

STATE RISK MANAGEMENT COMMITTEE MEETING MINUTES
MAY 27, 2009
9:00 a.m. to 12:00 p.m.
State Capitol Building, Room 152
Helena, Montana

Risk Management and Tort Defense Division Attendees: Brett Dahl, Marjie Adams, Aric Curtiss, John Duezabou, Cathy Meidinger, Kristie Rhodes and Jennie Younkin. Brett thanked everyone for coming to the meeting.

Risk Management Committee Member Attendees: Kathy Battrick, Kathy Benson, Ed Binkley, Mark Bruno, Marilyn Cameron, Sharon Caven, Kelly DaSilva, Julia Dilly, Dave Hamer, Teri Juneau, Erv Kent, Denise King, Sandy Lang, Carleen Layne, Amber McLane, Beth McLaughlin, Tom Nichols, Cory Purves, Kristie Rhodes, Esther Schneiter-Fantry, Marlys Stark, and Diane West.

Other Attendees: Donna Aldrich, Fred Lubke, Darlene Gilchrist, Cathy Doyle, Judy Little, Kathy Seacat, Katherine Dalton, and Wendy Collins.

Brett thanked everyone for coming to the meeting. Brett welcomed Sheryl Olson, Department of Administration, Deputy Director.

Agenda Item 1. **Introductions-New Members**

Brett asked new members to introduce themselves. Marlys Stark with the State Library stood and introduced herself.

Agenda Item 2. **Property/Casualty Insurance Fund**

Brett went over the bill tracking list Kristie had monitored during the current legislative session. RMTD did not have any bills they sponsored or have any they opposed. (http://rmtd.mt.gov/advisorygroups/files/May09_RMTD_bills.pdf) House Bill 602 was one bill RMTD monitored. The bill was brought to legislation by Representative Cohenour. The bill primarily affects the Highway Patrol and the Department of Justice was involved with the bill. The bill centers around employees using state owned vehicles to commute to work. This had not been addressed with the Vehicle Use Rule because commuting to work was not considered part of the scope and course of employment. There are three key elements to House Bill 602. The first one prohibits the use of state vehicles for commuting to work if the commute is over 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. The request needs to be maintained as documentation by the department. Employees that are on-call and respond to emergency situations are exempt from the 30 mile restriction. Psychiatrists employed by the state prison are also

exempt as well as employees whose worksite is the vehicle because their job is mainly traveling.

Each department will need to complete an assessment of employees using state vehicles and decide if there should be a letter of exemption for the Governor's approval if the commute is over 30 miles. Brett is meeting with the Director's office to determine if there needs to be a change in RMTD's vehicle use rule or establish a new rule based on House Bill 602.

Sheryl Olson advised the Committee the bill is effective immediately and departments need to conduct a survey on their employees using state vehicles to commute to work. If there are clarifications the Department of Administration needs to make, they are available to assist agencies.

If employees work from their home but have a state vehicle at the residence for when they do travel, Brett advised to do a memorandum for an exemption.

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

Brett moved on to budget highlights. He said there were no premium increases for this biennium. The 2011 biennium funding objectives are to maintain general liability funding at a level where estimated claims payable are less than 1.5 times the reserves.

Auto reserves are maintained to cover 4 deductible losses of \$750,000 per claim. Property reserves are set to cover 10, \$500,000 deductible losses.

Reserves are to cover unexpected losses and the cost of higher re-insurance costs. Premiums are set to hit the budget objectives and when they are met, it results premium reductions. Premiums have declined for the past six consecutive years. Overall premium reduction is .42%.

http://rmtd.mt.gov/advisorygroups/files/May09_ins_fund_11biennium.pdf

Every agency was given what their premiums were for Auto, Aviation, General and Property premiums and advised if anyone had questions to contact Kristie Rhodes.

