RISK MANAGEMENT ADVISORY COMMITTEE (RMAC)

Meeting Minutes
January 19, 2021

A meeting of the State Risk Management Advisory Committee was held on this date in the East Conference Room, Joe R. Williams Building, Boise, Idaho. Chairman Reynolds called the meeting to order at 1:30 p.m.

Members Present:
Keith Reynolds, Director, Department of Administration (DoA) and Committee Chair
Faith Cox, Administrator, Division of Insurance and Internal Support, DoA
Senator Steven Thayn
Susan Buxton, Administrator, Division of Human Resources (DHR) (as of about 2:10 pm)
Josh Tewalt, Director, Idaho Department of Correction (IDOC) (via conference call)
Charlene McArthur, Idaho Transportation Department (ITD) (via conference call)
Kip McBean, Boise State University (BSU) (via teleconference)

Members Absent:
Representative John Gannon

Others Present:
Steve Bailey, Deputy Director/CFO, DoA
Kris Coffman, Risk Management Program Supervisor, Office of Risk Management (ORM)
Kristie Fields, Technical Records specialist, ORM
Tim Erikson, Claims Adjudicator, ORM (via teleconference)
Diane Blume, Program Specialist, DoA

APPROVAL OF MINUTES

MOTION: Ms. Cox moved, and it was seconded by Ms. McArthur that the minutes of the September 8, 2020 Risk Management Advisory Committee meeting be approved as written. The motion passed unanimously. Ms. Buxton was absent from voting.

FINANCIAL REVIEW

FY20 – FY22 Cash Analysis Report, ending 12/31/20

Mr. Bailey provided three separate financial reports for the Committee beginning with the Cash Analysis for administering the risk program along with each of the eight lines of coverage. Three tables were included in the report showing actual cash positions for the full year of FY20, current fiscal year actuals up to December 31st, and projections for FY22.

The FY21 actuals table shows that overall, the program is in good shape financially, he said. This is evident by the healthy balances and by those ending sums that exceed the estimated unpaid losses, which are the anticipated unpaid financial liability for each line of coverage. An item of note on this report is the elimination this year of the insurance premium for Cyber Liability, due to the transition to self-insurance. Being self-insured is also the reason why the ending balance is significant when compared to the estimated unpaid loss, which will cover the state in case of a catastrophic cyber event, he explained.

The second report shows the FY21 variance to budget as of December 31st for each line of coverage, with the total variance for all lines of coverage identified. The total program is $628,373 over the projected cash balance, with the primary driver of this being the controllable expenses which was $573,545 under projection. This is highlighted, he pointed out, on the third report which is a summary of the variance between projected and actual Expenses and Claims. All lines of coverage are below the projected numbers except Inland Marine, he said. This coverage is for small mobile assets that are valued at less than $2,500, such as office technology. Claim amounts for this coverage are higher than anticipated primarily due to employees moving from their office to home during the pandemic which has caused some damage to computers and printers as equipment was transported between the two locations.

Overall, he concluded, costs are down largely due to the pandemic. Courts are not in session so there are not as many cases heard, less employees driving, and there are fewer people occupying facilities, for example.

UPDATE FROM STATEWIDE RISK MANAGER

New Risk Management Information System (RMIS) Update

The state entered into contract with Origami about a year ago for a new system for Risk Management and the Industrial Special Indemnity Fund (ISIF), Ms. Cox explained. The ISIF portion of the project has gone live and just in time, she said, because the old system had an expiration date of 2021. There are two components for Risk—one for claims and one for underwriting. The claims component is on track to go live on February 1 while the underwriting portion will be tested by various agencies entering data into the system. The remainder of agencies will be trained in late February and the old system taken down on March 1st.

With reorganization of the Division of Insurance and Internal Support, the scope of the Committee's purview has been expanded to include the ISIF, Chairman Reynolds pointed-out. This program is an off set of Workers Compensation and came about after World War I to encourage employers to hire disabled veterans. The program is dwindling although there are a couple hundred individuals who still receive a monthly annuity, and new claims continue to come in, he said.

Litigation Update and Current Claim Trends

As mentioned earlier, Ms. Cox pointed out, the litigation process has been much slower since the pandemic began. In fact, courts are pushing for mediation on claims that would normally not be considered for mediation in attempts to accelerate them through the process. Nevertheless, law enforcement-related claims are on the upturn. Employment-related claims are down 50% but continue to be driven by attorney fees. For example, $980,000 of attorney fees were paid for the most recent whistleblower claim with an award of $30,000.

Even though auto-property damage is down, rear-end accidents have been increased 100%, she continued. Prison inmate litigation remains steady.

Tiered Deductible for Employment Claims

Prior to July 1, Ms. Cox continued, Risk Management paid all claim damages while agencies were responsible for wages and benefits. The concept was that if an agency makes a poor decision on an employment decision, it will have a share in the cost, if litigated. However, this arrangement made it difficult for Risk to manage the litigation, plus it drove up costs. Often the agency didn't have funding available for its share of the unexpected settlement.

