Risk Management 101

Introduction and Welcome

Embracing a safety culture is part of good risk management and is critical to protecting your city or town’s assets.

Fundamentals of Loss Control
Identify Exposures

Examine Options

Select Implement

Decision-making model for risk management program

Identifying Loss Exposures

• Determine:
  – Types of value exposed to loss
  – Perils that could cause a loss
  – Potential consequences of a loss

Types of value exposed to loss:

• Property
  – Tangible
    • Real
    • Personal
  – Intangible
• Liability
  – Net income
  – Personnel
• Perils (cause of loss):
  – Natural
  – Human
  – Economic
Consequences of a Loss
Impact on common objectives:
• Continuity of operations
• Stable revenues and expenses
• Humanitarian concerns
• Fulfillment of legal requirements

Identifying Loss Exposures
• Surveys and questionnaires
• Loss histories
• Financial statements
• General records and documents

Identifying Loss Exposures
• Flow charts
• Personal inspections
• Consultation with experts
Examining Risk Management Options

- Avoidance
- Loss control
  - Loss prevention
  - Loss reduction
- Risk retention
- Risk transfer
  - Hold harmless / indemnification provisions
  - Insurance

Selecting Program

Establish priorities:
- Forecast frequency and severity of losses
- Effects of risk control or risk financing
- Costs of implementation and monitoring
Selecting Program

Also consider:
- Organizational objectives
- Political climate
- Entities risk tolerance
- Legal limitations
- Budget

Implementing Program

- Technical decisions - what
- Managerial decisions - how
  - Plan the program
  - Communicate to various constituencies
  - Lead the organization
Loss Control Report Card
City of Somewhere
For Year Ending 2013
Data as of 12/31/13

Risk Management Services

Hazard Awareness
Hazard

Any condition or practice that has the potential to cause harm, including injury or death to persons and damage to property.

Awareness/Recognition

• Critical part of any safety program
  “can’t fix what you don’t know”
• General Rule of Thumb:
  If it looks like it could cause a problem, then it probably IS a problem.

Paying Attention
Three Steps of Hazard Recognition

- **Identification**
  - Observing unsafe conditions and employee work practices (inspections)
  - *Take time to look*
- **Analysis/Evaluation**
  - Analyze/Evaluate/Prioritize
- **Control**
  - Eliminate or control

Basic Methods to Identify Hazards

- **Informal/Formal Observation**
  - Work practices
- **Comprehensive Surveys**
  - Takes advantage of employee hazard awareness
- **Individual Interviews**

Basic Methods to Identify Hazards

- **Walk-around Inspections**
  - Able to locate hazardous conditions and unsafe work practices
- **Documentation Review**
  - OSHA logs, claims, inspections, safety committee minutes, etc.
Why Hazard Assessments are **Not** conducted

- Belief that no significant incidents have occurred
- Reliance on insurance coverage/outside risk control to manage risks
- Misconception that simple checklists are adequate

Why Hazard Assessments are **Not** conducted

- Fear of discovering/documenting certain risks that may be difficult to address
- Lack of knowledge and/or resources to perform an assessment internally
- No management mandate or requirement to do so

Hazardous Conditions

May be grouped into three categories:

- Physical hazards
- Environmental hazards
- Behavioral hazards
Physical Hazards

Encompass a wide variety of conditions found in our buildings, parks, roadways, and work sites

- Slip, trip and fall hazards
- Fire hazards
- Shock hazards
- Pinch, crush and cut hazards
- Ergonomic hazards
- Collision hazards
Environmental Hazards

- Exposure to toxic chemicals
- Dangerous working conditions
  - high noise, poor lighting, extreme heat or cold
- Exposure to inclement weather
  - ice, snow, high wind, lightning
- Exposure to biological hazards
  - HIV, hepatitis, West Nile virus
Behavioral Hazards
Behaviors account for the majority of workplace accidents.
Include at-risk behaviors by employees and the general public:

• Failing to follow established safety rules or procedures
• Working under the influence of drugs or alcohol, while tired, or after taking prescription medications that cause drowsiness
• An act of workplace violence by a citizen, employee, or a combative person resisting arrest
Hierarchy of Controls

9/15/2014

Summary

• Hazards can be physical, environmental, or behavioral

• Look for possible hazards originating with people, equipment, material, or environment
  – Consider consequences of misuse, lack of maintenance, error, etc.