Brett went over the changes in revenues, expenses, and reserves report. The budget was put together 18 months ago. The budget is approximately \$500,000 over the projected amount for FY09 for underwriting expenses incurred. This is primarily because of the financial markets, condition of the economy, and the costs of re-insurance increases over the past 18 months.

There has also been a decrease in the investment income earned since the market went down. Brett said even though we are not in as good a position financially as we thought, we do have a good reserve position and are financially sound.

Brett asked the Committee members to think of ways to help control costs from losses. We can't change the fact insurance rates go up, but we can try to find ways to mitigate our losses. http://rmtd.mt.gov/advisorygroups/files/May09_stmtofchanges.pdf

Agenda Item 3. Claims

Marjie Adams said weather plays a big part in property and driving claims, but especially property claims.

http://rmtd.mt.gov/advisorygroups/files/May09_weather.pdf

For auto liability claims, snowplow claims are 61% of auto claims sent in. For FY09, there has been over \$52,000 paid for snowplow related claims. Most claims are alleging windshield or paint damage from sanders being engaged.

Marjie talked about freezing weather and property damage. A lot of the damage is from frozen pipes breaking. Renne Library at Montana State University and the Mitchell Building basement had large losses from water pipes freezing and breaking. Jennie said a two inch sprinkler line in the Adams Center froze and broke. Corbin Hall had radiators freeze and break because an air conditioner unit was left in a window and another window was open.

Marjie said hail and wind are two other weather factors that cause property and auto losses. Bozeman had about 1M hail damage on the campus. Jennie talked about the micro-burst that struck the Yellow Bay Biological Station. Large trees were uprooted and several buildings were destroyed.

Marjie talked about the major water damage claim in Billings at the Military Affairs building. A water main broke underneath the building and there was 10-12 inches of mud and water throughout the building which caused the building to begin sinking. The estimated loss was 1.5M. Water damage accounts for 45% of property claims.

Currently there are three major fire damage claims.

Jennie spoke about vehicle claims. 30% of state comp/collision arises from hitting animals. To date in FY09, claims paid for animal claims are over \$116,000. Striking objects and vandalism (includes hit and run) account for another 30% auto claims. Jennie said striking parked vehicles accounts for 39% of auto claims which came as a surprise.

Marjie said RMTD received 625 claims for FY09. If a claim is filed on behalf of a claimant by an attorney, those are handled by the legal staff. Marjie and Jennie handle the rest of the claims. So far, there were 46 property losses, 3 inland marine, 5 boiler machinery, 177 comp/collision claims, 184 auto liability, 1 crime, and 207 general liability claims that were filed. A lot of general liability claims are due to contractors during construction season and those get turned over to the contractor. Other general liability claims include highway maintenance claims and personal injury claims.

Jennie and Marjie ran the report that lists the day and time accidents occur. Surprisingly, Tuesday was found to be the day most auto claims with state vehicles accidents happen. If an agency would like their auto accident trend report, call Jennie or Marjie.

For claims turnaround timeframes, Jennie said the average time from when an accident/incident happens until RMTD receives the claim, is 20 days. Average days to pay on a claim is 41, and average resolved days is 54. Property loss claims stay open longer than vehicle claims. The reason it takes a long time for RMTD to receive a claim, claimants may not submit them to Transportation or RMTD right away.

Jennie said that agencies can call to see how a claim turned out.

Agenda Item 3. d. Medicare Primary Payer Requirements

Brett wanted to let the Committee know that this new law does affect RMTD if a claimant is a Medicare beneficiary and there are medical claims, or a settlement that includes medical care amounts. Deb Lopuch is tasked with helping RMTD implement what needs to be done to comply with Section 111 Medicare as a secondary payer. It will require on-line reporting. Failure to comply is \$1,000 a day per claim. Reporting begins January 1, 2010. http://rmtd.mt.gov/advisorygroups/files/May09_medicare.pdf

Agenda Item 3. e. 24 Hour Answering Service

Brett said RMTD is checking into a 24 hour answering service. He said that when the Mitchell Building flooded in December, it took a couple of hours to locate people. The flooding happened on weekend at night. The answering service would be for after hours and weekends.

