brett said in 2000 RMTDD began insuring the secondary highways instead of the counties insuring them. The state also took on insuring the Highway Patrol and the Public Defender's office. Even with increased exposures, claims are down.

Brett said property claims are down in 2010, but in 2009, there were some larger claims involving weather related damages. Expenses in 2008 and 2009 were the worst two years Brett can remember since he has been with RMTDD. Brett wanted to know what the other members on the council were experiencing for trends.

Jeff said the area with the most risk is foreign travel. They have formed an international travel review committee. He stated they have more control if it involves a student and are more concerned with the risks if it is a student, rather than faculty. Jeff indicated they do purchase athletic insurance on their own.

Allen said trends for property casualty have flattened down but they have seen some development with liability claims from prior years. Worker's Compensation claims for the last four to five years have remained flat, but there has been some loss development from earlier years. Allen said for the last 10 years they have had outstanding performance in the property program. Brett wanted to know if they do course of construction in the property program. Allen said they do for select projects and it has to be put in the contract. Allen said for liability claims they are seeing more claims for spoliation. They have paid three to four claims because the allegations were that cities did not preserve evidence, so MMIA could not prove their case. MMIA has a claim against them based on the fact that they did not advise and train the city employees to preserve evidence. They now send out a letter of preservation of evidence for every claim they receive to advise that any evidence (tapes, records, documents, emails, etc) must be kept until the claim is resolved. There was a claim out of Missoula where the police tape was destroyed when the machine ate the tape. The person was claiming excessive use of force and there was no evidence so MMIA lost the case. They just paid 3M on the Delaney v. City of Bozeman claim for failure to comply with the discovery requests. The emails had been deleted and there were no copies of them, so MMIA could not defend them. Allen said they are doing a lot of work with their clients as far as preserving and categorizing electronic records.

Greg said they are experiencing more severity in property claims MACO is also seeing an increase in physical damage claims even though they have an aggressive defensive driving training program. A lot of the claims are with sheriff departments. He said counties are starting to get into the transit business and that is a risk.

MACO has done an extensive internal control training this past year, and they received a positive feedback especially with elected officials. Auto liability is still an issue. Greg said they have more severe claims based on jailors not following policies and procedures. He said where they have seen the effects based on the economy, is subdivisions. They provide the defense for subdivisions for zoning codes. In the last year, they have seen a reduction of about 75% for zoning claims. They have an attorney on retainer that conducts land use training when needed. The number of claims has been stable; it is the severity that has increased. They implemented an on track safety program in July 2007 and since then they have seen a 35% reduction in frequency for worker's compensation claims.

Jacque with Rail Link advised they spend quite a bit of time on safety programs, and the operating departments have reduced their risks by half over the last two years. Jacque said they are also talking to supervisory staff about emails versus phone calls. People seem more apt to put something in an email that they would not put in a letter and they need to think about the issue before doing an email. Most people think emailing is the easiest quickest way to communicate.

Tana said Northwestern Energy's general liability claims are up a bit. She believes it is the economy. They are seeing claims for minimal damage amounts (under \$200.00) and she thinks that in the past people paid those without filing a claim. With the economy, they now are filing claims. Auto claims are stagnant and so are employee loss claims. She said they are seeing a lot of developmental claims from injuries from the 1970's and 1980's and people now need knee replacement surgery for an earlier injury.

Brett said the state has a lot of out of state liability and exposure as Jeff stated earlier. Based on a study of the state pro-card usage, agencies and university systems make about 2,000 out of state trips a year. Those are just the trips using rental cars, not trips using a state owned motor pool vehicles. That is about 500 more trips out of state a year. The state tort damage caps do not apply out of state. Brett did look at having employees adding the rental car insurance but it is expensive and can add about \$8.00 to \$30.00

a day depending on the coverage .Brett there have only been 13 rental car losses in 20 years for about \$70,000-\$80,000, so it is not cost justifiable to purchase rental insurance. He said they do have people purchase local car insurance for out of country rentals. He has looked at excess auto liability insurance for out of state, but at this time, with the economy and not raising rates, he had to weigh the risks versus the benefits He also talked to other state STRIMA (State Risk Insurance Management Association) members and several states in our region are buying excess liability insurance, but all the other states are not. Bill said the market is good right now, and to keep checking into excess liability insurance. Brett indicated that is what he is planning on doing. Greg told the council that their excess liability insurance rate has gone down. Brett told Greg that when was talking to brokers about it; they view insuring counties differently than insuring the state because there is more exposure to risks.