• Evaluate and prioritize

• Take action to eliminate or control

• Document and communicate results

Poor Communication
Assistance

- OSHA
  - www.osha.gov
  - Standards, general information
- SC OSHA
  - www.scosha.llronline.com
  - Training, consultation, publications, reporting

*Take advantage of SC OSHA consultations. Recommend doing an industrial hygiene survey (inventory of hazardous materials, review HAZCOM plan, air sampling, noise levels, etc.)

Incident or Accident Investigation
Why Investigate?

- Find the cause and prevent similar events
- Determine the cost of an accident
- Determine compliance with applicable safety regulations

When to Investigate?

- Immediately - within 24 hours

Gather Data

- Physical
  - Site evaluation
  - Collect evidence
  - Photos, sketches, measurements
- Human
  - Interviews, contact info for follow up
Gather Data

- Documents
  - Inspection logs, incident report
- Other research
  - Manufacturer’s website

What should be investigated?

- Injuries
- Illnesses
- Property damage
- Near misses

Why Investigate Near Misses?

- Prevents or mitigates injuries
- Improves safety
- Saves lives
Root Cause Analysis

Sam slips and breaks wrist in public works shop

Why?
- Coolant on floor
- Leaked from machine

Why?
- Seal damaged
- Machine had not been inspected

Why?
- No preventive maintenance program
- Or program not followed

Who Should Investigate?
- Trained staff
  - LocalGovU
- Supervisor
- Employee input
- Safety coordinator

What if…employee admits fault
Do you still investigate?
Indirect Cost of Accidents

- Training and paying replacement workers
- Repairing damaged property, equipment
- Investigation and corrective action
- Lost productivity, low morale, increased absenteeism
- Poor customer and community relations

Interviews

- Conduct separate, private interviews
- Ask open-ended questions
- Repeat narrative to witness
- Ask them to clarify

Contributing Factors

- Environmental
- Design
- System or procedure
- Human behavior
Root Causes of Accidents

- Unsafe acts
- Unsafe conditions
- Inadequate procedures
- Personal factors

Control of Accident Causes

- Eliminate the hazard
- Engineer to reduce hazard
- Educate and train
- Enforce safe work habits

Unsafe Acts

- Unauthorized operation
- Failure to secure
- Failure to warn
- Removing safety devices
- Using defective equipment
Unsafe Acts

- Working at unsafe speeds
- Using equipment unsafely

Unsafe Acts

- Unsafe position or posture
- Servicing moving equipment
- Horseplay
- Not using PPE
- Riding equipment
Unsafe Conditions

- Guards and safety devices
- Warning systems
- Fire/explosive hazards
- Unexpected movement
- Housekeeping

Unsafe Conditions

- Protruding objects
- Atmospheric conditions
- Defective tools and/or equipment
- Poor lighting
- Personal attire
Job Factor Warning Signs

- Poor communication
- Lack of supervision
- Poor materials handling/equipment use

Job Factor Warning Signs

- Poor training
- Poor indoctrination
- Poor follow-up
- Lack of safety rules
“Every day in America, 13 people go to work and never come home. Every year in America, nearly 4 million people suffer a workplace injury from which some may never recover. These are preventable tragedies that disable our workers, devastate our families, and damage our economy.”

Secretary of Labor, Hilda Solis

Types of Insurance Coverage
Property and Liability Coverage

• First party coverage
• Third party coverage

First Party Coverage
Provides protection for the physical assets of the insured

• Property Insurance
  – Building
  – Contents
• Automobile Insurance
  – Comprehensive
  – Collision
First Party Coverage

- Inland Marine Insurance
  - Mobile equipment
  - Signs
  - Bridges
  - Recreation equipment
  - Fences

- Time Element
  - Loss of business and rental income
  - Extra expenses associated with a covered loss to insured property

- Crime
  - Loss of money via robbery, burglary, and theft
  - Employee dishonesty

Third Party Coverage

Protects the assets of the insured by providing coverage for claims brought by third parties
Third Party Coverage

• General Liability
  – Includes coverage for bodily injury and property damage associated with the premises and operations of an insured.
  – Slips and falls on municipal property, sidewalks, etc.
  – Property damage associated with sewer backups.