Agenda Item 4. Property Loss Management Update

Aric said RMTD does property inspections for state owned properties to identify areas that could be hazardous and cause a claim. Inspections are conducted throughout the year by Aric and consultants. Some of our insurance carriers will send their people to do inspections. Locations are selected by value, high risk and geographically. After each inspection, the Risk Management contact and the person that met with Aric at the site will get a detailed report. Recommendations from the report are only that. The agency does have to acknowledge they have seen the report even if they don't follow all the recommendations. Approximately 100-150 inspections are conducted each year. If an agency wants an inspection on a building done, contact Aric.

http://rmtd.mt.gov/advisorygroups/files/May09_prop_review_map.pdf

Aric then talked about property appraisals. State owned properties; leased buildings are appraised. The goal is to conduct appraisals on sites that have not been appraised in the last three or four years. Appraisals are done geographically like inspections. RMTD hires

contract appraisers. There are two types of appraisals; historic and standard. For historic properties, there is a company that RMTD uses that specializes in historic properties. Appraisals are based on what it would cost to replace the building, not on the market value. Appraisals include the structure and the contents of the building. Special contents in buildings are not part of the appraisals. Agencies need to enter special content values on PCIIS. When the appraisal reports are submitted to RMTD, Aric sends them to the agency for their review. When the agency returns the appraisals to RMTD, Deb Lopuch updates the property information on PCIIS.

http://rmtd.mt.gov/advisorygroups/files/May09_appraisals.pdf

RMTD also applies inflation factors to property values every year or every other year based on what is occurring with building values and appraisals. Based on the appraisals done in the past few years, the state property values have increased by millions of dollars, which in turn, makes insurance rates go up.

Agenda Item 4. c. Property Loss Management

The state has about 4,300 properties to insure. Aric talked about the property discount program and the 10% property insurance discount for agencies that participate. Agencies are encouraged to use the monies saved on premiums for property loss management measures. The date for electing to participate is June 15th. Aric sends binders to the risk management contacts to complete and provide documentation for property loss management measures.

http://rmtd.mt.gov/advisorygroups/files/May09_prop_loss_mgmt.pdf

<http://rmtd.mt.gov/insurance/files/propertylossmanagementpremiumdiscount09.pdf>

Agenda Item 5. Insurance Update

Kristie went over 2-9-305, MCA, which outlines that employees working in the scope and duties of employment, are covered under the state insurance. RMTD does get questions in regard to when employees are covered/not covered.

Kristie reminded everyone about requesting Certificates of Insurance; when to request them and what information is needed by RMTD to complete one. Requests can be sent to Kristie or Deb Lopuch. Kristie advised that the certificate has been revised to add language in regard to the use of alcoholic beverages at state functions. Coverage does not apply to any injury or damage that arises from the use of alcoholic beverages. This was changed about two months ago. Call Brett or Kristie if you have any questions.

http://rmtd.mt.gov/advisorygroups/files/May09_coi.pdf

Agenda Item 5. c. FY10 Insurance Market Outlook

Brett said right now the outlook right now is unpredictable with the changes in the overall economy/market with the investment income. For FY09 RMTD projected 2.8M from investment income returns and for FY09 RMTD budgeted for 1M causing an over 1.7M