Cyber Liability

Sheryl wanted to know what others were doing for identity theft issues. The state had a breach of about 100 employee's social security numbers. She asked if everyone thought it was a risk and had concerns about identity breaches. Greg said they an AGRIP (Association of Governmental Risk Pools) conference in Seattle last fall and that was a big issue. He said they have a manuscript liability policy and their position has been if there was an outside identity theft and there was a third party general liability claim, the claim would fall under general liability; now not clear that it does. He said they looked at changing the manuscript policy to allow for that coverage and what limits should they have or secondly; could they have a separate policy like they do for crime, fidelity, etc. Greg said he heard from the underwriter prior to the meeting today, and they wanted to know if all the counties followed a uniform policy and procedure pertaining to firewalls. They do not, so it cannot be offered on a pool wide basis. Each individual county would have to be quoted a rate and have that coverage as an option. Greg believes it is important coverage. There was a case in Florida where 3,000 HIPPA records were released and each is an occurrence. The smaller counties do not have adequate protections from cyber theft. Greg said the fidelity and crime policies do not cover claims where an internal employee steals private information from the county.

Brett said the state crime policy covers electronic fraud. Greg said their insurance broker does not carry that on their crime policy.

Allen said they do cover cyber theft under their general liability policy, it is not excluded.

Brett brought up the fact that the definition of a tort claim under the State Tort Claims Act is for personal injury or property damages. With the cyber theft the state had, there were no claims for damages or injuries, so the state did not pay for the credit monitoring and identity restoration services. Brett asked the advisory council if they would pay for those services as a claim being self-insured. Allen said he was not sure and would talk to his attorneys about the liability. Greg said there are cyber liability policies that do pay for those services and there are eight or nine things the policies do cover.

Allen said the question Brett raises is there negligence and does it meet the definition of damages. Brett said technically, there are no damages, but there is a potential for future damages for the cyber theft. The dilemma is whether to purchase commercial insurance, or self-insure. Brett said he thought it is worth looking into. Greg stated that the firewall system for the state should help as far as purchasing insurance.

Tana said they are going through their renewal process now and Northwestern Energy is looking at cyber liability insurance. Customers can pay their energy bill online or over the phone, so they have access to personal bank accounts, so they have to do something. Tana will update Brett on the insurance quotes. Tana stated that as a claims adjuster, she would pay for the monitoring and identity restoration services if she had claims. She felt a proactive approach would be best.

Insurance Outlook

Bill addressed the insurance market outlook from the retail perspective. He stated the industry is cautious about what will happen next. They are in a better financial situation than the late 1970's and 1980. There have been some large mergers. Property insurance rates are fairly flat. On the liability side, health care is going to affect the industry and the rates. Liability is where the volatility is. The larger insurers are trying to push liability rates up, even though there is less exposure in employment. Auto is always a concern since it continually trends up. Bill stated they are looking at least three years before the industry will see some semblance of stability.

Brett went around the table to see what everyone was anticipating for their insurance renewal. He wanted to know if they were looking at changing deductibles or coverages, or expecting any surprises.

Allen indicated they will be getting their renewal quotes in the next few weeks. At this time, they are budgeting for a flat property rate and anticipate being down five to ten percent. Liability will probably be up 5 to 10 percent and probably up 5 percent for workers compensation. For health they have a quote with a 9 percent increase.

Greg stated MACO will see an increase in their property rates. Fidelity, crime and boiler and machinery will be flat. MACO is self-insured for liability so they will be looking at the high claim counties and doing a loss ratio adjustment. He will also work with the larger counties to increase their maintenance deductibles. They won't require it, but will work with them to see if they can go with a higher deductible. He thinks workers compensation will stay flat. They are also implementing loss control credits for workers compensation rates. Greg said health care is a separate program, so he does not know about that.

Jacque said she is not anticipating anything new with Rail Links reinsurance.

Northwestern Energy is in the renewal process now. They have some preliminary quotes and their excess liability is up about 13 percent due some big losses in 2009. Tana said for property insurance rates went down even though the values went up. She has not seen any rates yet for workers compensation. For auto they do a fronting policy and they self-insure, so nothing with auto rates.

Brett said everyone seems to be in a hold the line for insurance renewals. That is where the state is at also. Last year the state changed the structure of the property insurance and there are fewer carriers. Last year with taking a higher retention, there was a 5 percent reduction in the commercial excess. This year, Brett is not anticipating any increase for property. Brett is meeting with the insurance brokers next week. Brett is looking at negotiating a five percent no loss discount. Brett recently had a call in regard to a helicopter taking university students from one state owned property to another state owned property. When Brett looked through the property policy he noticed an exclusion for loss of property arising from aircraft. What that means is the building structure would be covered, but the contents of the building would not be. Brett will look at having that exclusion removed from the property policy.