Third Party Coverage

• Law Enforcement Liability
  – Bodily injury
  – Property damage
  – False arrest
  – False imprisonment
  – Wrongful death

Third Party Coverage

• Public Officials Liability
  – Provides protection for personal injury type claims associated with the actions of public officials
  – Excludes actions of law enforcement
  – Land use claims
  – Employment practices liability
Third Party Coverage

- Excess liability
- Underground Storage Tank liability
- Special Events Coverage

Occurrence vs. Claims Made coverage

- Occurrence
  - Trigger for coverage is that the claim occurs during the time coverage was in effect
  - Broadest form of coverage
  - Property insurance always written on this basis
  - Applies to General Liability and Law Enforcement Liability for SCMIRF

- Claims made coverage
  - Two requirements:
    - The claim must occur during the time coverage is in effect
    - The claim must be reported during the time coverage is in effect
  - Public Officials Liability tends to be written on claims made basis
Occurrence vs. Claims Made coverage

- Terminology:
  - Retroactive date
    - Start date of coverage
  - Tail coverage
    - Also referred to as extended reporting coverage which allows additional time for the claims to be reported
    - Does not extend the coverage for claims that occurred after the coverage was cancelled

Underwriting Issues for Municipalities

- Underwriting differs depending upon coverage
  - SCMIRF property coverage
    - Replacement cost basis
    - No coinsurance
    - Uses values provided initially at the time of the quote

- If a building is not insured to replacement cost, policy provision that can provide up to 150% of the value scheduled
- Property appraisals on buildings meeting certain values to better ensure that coverage is provided to full replacement cost
- Trends all building and contents values annually to keep up with changes in building costs
Underwriting Issues: Coinsurance

- Blanket insurance offered by other carriers
  - coinsurance requirement of 90%
- Places the responsibility of insuring to value on the municipality
  - If not insured to value, can be a penalty on any loss paid
  - Exception in SC for total losses to building by fire or lightning
    - The total amount of insurance carried will be paid even if underinsured via coinsurance

Underwriting Issues for Municipalities

- The differences in the coverage provided are important to note. Otherwise, any premium savings could soon be exhausted in the claims payment or the exposure could be excluded altogether.
Certificates of Insurance

• Workers’ Compensation
  – If COI is not obtained from the subcontractor’s agent before the work commences, employer may
    • Be responsible for paying WC premium
    • Be responsible for any on the job injury of subcontractor
    • Have experience modifier impacted, resulting in higher premiums

• Liability
  – Obtain for general liability, auto liability, professional liability, etc. depending upon the work being done
  – Require naming as an additional insured where permitted
  – Bonds may be required by statute depending upon the size of the contract
  – Have agent include information in the description area to ensure there is coverage for the particular job being performed
  – Always obtain COIs directly from the insurance agent…..never the subcontractor
Special Events

- Exposures
  - May or may not be covered by SCMIRF or your insurance carrier

- Transfer the Risk
  - Transfer the risk to the entities providing the services
    - Certificates of Insurance
    - Require to be named as an additional insured

Special Events and TULIP

- What if the special event is being held by others on your property?
  - TULIP
    - Renting of municipal facilities to private parties for weddings, etc.
    - Providing space for a farmers market
    - Low cost, efficient means of ensuring that negligence of the lessor does not fall on the municipality
Basic Facts: Workers’ Compensation

Why Workers’ Compensation?

- **Benefits to the injured employee:**
  - Replaces lost wages if out of work
  - Provides quality medical care
  - No Fault coverage

- **Benefit to the employer:**
  - Exclusive remedy for covered injuries
  - Less litigation sue to tort action protection
  - Required for employers with 4+ employees
The Cast

- The injured employee
- Department/Supervisory management
- Municipal member management
- SCMIT
- S.C. Workers’ Compensation Commission

Who is covered?

- **Employee:** any person engaged in employment by appointment, contract of hire, expressed or implied, oral or written….
- Can include minors, illegal aliens, contractors, volunteers, and inmates
- Can be “statutory employee” as defined by law

Elements of a Compensable Claim

In an established employer/employee relationship there must be:

1. Injury
2. By accident
3. Arising out of employment and
4. In the course and scope of employment
Medical Treatment

100% of all treatment **AUTHORIZED by the TRUST** is covered:

- physician, physician assistant fees
- hospital, out-patient clinics
- prescription drugs & medical supplies
- medical rehabilitation
- certain travel expenses
- other treatment as reasonably required

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Medical Treatment

- SCMIT uses physicians who:
  - Are selected to treat occupational injuries
  - Support modified duty programs
  - Communicate well with employer and employee

