

Risk Management Advisory Council Minutes
May 28, 2009
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, 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, Cathy Meidinger, filling in for Deb Lopuch, Risk Management and Tort Defense Division

Agenda Item 1.

Sheryl Olson welcomed and thanked everyone for attending.

Brett Dahl thanked everyone for their support and for accepting their reappointments to the Risk Management Advisory Council.

Brett advised that House Bill 602 was one of the bills during the Legislative Session that RMTD was monitoring. House Bill 602 “Act Revising Provisions on State Owned Vehicles”, placed restrictions on employees commuting from their residence to a worksite. Senator Cohenour, whose husband is a Highway Patrol Officer, introduced the bill to the Legislative session. Employees driving to and from work in a state owned vehicle are not covered for insurance purposes. House Bill 602 prohibits employees from commuting from home to work in a state vehicle if the commute is more than 30 miles one way. There are some exceptions. If there is a written exception from the department head, the Governor’s office will review the request. Also, employees that are on-call and respond to emergency situations are exempt from the 30 mile restriction. Sheryl and Brett will be working with agencies in regard to House Bill 602.

http://\rmtd.mt.gov\advisorygroups\files\May09_HB_602.pdf

Allen Hulse said when it applies to employees commuting to and from work in a city vehicle, the decision to allow it is done at the local city level. He said they recommend that there are policies and procedures in place. The vehicle is considered covered by insurance, and based on whether the employee is driving the vehicle based on the course and scope of their duties, determines if they would be covered under Worker’s Compensation. On-call employees are typically the only employees that have city vehicles at their residence.

Greg Jackson said they basically do what Allen said the cities do. One of the bigger liabilities they have is ride alongs. Police officers may take reserve officers on a ride along for observation purposes. There have been accidents where the reserve officer has

been hurt. They do have recommended policies and it is up to the counties to implement and enforce them.

Brett said the state allows a spouse do drive if it is based on an accommodation under The American's With Disabilities Act (ADA). If an employee uses their own vehicle for company travel, they are not covered by state liability insurance. The employee's personal insurance applies.

Greg Jackson said they have three counties that officers are using their personal vehicles for work and at that time, they are insured. He said that the problem is when the vehicle is not being used for work, private carriers do not want to cover the vehicle. He stated the reason for that is the carrier has a hard time distinguishing when the vehicle is not being used for work.

The Montana Municipal Insurance Authority (MMIA) has had situations involving accidents with undercover officers using their own vehicles. Alan said they practice risk management and do training and make employees aware of the risk of using personal vehicles.

Jeff Shada said there are problems with employees going on long trips and wanting to take their spouse with them.

Montana Rail Link has contract auto carriers that will take employees that do service and maintenance work to hotels. Personal vehicle use is rare and there has to be extenuating circumstances for using a personal vehicle.

Tana Wilcox said Northwestern Energy allows gas service employees to take company vehicles home because they are on-call. They also allow employees to use personal vehicles for company travel and they cover insurance if there is an accident at 100%.

Agenda Item 2.

RMTD uses a targeted based funding approach. Premium levels are driven by targets. For general liability the target is to set premiums at a level where the estimated claims payable is less than 1 ½ times less than the reserves. Reserves are defined as the amount above and beyond all of RMTD's obligations. Case reserves on each individual claim are varied and unpredictable. Case reserves allows for fluctuations for payable claims and unexpected changes in the re-insurance market. This is referred to as a leverage ratio. http://rmtd.mt.gov/advisorygroups/files/May09_ins_fund_11biennium.pdf

Reserves for auto liability are set to assure that deductibles for auto losses are covered.

Property reserves are set to cover ten deductible losses. The property deductible is \$500,000.00.

The budget expenditures for the 2001 biennium remained constant. Budget projections were put together over 18 months ago.

Overall, premiums declined 4.2%. This is the sixth consecutive year they have declined.

For 2009, RMTD budgeted 3.9 million for property. Part of the increase was because RMTD conducted appraisals that had not been done for the past five years. Some of the properties appraised were historical sites/properties. This has significantly increased property values, which has resulted in approximately a \$200,000.00 increase in property premiums. There is no co-insurance provision in the insurance policy that dictates appraisals. It is a matter of being fair with the underwriters and ensuring properties have adequate coverage at current replacement values if there is a loss.