The state does have an aviation policy and Bill said it could be taken out of the property policy. Brett would like to increase the limits on the business interruption policy. Tana asked if the state has ever had any business interruption loss. Brett told her that the state has never had a loss for business interruption, but there is exposure. Allen said his broker told him this is a good year to ask for some of those things during renewal.

The state has \$1,000.00 maintenance deductible on property and Brett wanted to know what everyone else has. Greg said their maintenance deductible ranges from \$1,000.00 to \$3,000.00. The counties have the option to choose which deductible they want. Brett said there is an option for agencies to choose a high deductible discount program of \$5,000.00, \$2,500.00 or \$10,000.00. Only three agencies have chosen a higher deductible than \$1,000.00.

Allen said they also have variable deductibles from \$1,000.00 to \$15,000.00. Allen also said they go up to a \$50,000.00 deductible for liability. He has a rate for \$100,000.00 and \$200,000.00 deductibles for the larger counties.

Jeff wanted to know if Brett has considered having a deductible for liability. Jeff stated if agencies had a deductible they may look at loss control and prevention more seriously. Brett said he has not considered a liability deductible. Agencies don't have the money in their budgets.

Greg said there are a couple of pools that have a co-insurance on liability. Unlike cities and counties where a lot of claims arise for law enforcement issues, Brett said the state has a wide variety of risks and causes of claims for general liability, there are hardly trends to pinpoint. He has talked about doing a non-scheduled discount for general liability, where if an agency came up with an idea for loss prevention after looking at their loss experiences and identifying trends, they would be entitled to a discount.

Allen asked that the advisory council attorneys take a look at the Montana Supreme Court Ruling, *Delaney v. City of Bozeman*. The tort limit of \$750,000.00 was not applied in this case and the city had to pay 3M. The court ruled that economic damages were not subject to the tort cap. Allen feels that it could relate to land use, right of way type issues. If a county did not grant an application for a subdivision, the tort limits may not apply based on the above decision.

Online Training

Brett asked the group if they were doing online training. Greg said MACO is starting to look into it at some law enforcement online training.

Tana said they have a program (WETS) that goes to every employee on Friday. There is a variety of subjects, like slips and falls, how to properly lift things, auto accident, etc. The training is tracked online and every employee must take it. The safety department handles the program. It only takes about five minutes and she said the employees really enjoy it. Brett asked Tana to get him the information.

Brett stated he does not think online training works as effectively as hands on training for behavioral based things. He said the defensive driving classes RMTDD conducts help people to think about their bad driving habits.

John said they have not found any corporate online vendor that was not cost prohibitive at this point. MMIA does plan on doing a partnership with schools over the next twelve months and work with their

Learning Management System and start adding their own programs. They are also trying to incentivize through grants for different pools to develop their own training programs.

Allen stated years ago they partnered with the schools and MACO to put together a video library to spread the cost. He feels that where the risks and exposures are common, it is worth looking into partnering to defray the costs.

John agreed that having a common training and partnering is something to look at. At the present time, buying into one of the national corporations is not the best way to go.

Greg said he has always been an advocate for a training clearing house for everyone.

Loss Prevention

Brett said John Duezabou is the driver safety trainer and about 2,000 employees have gone through one of his classes this year. Aric Curtiss is the property loss specialist and has been conducting property inspections.

Loss mitigation grants are offered for agencies to do training, purchase equipment or develop a process to potentially mitigate a loss

Greg said MACO does loss control credits on premiums. They used to give dividends but quit doing that.

Allen said because they are a member owned organization, it is difficult to give any city a stipend or grant because it takes money away from the other cities. They have created a risk management endowment fund and it is strictly for training. If a city wants to hire a trainer and at least 10 percent of MMIA's membership is represented at the training, they assist with the cost of the training.

Risk Management Benchmarks

Brett said RMTDD uses NAIC (National Association of Insurance Commissioners) data, even though the state is not an insurance company; Brett wants to know how the state ratios compare with the insurance industry. Brett also is a member with STRIMA and every three or four years they have an actuary do a benchmarking study and the state is always in the top twenty five percentile for the number of claims for every 100 FTE. He believes that risk management pays off.

Meeting adjourned