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Medical Treatment

- SCMIT uses network physicians, facilities, pharmacies and providers whenever possible
- Specialized treatment must have prior approval and be monitored by SCMIT claims staff
Indemnity Payments

- Temporary Total Disability (TTD)
  - 66 2/3% of average weekly wage (AWW)
  - subject to minimum and maximum benefits for employees who are out of work on the orders of an authorized doctor
  - 7 day waiting period (does not need to be consecutive) retroactive after 14 days

Modified Duty

- Develop a Modified Duty Plan & follow it
- Use “Light” or “Alternate” Duty
- Utilize a Task Bank
- Does NOT need to be in the same department where the employee ordinarily works
- Encourage physician support by providing job task descriptions and analysis to be given to treating doctor at employee appointments

Benefits of Modified Duty

- Can provide a rehabilitative transition from full disability to regular duty
- May be a viable alternative to costly therapy and rehabilitation programs
- If modified duty is refused by employee released to such duty, benefits can be suspended
- Provides a productive way to utilize employees and save premium dollars
Concluding Claims

- Medical only losses - pay medical bills and/or minimal lost time from work - the claim ends
- Injuries with permanent impairment - permanent loss of use of the injured body part, AMA Guidelines used to provide ratings
- Disability Rating - determined by the Commissioner - can include additional factors such as educational level, type of work performed

Permanent Partial Disability

Typical Scheduled Injuries
- 300 weeks for the back
- 220 weeks for the arm
- 185 weeks for the hand
- 195 weeks for the leg
No. of weeks x % disability rating x comp rate

WC Commission Proceedings

- Informal Conference
  Claimant, SCMIT representative, employer meet with Commissioner - usually no attorney
- Hearings
  SCMIT, Member, claimant and attorneys for claimant and employer meet with commissioner (usually over disputed issues) to resolve claim - formal procedure
Permanent and Total Disability

• Maximum compensation is 500 weeks except for cases of paraplegia, quadriplegia, or permanent brain damage
  – Lifetime benefits
• 2014 maximum weekly comp rate is $752.16 for a worker making around $58,639
• Total payable for 500 weeks is $376,080

Responsibilities

• **Employee** - report claim to employer quickly, treat with employer authorized provider, be mindful of two year statute of limitations
• **SCMIT & member** - report claim quickly so SCMIT can submit within 10 days and avoid fines, provide medical care, issue lost time benefits when disability is greater than seven days

Prompt Claims Reporting

• **Prompt/appropriate medical care** - directs treatment to network providers/pharmacies to ensure treatment is matched to the injury
• **Immediate Investigation** - gets facts before stories change and people forget, makes it possible to determine compensability and subrogation potential
Immediate Claims Reporting

• Avoid fines by the Workers’ Compensation Commission for claims not filed within the 10 day statutory requirement
• Early investigations mean SCMIT only pays for those claims that you owe
• Remember…..filing a First Report of Injury is NOT an admission of compensability or liability

Limiting Litigation

• Establish and maintain communication and trust with employee from the start
• Investigate, don’t intimidate
• Check on employee weekly when possible
• Provide support/communication throughout
• Remember after employee returns to work, case may still be open
• Communicate! Communicate!

Subrogation

• SCMIT may recover funds from a third party who is responsible for the accident that resulted in an injury to an employee
• Auto Accidents
• Defective parts and equipment
• Court Ordered restitution
• Property owners’ liability, such as dog bites or poorly maintained property
Controlling Cost

- Prompt reporting
- Modified Duty
- Proper medical care
- Communicate
- Use PPO network
- Assist with subrogation efforts
- Investigate thoroughly
- Be involved/concerned/caring

Sewer Backups: Avoiding the Pitfalls

Elements of Negligence

- A legal duty owed
- A breach of the duty owed
- A proximate cause
- Actual loss or damage
What is the duty owed?