loss. Guy Carpenter & Company conducted a survey and found the re-insurance rates on the average increased 11% at the January 1, 2009, renewal. The re-insurance rates for April 1, 2009, renewals increased between 10% and 14%. Some of the market factors as Brett stated previously, was the loss of investment assets with the uncertain financial market. Because of large catastrophic losses (tornados, hurricanes) the capacity to obtain higher limits and broader coverage is not what it had been in the past couple of years. Brett said in the past, underwriters had not been as concerned with program specific losses, but this year they took a close look at the program specific loss history the state had. That was from FY03 through FY09. The state had several large property losses; the State Prison fire, the Fish Wildlife and Parks fire at Spring Meadow Lake, the Military Affairs National Guard building in Billings which was over 2M in property damage. Out of over 8M property loss claims, the commercial carrier paid over 6M and the state paid a little over 2M. Based on that, Brett had to look at changing the deductible for property or have a 20% premium increase. After he did an evaluation, the deductible was raised from \$250,000 to \$500,000 with a 10% premium increase. The state has Lexington and not AIG as an insurance carrier. http://rmtd.mt.gov/advisorygroups/files/May09_renewal.pdf

Agenda Item 5. d. TULIP (Tenant/User's Liability Insurance Program)

TULIP is a special events insurance program. This covers non-traditional events that involve people that are not state employees but want to use a state facility for an event. The program has three different hazard schedules based on the risks of the event. The state is named as an additional insured and the requestor does not have to obtain outside insurance on their own. The agency can complete the form and submit it for review to RMTD. Brett and the Driver Alliant brokers are doing an orientation for TULIP on June 4, 2009. Brett encouraged committee members to attend the orientation. http://rmtd.mt.gov/advisorygroups/files/May09_tulip.pdf

Agenda Item 5. e. Waivers of Liability

Brett wanted agencies to be aware of a recent Supreme Court decision that held pre-activity Waivers of Liability are illegal and against public policy. Basically waivers are used to deter people from suing someone if they are injured. The courts say people cannot waive their rights to sue. The courts did say you can have people sign an acknowledgment of risk form that outlines and explains the risks and dangers of an activity. You can include a statement the person has the ability to participate and their health allows it and an affirmation the person understands the warnings and is voluntarily participating. Ty Jones with RMTD, put together some samples of acknowledgment risk forms. Brett asked the members to pass this information on to their legal counsel. The information will be posted to RMTD's website. http://rmtd.mt.gov/advisorygroups/files/May09_waivers_of_liability.pdf

Agenda Item 6. Loss Prevention

John Duezabou talked about auto loss prevention and the auto premium discount offered by RMTD. The discount is offered annually. A lot of effort has gone into training for auto

loss prevention. So far in FY09, there have been 105 classes conducted with 1,875 students participating. In FY09, John switched from the 6-Hour Defensive Driving class to the 4-Hour Defensive Driving class.

John discussed the loss mitigation grant program. If an agency needs money to take some loss prevention steps, they can apply for a grant and submit them to RMTD. The money needs to be spent to reduce the likelihood of an agency incurring a claim.

The grant application is on the RMTD website under loss prevention.

http://rmtd.mt.gov/advisorygroups/files/May09_loss_prev_mit.pdf

Agenda Item 7. Insurance Exposure Reporting Issues

Kristie advised that agencies can now access/enter data on PCIIS for their vehicle comp/collision additions or ending coverage. Users had not been able to do updates for the last couple of months. She said all the updates submitted to RMTD have been completed. The date to have all exposure data entered/updated was changed to November for completion by the agencies by January 15th.

Kristie said RMTD has added a new responsibility for Risk Management Committee members under policy 2.02. Item I ask that risk management members ensure state drivers involved in an accident which results in a claim attend a driver training course.

<http://rmtd.mt.gov/aboutus/files/rmc.pdf>

Agencies can check their accident reports on the RMTD website under the claims/state agency loss reports. If anyone forgot their password, call Jennie and she can reset it

http://claimweb.doa.mt.gov/claim/CLAIM_WEB_REPORT.index.htm

Agenda Item 8. Client Visits

Brett thanked his staff for putting together their presentations and thanked all the members for attending.

Brett asked the members if they have any suggestions for the next client visits, please let him know and thanked everyone for helping set the client agency visits up and taking the time to meet with the RMTD staff.