Alan indicated they have a similar appraisal program as RMTD. They have an in-house employee to conduct appraisals, but hire outside appraisers for high end structures and water treatment facilities.

Brett said that for the past four years, the state has had some large property losses/claims. Weather plays a big part in property claims, as well as fire and water.

Total reserves for the state will decline from 11.8 million to 7.1 million because of higher than expected losses (large settlements in 2008), higher costs for re-insurance, and lower investment income based on what has occurred with the economy.

http://rmtd.mt.gov/advisorygroups/files/May09_stmtofchanges.pdf

The state is also involved with the Libby asbestos litigation and now that the criminal trial is completed, this will be coming to the forefront and costing more money to defend, possibly up to 1 million a year or more for attorney fees.

Brett stressed that RMTD offers property and auto liability discounts for all agencies but not all agencies take advantage of the program. Property is a 10% discount for participation and 10% for auto liability. Approximately 85% of the agencies participate in the auto premium discount program and only about 70% participate in the property loss management discount program.

Alan Hulse opined that RMTD has several high risk areas that are unpredictable. This includes state prisons, out of state activities, and the Montana Highway Patrol. MMIA's reserves at the present time are two times the amount of written premiums. Alan believes that having reserves also provides additional stability to members in regard to rates. They are increasing coverage in their liability programs, but are not passing the cost down to the members at this time.

Greg Jackson said they don't have excess insurance and they are totally self-insured. They have approximately 10 million to pay about 3.2 million a year for claims. They do have out of state and federal insurance coverage and pay \$290,000.00. They include jails and civil rights actions.

Agenda Item 3.

Bill Price said that insurance industry losses are up and earnings are down. Rates are being increased, not only liability, but property also. He said 2009 and 2010 will be rough years but may begin to turnaround starting in 2011.

Alan Hulse said not much has changed for them. Liability insurance has gone up but most insurance renewals have remained flat. Property may go up, but the renewal is not completed yet. Worker's Compensation has remained steady.

Montana Rail Link insurance renewal is July 1. Jacquie Duhamme said the premiums look stable. She said this year, underwriting wanted an estimate of what would be spent for defense expenses. They also want COOP data.

Per Tana, Northwestern Energy had internal meetings in regard to what to insure. In the past, they just glanced over things. They decided not to insure properties that fell below the deductible amount. They are getting more questions from the underwriters. They looked at all the property records and readjusted some of the values. Some property values were increased to over 1 million. This was done across the three states Northwestern Energy covers. Tana said their premiums stayed flat. They did reserves for the uninsured properties. Losses have remained low in all areas of insurance. They have training and Tana believes that has made a huge difference in losses.

Greg Jackson indicated there are four primary areas where MACO has seen an increase. Jails are the primary area and they currently have three major death claims. Typically these are suicides. There are jail standards and this year the interim committee dropped them and will re-look at them next year. The second area is auto physical claims. MACO has a \$50,000.00 self-insured retention rate for auto physical damage which is rated at a property rate. Greg said about six counties are getting into the transit business which results in untrained volunteer drivers. Greg said 70% of their physical damage claims involve law enforcement. MACO has had several large property claims. One involved a roof collapsing in Lincoln County which was \$3 million dollars damage. MACO also had \$1.5 million dollar damage from wind and hail in the eastern part of the state involving several counties.

Over the past four years, there were five fire damage claims. MACO has taken a proactive stance with their insurance agents to identify unsound buildings. Currently, they have four properties they are not insuring because they are too risky. Most of the structures are located at fairgrounds. The counties are in the process of fixing these properties. MACO has a thermographic testing program which has identified at least three potential hot spots. At this time, they are designing training for loss control.

Jeff Shada said one concern is because of the budget for the state. Some maintenance is not being done and water systems are failing causing water damage. The university has been aggressive in their efforts to cut down losses from cold weather and frozen pipes.

They have an employee that goes around the buildings to make sure windows are closed and the thermostats are set at the right setting. One area in the liability area is foreign travel. They do have a foreign travel insurance policy. The issue is Worker's Compensation when someone is out of the country. They now have foreign medical coverage under their health benefits. When employees travel, part of the issue is determining if they are injured, were they in the course and scope of their work duties at the time of injury.

