

# RMPE 352 Risk Management for Public Entities

Presented by:  
Erike Young, MPPA, CSP, ARM-E

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## Chapter 6

### Claim and Litigation Management for Public Entities

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### *Educational Objectives*

1. Describe how responsibilities for the handling of legal claims involving public entities are frequently divided among the entities, their insurers, and third-party administrators.
  2. Describe the procedures by which legal claims against public entities are typically processed.
  3. Explain how these claim processing procedures can reduce the size and unpredictability of a public entity's liability losses.
  4. Describe how the procedures for recording, analyzing, and auditing the legal claims involving a public entity facilitate the effective management of these claims.
  5. Describe the elements and strategies of litigation management for a defendant public entity.
6. Explain how litigation management can reduce the size and unpredictability of a public entity's liability losses.
  7. Define or describe each of the Key Words and Phrases for this chapter.

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## Claim and Litigation Management for Public Entities

- ▶ Claims management has direct effect on other risk management functions of identifying, and financing risk, as well as loss control
- ▶ Claims management also impacts public administration
  - Economic impact of claims on budget
  - Public relations impact
  - Efficiency of service delivery
  - Management accountability

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## Claim and Litigation Management for Public Entities

- ▶ Risk management professionals have 4 primary responsibilities regarding claim management
  - Act as a facilitator between staff, adjuster staff, and sometimes claimant
  - Identify and monitor politically sensitive claims
  - Auditing of claim function
  - Notify claims personnel of all situations that are likely to give rise to claims

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## Claims Administration Responsibility

- ▶ First decision regarding claims administration is to determine who will administer
  - Internally
  - Third-party administrator (TPA)
  - Insurance provider
  - Combination of three
- ▶ Considerations
  - Preference to have hands-on control or manage work of outside firm
  - Preference to review claims or only make payments
  - Advantage of referring employees to outside firm if claims are denied
  - Documentation requirements
  - Expertise and ability to pay for expertise

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## Claims Administration Responsibility

- ▶ Usually a combination of methods is used as different lines of coverage have different frequency and staffing needs
  - Property and GL claims more likely to be handled in-house
  - WC is likely to be done by insurance carrier, risk pool staff, or TPA

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## Claims Administration Responsibility

- ▶ Provider-Controlled Claim Administration
  - Occurs when an insurer or another outside provider funds to pay an organization's losses manages the administration of claims it pays
  - Includes insurance carriers and risk pools handle claims as part of providing coverage
  - Coverage provider administers losses within a deductible, but entity must administer retained losses of the same amount (difference between high deductible program and excess insurance)

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## Provider–Controlled Claim Administration

- Discuss the loss adjustment philosophy of the entity with the claim representative. In some cases, a replacement product or service may be offered instead of money. In other situations, the entity may wish to settle claims that are open to debate or litigation in order to save long-term adjustment expenses and preserve citizen satisfaction and employee morale. Risk management professionals can relay these decisions to the insurer's claim representative.
- Request in writing that the insurer advise the entity of pending settlements or denials that will exceed agreed upon amounts or that involve sensitive issues.
- Request that the claim department advise the entity of any changes in reserves of individual claims or of any settlement offers that may be received from the claimant or the claimant's attorney.
- Obtain the right to review all open claims files before experience modifications and retrospective ratings are calculated. This can be done by modifying the Inspection and Audit clause of insurance policies. This clause allows the insurer to retain the right to inspect and audit the entity's books and records relevant to the policy. These same rights can be given to the entity when relating to claims files of the insurer.
- Endorse a requirement that all losses be reported to the risk management professional and other selected officials immediately after the occurrence. In this way, the clause covering the entity's responsibilities in the event of an occurrence, claim, or suit can be addressed.