- To keep sewage out of residents’ homes?
  Not necessarily...
- Duty owed - operating and maintaining municipal sewer lines properly

Sewer Backups and Negligence

- Ownership ≠ Liability
- Not automatic “at fault” situations
- No strict liability

South Carolina Tort Claims Act

- Ownership
  - Not an automatic conveyance of liability
- Budgetary constraints
  - Strong defense
- Miles and miles of sewer collection lines
- Department of Transportation
  - Not liable for every accident that occurs on state roads
Sewer Backup Response

• Rapid response
• IMPORTANT – how city/town responds just as important as facts of claim
• Uninformed staff = possible liability when none would have existed
• Suggested outline of a sewer claim

Outline of a Sewer Claim

• No admittance of fault
  • Even in face of tremendous pressure, avoid the temptation; Feel sympathy but do not agree to “undeliverables”
  • Remember: ownership and liability are not one and the same

Outline of a Sewer Claim

• Role of employee - to determine nature of problem but not to determine fault
• Claims adjuster ("bad guy") - role is to determine fault and assist in resolving damages if city/town is negligent
Outline of a Sewer Claim

If non-waiver of defense agreement is signed

- No speculating
- Extraneous remarks to a minimum
- Remember 3 Rs
- Cleaning only
- No renovating-replacing-repairing

The Political Realities

- Elected representatives sometimes involved
  - Can be good or bad - depends on whether or not city has been proactive in educating council members
  - **EVERYONE** (staff and elected officials) to avoid well-intentioned comments
    - i.e. “Don’t worry about it - we’ll take care of it”....
    - “Created liability”- not covered by SCMRF

Avoiding Other Pitfalls

- Electrical Claims
- Water Service Claims
- Slip and Fall Claims
- Pot Hole/Utility Cut Claims
Electrical Claims

- Squirrels
  - Do not provide advance notice to city
  - Just electrocute themselves

- City
  - No notice
  - No invitation extended to chew/electrocute

**CITY - DID NOTHING TO CAUSE, HAD NO NOTICE**

Therefore...

- City not liable
- In order for the city to be liable:
  - Prior notice of the problem and failure to do anything about it AND/OR
  - City must have created the problem

- City workers:
  - Respond to complaint, be polite and as helpful as possible
  - Do not make any promises, advise city’s insurance carrier will be in touch
Water Damage Claims

Do we owe these claims?

- For the city to be liable,…
  - City must have notice
    • City pipe has burst and the city does not respond
  - City must have caused the problem
    • City cut the pipe, the city turned water on when it should not have, etc.

- Common water damage claim occurs when water service is turned on
- City - procedure should been in place for cutting service on and off, procedure must be followed
- Document, document, document
- Documentation - maintained and kept in one location preferably by one person
Therefore….

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  - Prior notice of the problem and failure to do anything about it AND/OR
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Slip and Fall Claims

Do we owe these claims?

- Take pictures
  - Close up pictures
  - Pictures that give an idea as to the overall lay of the land
- Close up shots - use something in the picture that will provide some idea as to scale (a coin, a ruler, a hand, etc.)
Slip and Fall Claims

- Ownership - can be irrelevant
- **Lyman** case - imposed liability due to the fact that the location where the loss occurred was in the city limits
- Whether or not the city had notice and whether or not they created the problem helps to determine the liability position

The Lyman Case

*Vaughan v. Town of Lyman* - “The city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.”

Therefore….

- **Lyman** case - can be an issue
- In order for city to be liable:
  - Prior notice of the problem and failure to do anything about it AND/OR
  - City must have created the problem
- City workers:
  - Respond to complaint, be polite and as helpful as possible
  - Do not make any promises, instead advise that city’s insurance carrier will be in touch
Pot Hole/Utility Cut Claims

Do we owe these?

Pot Hole Claims
- Pot holes - often occur due to weather conditions and wear and tear - the city may not be aware of their existence
- City - no notice, no involvement in causing problem
- Watch out for constructive notice - should the city have known (police, public works)
- Lyman case - could complicate matters (public areas)

Utility Cuts
- If the city makes a utility cut….
- They did create it and….  
- Cannot claim lack of notice
- Mark the area with barricades, cones, steel plates, signs, etc.
- Arrange for permanent repair to be made as soon as possible
- Gravel should be checked daily
Remember…

• Similar claims/different causes - for example, while we can deny some types of electrical claims we may have to pay others
• Claims - looked at on a case by case basis
• “Will you cover the city if it is sued?” - depends on what the causes of action are
• Claims - denied if the city is not liable but paid if the city is responsible

Lessons Learned

• Crime Claims
  • Employee embezzlement
• Pursuit Claims –
  • Very unfavorable climate
  • Video cameras
• Public Officials Claims
  • Work together and follow policies and procedures
  • Not the place for politics

Lessons Learned

• Employment Claims
  • Expensive to defend
• Documentation and Records
  • The difference in denying or accepting liability
Questions