As of July, Risk will cover wages, benefits and damages while agencies will have a $10,000 deductible. This makes it easier for Risk to negotiate settlements because it doesn't need to negotiate with agencies on their portion of the settlement amount. Nevertheless, she said, agencies should have incentives for best practices to reduce the potential for high-cost litigation. A tiered deductible model is being considered to include a $50,000 deductible if an agency doesn't adhere to protocol, but it would drop to $10,000 as an incentive for best practices. This topic will return on the agenda for the Committee's May meeting as an action item, she said.

One reoccurring bad practice is agencies rehiring poor performing state employees from other agencies. Recommended are background checks for all new employees and if hiring a current or past state employee, a review of personnel files. Another identified problem is agencies making adverse employment decisions without having an outside review of the contemplated action. Risk Management proposes agencies be required to solicit an independent review that supports the employment decision. If a claim comes in and it shows that a termination was warranted, for example, and there was justification by an independent review, then a $10,000 deductible would be applied. Should a suit be filed and there was no independent review, a $50,000 deductible would be warranted. The outside review could include an independent Deputy Attorney General who is not assigned to the agency, the Division of Human Resources, or outside counsel.

Often adverse decisions take place with no risk involved, so instead of a comprehensive requirement, it may be left up to the agency to determine whether a situation requires an independent review, Chairman Reynolds noted. If a lawsuit occurs, the agency can show that it exercised due diligence and a lower deductible would be applied. The Governor's Office has been supportive of this idea, he added.

Director Tewalt remarked he is supportive of the proposal but cautioned that the Attorney General's Office be ready and resourced for this added responsibility. He noted that IDOC already has a special investigation unit to conduct personnel investigations with assistance from Human Resources and legal representation. His concern is adding on unnecessary delay in the process while employees may be out on paid leave. Ms. McArthur echoed these concerns. Chairman Reynolds responded the idea is to not to add an additional burden on agencies; this recommended practice is targeted to incentivize smaller agencies that do not have a review structure in place. Ideas how to implement the recommendations will be circulated to human resource professionals and others, and perhaps a subcommittee put into place to hash out the details, he concluded.

Litigation Roundtable Update and Fall Training Forum Update

Ms. Cox explained that every other June Risk Management sponsors a litigation roundtable. This year, with the help of a trial consultant, it will be scheduled virtually.

Further, each year in September a Fall training forum is held but this year it will be cancelled, she said, due to unknowns with the pandemic. Well over 100 individuals typically attend.

Idaho State Risk Management Association (STRIMA) Update

Idaho is scheduled to host the annual STRIMA conference this year from August 28 to September 2. It had been scheduled for last year but because of the pandemic was postponed. Contracts are in place with the Grove Hotel, but the keynote speaker has yet to be identified.

Cyber Insurance Premium Allocation Methodology Discussion

As mentioned earlier, as of this fiscal year cyber insurance coverage is self-funded. There have not been any large cyber breaches, and because of good experience, Ms. Cox pointed out, there will be substantial reserves long term. A large data breach, however, would erode that amount very quickly. Even smaller breaches can cost up to $50,000 and on top of that are added costs for credit monitoring. Two years ago, there was a small breach impacting less than 100 individuals and the final claim cost was almost $100,000.

Currently, premium allocations for cyber insurance are rated by agencies' sensitive record count. The Office of Information Technology Services has recommended that additional factors be applied to determine premiums such as phish-prone score, agency training, verification that agencies are patching their systems, as well as sensitive records count. The new RMIS system will make it possible to apply these criteria.

Reinsurance Renewal

The state maintains reinsurance coverage for events that are not covered by the tort cap limit which in Idaho is $500,000, Ms. Cox explained. The reinsurance policy covers the state up to $10 million. A Lloyd's of London company, Brit, has provided reinsurance coverage for the past few years but has recently decided to pull out of the market for public entities. It has had several large losses recently due to wildfires, civil unrest, and the Covid-19 pandemic. The state's broker is looking into other sources of reinsurance for the state, but it may be difficult to find a carrier interested in providing coverage at all. Each April the state's actuary provides the amounts needed from agencies to stay financially sound. This year, she said, she is asking the actuary to provide projections should the state go self-funded for reinsurance. No claims have been paid on the reinsurance policy over the past 10 plus years.

OTHER BUSINESS

The proposed schedule for 2021 meetings of the Risk Management Advisory Committee is:
Tuesday, May 18, 1:30 pm
Tuesday, September 21, 1:30 pm

ADJOURNMENT

Senator Thayn moved and it was seconded by Ms. Buxton that the January 19, 2021 meeting of the Risk Management Advisory Committee be adjourned at 2:25 pm. The motion passed unanimously.

Diane K. Blume

Diane K. Blume, Program Specialist
Department of Administration