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## Claims Administration Responsibility

- Third–Party Claim Administration
  - Occurs when a claim is administered by a party other than the entity against which a claim is made or the entity is responsible for the claim
  - Allows for more flexibility and efficient approach to meet program needs.
  - Allows for change in service providers
  - Easier to respond to changing workload requirements
  - Adjuster more likely to be seen as an impartial, independent third party

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## Claims Administration Responsibility

- ▶ Third-Party Claim Administration
  - Selection Considerations
    - Philosophy
    - Performance guarantees
    - Accuracy of payments
    - Accuracy of reports
    - TPA Agreements

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## Claims Administration Responsibility

- ▶ Internal Claims Administration
  - Occurs when an entity manages its own first-party or third-party claims, regardless of whether those claims are retained or transferred to an insurer.
  - Primary reason for internal administration is control of claim process, as claims tend to be largest risk management cost
  - Volume and cost are two criteria to consider when determining to go internal or external
  - Main disadvantage
    - Puts public employees in awkward position of handling claims for co-workers
    - Confidentiality issues

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## Claims Administration Responsibility

Although these problems can pose challenges to internal claim handling, the challenges are not insurmountable. Some suggestions on how to deal with these problems include the following:

- Designating one employee to handle all employee-related claims
- Establishing protocol in writing
- Establishing procedures for investigation, record keeping, and reporting settlement
- If confidentiality is an issue, determining the procedure to ensure confidentiality from those who will handle investigations and reporting and those who will type the reports
- Limiting access to the computer on which confidential information is stored
- Developing a procedure to ensure that confidential information cannot be intercepted at a printer if shared printers are used on a network

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## Claim Processing Procedures

▶ Claims administrators should have claim manual that establishes standards for the following:

- Qualifications of the claim personnel, such as education, training, and professional experience
- A description of every activity in which the entity is engaged and every program that might generate a claim
- Procedures for handling claims, from initial report to disposition
- The number and types of claims that individual processors will handle
- Expectations in terms of communication with various entity employees

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## Claim Processing Procedures

### ▶ Claims Handling Policies

- File creation
  - Should be created within 48-hours (three point contact)
- Assignment
- Acknowledgement letter
  - Sent within 48 hours
- Incident report
- Settlement
  - Establish claim philosophy regarding types of claims it will pay outright, seek to negotiate, or defend.

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## Claim Processing Procedures

### ▶ Claims Handling Policies

- Settlement Authority

The entity should also develop a policy specifying who has settlement authority at various dollar levels. For example, an entity may establish the following scale:

<u>Amount of Claim</u>	<u>Settlement Authority</u>
≤ \$5,000	Claim representative
\$5,001 – \$10,000	Risk manager
\$10,001 – \$25,000	Chief executive
> \$25,000	Governing board

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## Claim Processing Procedures

- ▶ Claims Handling Policies
  - Subrogation
    - Notification of rights
    - Payments
  - File closure
    - “Best claim is a closed claim”

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## Claim Processing Procedures

- ▶ Investigation (accident investigation)
  - All accidents and near-misses incidents should be investigated
  - Most states require accidents to be investigated and reported in certain cases
  - Responsibility and Instruction
    - Who conducts an investigation depends on nature of accident, severity, and effects that it may have on organization
      - Supervisor
      - Structured committee
      - Safety professional
      - Other resources

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## Claim Processing Procedures

- ▶ Investigation techniques
  - Physical evidence
  - Interviews
    - Listening skills
    - Body language
  - Investigation report (p. 267)
  - Accident analysis
    - Environment
    - Equipment/machinery
    - Human errors
    - Management
    - Natural phenomenon

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## Claim Processing Procedures

- ▶ Fraudulent or Frivolous Claims – situations that should be investigated
  - A “perfect” story
  - A “blind accident,” in which an accident occurred without any witness
  - Kinship or close friendship between the claimant and a key witness
  - The claimant’s history of being the “victim” of numerous accidents
  - Eagerness for a quick settlement disproportionate to the apparent real value of a claim
  - Refusal to submit to examination
  - Evidence of physical discomfort (nervousness is natural, but increasing hostility or pain is not)
  - Inconsistent memory
  - Eagerness to explain away fictitious facts