Brett said the state's auto liability claims are trending downward. The comp/collision claims, however, are trending upward, primarily because the state now insures the Highway Patrol vehicles. This occurred about four years ago. This adds about 60-100 more claims a year. Brett attributes a lot of the downward trend for auto losses is because of John Duezabou and the seven auto courses he conducts. This includes a van safety course for the university system. This year, 1900 state employees have taken one of the various driving classes John teaches.

Deb Lopuch, Administrative Assistant with RMTD is attending training sessions that are available and sits in on the monthly conference calls the Center for Medicare Services provides. She is also working through the computer training modules when they come available. http://rmtd.mt.gov/advisorygroups/files/May09_medicare.pdf

Brett went over the timelines for testing and actual submittal to Medicare with the council and then asked where everyone was at with getting ready for compliance.

Greg Jackson said their claims department is handling Section 111 and they have been attending the training for this. They are also setting monies aside for software changes if needed. They are working with their RIMS vendor to put a bridge to Medicare for submittal of data.

Tana Wilcox advised they are working with Northwestern Energy's third party administrators. They are hoping to use them to do the reporting to Medicare.

Agenda Item 4

Brett said the state is looking at a 10-14% rate increase based on the market factors Bill Price had talked about. The state has fully dedicated limits. Based on large property loss claims, the primary insurance carrier (Lexington) wanted the state to carry more of the burden of losses. http://rmtd.mt.gov/advisorygroups/files/May09_renewal.pdf

Brett conducted a deductible analysis using past claims/losses. At the current \$250,000.00 deductible, rates would increase by 20%, at \$500,000.00, the increase would be 10% and if the state went to a \$1,000,000 deductible, there would be no increase in the rates. The \$500,000.00 deductible was the best option so the state increased the property deductible.

Rail Link has a \$500,000.00 deductible per occurrence on property.

Northwestern Energy has a 1 million deductible.

MMIA has a \$500,000.00 deductible.

MACO had a \$50,000.00 property deductible and increased it to \$100,000.00 this year. This is not only for property, but also for crime boilers and machinery. They were in the same situation as the state and were looking at a 30% rate increase for property. There would have been no rate increase with a \$250,000.00 deductible and with the \$100,000.00 deductible a 10% increase. They took the same approach as Brett did and split the difference. Counties can choose from a \$500.00 or a \$2,000.00 property deductible with the option to buy back.

The state also has various property deductibles for agencies to choose from.

Alan Hulse indicated they are looking at a mandatory deductible increase for auto physical damage since that is where most of their losses come from. Part of the problem is that they have some areas like Billings, which could afford the increased deductible and other areas that are smaller that do not have the budget for an increase.

Brett stated the language on the certificate does not alter the language in Statue 29.101-29.305. Last year, a certificate was issued to a city and afterwards, RMTD found out alcohol was involved. Because of that, language was added to advise use of alcohol at an activity would not be covered, since it is outside of the course of the scope and duties of the employees/volunteers. http://rmtd.mt.gov/advisorygroups/files/May09_coi.pdf

Montana Rail Link gets their certificates of insurance from their carriers; they do not issue their own. MACO issues their own certificates they issue and will send a copy to Brett.

Brett said the appropriation for the allocation of premiums to agencies is set by legislation and is part of each agency's budgets as a fixed cost. RMTD's philosophy is that agency insurance premiums should be based on their loss experience and exposure. Even though Agriculture has not had a loss if a long time, they still have exposure for a incurring a claim. On the other hand, RMTD does not want an agency to have to bear the total cost of their claim, so the losses are pooled to share the cost. http://rmtd.mt.gov/advisorygroups/files/May09_cost_alloc.pdf

Auto premiums are set for both liability and comp/collision. For the comp/collision premium, RMTD charges 1 ½ times the market value of the vehicle. The liability premium is based on the number of vehicles, classification of vehicles, and the loss experience of the agency.

The aviation premium is basically the commercial re-insurance premium and the allocated and unallocated expenses. There have not been a lot of losses with aviation.