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## Claim Processing Procedures

- ▶ Corrective Action – Primary outcomes of effective claims administration is to identify corrective actions.
- Study all of the operating methods and practices.
- Provide training to minimize the human factors that contribute to accidents.
- Disclose to management the unsafe practices that will necessitate employee training or changes in work methods.
- Provide supervisors with information about the principal hazards and unsafe practices in their own areas. This information will result in more effective discussions with employees and initiate prompt changes in the work environment.
- Discipline when mandated. Many organizations assess a financial responsibility against individuals whose failure has caused injury or loss.

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## Claim History and Recordkeeping

- ▶ An organization's claim history is the best way to predict its future claims
- ▶ Can be used to:
  - Negotiate insurance premiums or risk pool contributions
  - Demonstrate effectiveness and importance of risk management activity's to governing board
  - Crucial to success of loss control efforts
- ▶ Data on past losses must be complete enough to serve as a foundation for predicting future losses

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## Claim History and Recordkeeping

- ▶ Reserves
  - Public entities must ensure that they have sufficient funds to pay for legitimate claims
  - Must establish reserves to pay for anticipated losses
  - Funding should be calculated at least partially on the basis of loss experience.
- ▶ Confidence levels
  - Considered to be a contingency margin
  - 50% is considered the expected level
- ▶ Discounting
  - Process for determining the amount of money needed now in order to build through investment earning a specified sum at some future date.

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## Claim History and Recordkeeping

- ▶ Long-Term Investments
  - Funds that will not be needed until far in the future
- ▶ Actuarial Studies
  - Helps determine the adequacy of reserves
  - Estimates of future losses based on past losses
- ▶ Claims Audits
  - Frequency of claim audits
  - Claim auditor qualifications / selection
  - Phases of an audit
    - Pre-audit planning
    - The Audit
    - Post-Audit Analysis

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## Litigation Management

- ▶ Litigation Management
  - Encompasses all actions for achieving the desired results from a lawsuit
  - Ultimate objective is to protect the entity's resources by reducing cost

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## Litigation Management

- ▶ Components of a Lawsuit
  - Summons and Complaint
  - Discovery
    - Interrogatives – written questions
    - Requests for production – request for documents
    - Depositions – oral questioning
    - Request for Admissions – asks a party to admit truth of certain elements of case
  - Motions
    - Motion in Limine – request to limit evidence
    - Motion for Summary Judgment – request for judge to decide all or part of a case

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## Litigation Management

- ▶ Components of a Lawsuit
  - Settlement Negotiations
  - Trial
  - Post-trial activity

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## Litigation Management

- ▶ Standard Procedures
  - Written procedures
    - Actions to be taken when lawsuit is served
    - How defense counsel is selected
    - Who manages litigation
    - Format for reporting
    - Who has authority to make policy/settlement decisions
    - Standards for evaluating legal services
    - Who will carry out remedial actions based on outcome

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## Litigation Management

- ▶ Standard Procedures
  - Litigation strategy
    - Development of litigation plan that specifies actions to be taken and anticipated timetable
    - Should include budget
    - Regularly updated and communicated to risk manager
  - Risk management role in litigation
    - Must be actively involved in process in order to evaluate a case and make a valid assessment of potential exposure
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## Litigation Management

- ▶ Standard Procedures
  - Choosing and working with an Attorney (p. 289)
  - Administrative Issues
    - Staffing
    - Reporting and communication
    - Billing procedures

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# Litigation Management

- ▶ Alternative Dispute Resolution (ADR)
  - Formal systems that are less structured and much less time-consuming than tradition litigation
  - ADR methods
    - Negotiation
    - Mediation
    - Arbitration
    - Mini-trials
    - Structured Settlements