Under general liability, it covers commercial professional liability for medical and non-medical students and interns. The self-insurance program is the main component for the premium.

Property premiums are based on the value of the agency's buildings and not on loss experience. The reason for that is most property losses are accidental and not the agency's fault.

Liability premiums are allocated to 20 different agency groups. The agency can then sub-allocated to their attached to agencies. Each agency is considered an exposure group. The entire university system is considered one exposure group and premiums are allocated to each university. Losses are capped to minimize fluctuations in agency insurance premium. The allocation of premiums is a combination of changes in experience and changes in exposure from prior allocations.

Montana Rail Link has an administrative system to track the cost individual departmental claims and apportions the charges to the departments. Montana Rail Link looks at this quarterly and annually. Because Montana Rail Link has a large exposure base, they do not use capping.

Greg Jackson indicated that using changes in experience and exposure is an underwriting approach. For counties, they also have an underwriting application which counties must complete. This allows them to calculate their base liability premium. Property premiums are based on the property rate, times the value. Once the county is in the pool, MACO does adjust the liability premiums based on each line of coverage. Initially, the premium level does include experience. With each renewal, they use a loss ratio adjustment table and if a county falls below the loss ratio or goes above it, their premiums will be adjusted. They also have a loss ratio control credit and if the county achieves the criteria outlined on it, they can get up to a 5% credit in premiums. They have a boilerplate recommendation for counties to allocate back to their departments. They use 10-11 factors for underwriting policies. They have a loss rate adjustment cap of 5%, up or down.

For liability premiums, MMIA uses payroll. They establish the risks based on the annual payroll payments. They trend losses to calculate what monies need to be collected. They use a rate based on \$100.00 a payroll. This includes liability and Worker's Compensation. Then they go back and allocate based on losses for the past five years. They also use cap losses.

Agenda Item 5

Tana said Northwestern has some old waivers and they centered around people wanting to tour properties. She said their exposure comes from people on their property and they are trying to get a handle on what they will require from them.

Per RMTD's legal counsel, waivers do not make it so that a person cannot sue an entity if something happens. The courts have determined that a person cannot waive their rights.

You can require people to sign an acknowledge of risks form stating one knows the risks, their health allows them to participate in the activity, they have read, understand and will follow the rules, and finally, an affirmation they understand the warnings and are voluntarily participating. RMTD will post the acknowledgement form on their website. http://rmtd.mt.gov/advisorygroups/files/May09_waivers_of_liability.pdf

Everyone agreed that waivers do not protect companies from being sued. Alan indicated that the acknowledge form is not the same as a waiver. It does provide an argument for a company to defend themselves if something happens.

Brett asked if anyone has one to send them to RMTD and he can pass them on to the Council.

Agenda Item 6

RMTD has John Duezabou as a full-time training employee for driving courses and Aric Curtiss is the property loss specialist for RMTD. http://rmtd.mt.gov/advisorygroups/files/May09_loss_prev_mit.pdf

Per MMIA and MACO, law enforcement officers to go through the Montana Law Enforcement Academy, but after that, there is not a lot done by various entities. They are looking at the issue.

Brett is working with the Highway Patrol for more training with Michael Brave. Michael does training on the use of tasers. They have not committed to it yet, but have expressed interest.

MACO is planning a four hour internal controls training with CTF in Great Falls.

RMTD began the program in fiscal year 2009 in July. The program is offered to agencies if they can demonstrate that the funds will be used to mitigate or prevent auto, aviation, general liability and property claims. Jeff Shada used grant money to install blue light towers on campus. This allows people to go to one the stations and push a button for the light to activate and get them in immediate contact with campus security.

Grants were issued for fire protection/sprinklers. Another grant was given to the Historical Society to install racks to get invaluable items off the floor in the basement of the building.

Greg said MACO issues stipends to cities on the Worker's Compensation side of insurance. They issue five a year and cities send in applications.

Agenda Item 7

Brett discussed recent client visits with state agencies. The visits went very well and were very information. A great way to sell risk management and learn about client risks.

Agenda Item 8

There was no public comment. Sheryl Olson thanked the members of the Risk Management Advisory Council for attending and the meeting was adjourned.