



REPORT HIGHLIGHTS

City of Seattle Office of City Auditor
June 22, 2011

Promising Practices in Risk Management

Why We Did This Audit

Seattle City Councilmembers Jean Godden and Bruce Harrell asked the City Auditor to review risk management best practices implemented by public entities within Washington State and around the country. Specifically, they asked us about:

1. Organizational and legal approaches to implementing risk management strategies;
2. Methods for identifying and implementing loss control initiatives; and
3. Options for allocating and funding judgment and claims costs.

What We Did

- Researched industry standards and practices by conducting interviews with representatives from industry associations and risk managers from other public entities, including two public entities in Washington State;
- Obtained a comparison of all 50 states' laws governing tort claims from the Seattle City Attorney's Office, then conducted a telephone survey of nine jurisdictions in states with legal environments similar to Washington State; and
- Reviewed City of Seattle reports, and interviewed risk managers from three major City departments and the City's Director of Risk Management and his staff.

What We Learned

- In 2010, the City of Seattle (City) spent \$11.8 million from the Judgment and Claims Subfund to settle claims and lawsuits against the City.
- Traditionally, risk management functions in public entities have included one or more of the following: risk financing, claims administration, loss prevention and control, insurance procurement, indemnification, and contract review.
- More recently, many private and public sector entities have embraced *enterprise risk management*, a comprehensive approach to risk management that identifies and analyzes all the major barriers that could affect an entity's ability to achieve its goals and objectives.
- The jurisdictions we surveyed varied in their organizational and legal structures and no one structure stood out as a risk management best practice.
- We identified five promising practices that are parts of robust risk management programs:
 - Strong leadership and involvement of employees at all levels of the organization;
 - A process for identifying and prioritizing risks and determining the root causes of losses;
 - A method for developing and implementing realistic and achievable mitigation strategies;
 - A system for regularly gathering and reporting data on claims losses and the results of loss control efforts; and
 - A commitment to continuously review priorities, refine strategies, and share what works across the organization.
- The City's recently-revised draft Enhanced Loss Control Procedures are consistent with these five promising practices.
- One tool, the Cost of Risk index (total claims/total budget), not currently used by the City of Seattle, is generally accepted as a standard risk management industry measure of effectiveness.
- All the jurisdictions we surveyed, except one, use a combination of setting aside reserves and insuring against catastrophic losses to cover their judgment and claims costs.
- We found only one jurisdiction, King County, which incorporates a direct financial incentive into its loss reserves cost allocation methodology.

A copy of the Office of City Auditor's full report can be obtained at our web site:
<http://www.seattle.gov/audit/> or by calling (206)-233-3801.

Public entities differ from businesses in many ways, but both assume risk in pursuit of their objectives. Risk is not inherently bad: it is simply a measure of the relative probabilities that an entity will fall short of, meet, or exceed its objectives. Risk is always present because activities seldom produce exactly the results expected.

The Risk Management Process, Public Entity Risk Institute, 2011

Our Recommendations

Although we were tasked only with identifying best practices in risk management, in the course of our work, we developed three recommendations to strengthen the City's Risk Management Program.

Recommendation #1:

The City of Seattle should calculate its annual Cost of Risk index, track it over time, and compare it to the Cost of Risk index for similar jurisdictions.

Status:

The City's Director of Risk Management is considering this recommendation.

Recommendation #2

Because we found that the City's draft Enhanced Loss Control Procedures reflect the risk management industry's most promising practices, we recommend that the City adopt these new policies for a trial period and periodically evaluate their effectiveness and revise them accordingly.

Status:

This recommendation is in the process of being implemented. The Risk Management Division in the Department of Finance and Administrative Services and the Seattle City Attorney's Office are in the process of implementing their draft Enhanced Loss Control Procedures. They have agreed to review the procedures after one year from their initial implementation date to identify procedures that can be refined and improved.

Recommendation #3

Because workers' compensation claims are a substantial component of the City's claims costs, and some of the measures taken to protect worker safety also help reduce claims against the City, we recommend that the City's Risk Management Advisory Group (RMAG) include a senior staff representative from the Personnel Department's Employee Health Services Division, and that representatives from the Personnel Department's worker safety and workers' compensation units participate in the Risk Coordinators meetings.

Status:

This recommendation is in the process of being implemented. The City's Director of Risk Management is working with the City's Director of Employee Health Benefits to determine how managers and staff with workers' compensation and worker safety expertise can be integrated into RMAG and the Risk Coordinators meetings.

Office of City Auditor

Promising Practices in Risk Management

June 22, 2011



City of Seattle Office of City Auditor

Our Mission:

To help the City of Seattle achieve honest, efficient management and full accountability throughout City government. We serve the public interest by providing the Mayor, the City Council, and City department heads with accurate information, unbiased analysis, and objective recommendations on how best to use public resources in support of the well-being of the citizens of Seattle.

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The office's work is performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. These standards provide guidelines for staff training, audit planning, fieldwork, quality control systems, and reporting of results. In addition, the standards require that external auditors periodically review our office's policies, procedures, and activities to ensure that we adhere to these professional standards.

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City of Seattle Office of City Auditor



June 22, 2011

City Councilmember Jean Godden
City Councilmember Bruce Harrell
City of Seattle
Seattle, Washington 98104

Dear City Councilmembers Godden and Harrell:

As you requested, attached is our report "Promising Practices in Risk Management." This audit reviewed risk management best practices implemented by other public entities within Washington State and around the country. We identified five promising practices for loss prevention and control that are part of robust risk management programs. We reviewed the City of Seattle's (City) draft Enhanced Loss Control Procedures (ELCP) and found them to be consistent with these five promising practices. We documented how the City of Seattle allocates the cost of its Judgment and Claims Subfund to departments and compared this to the method used by other jurisdictions. We found that no single organizational or legal structure stood out as a best practice. We offer three recommendations for enhancing the City's risk management program and one matter for further study.

Six City departments reviewed and provided feedback on drafts of this report. Throughout the audit process, we appreciated the cooperation of officials from the Department of Finance and Administrative Services, the Seattle City Attorney's Office, Seattle Public Utilities, Seattle City Light, the Seattle Police Department, and the Seattle Department of Transportation. Special thanks go to the City Attorney's Office, who prepared the comparison of state tort laws contained in Appendix IV. We also appreciate the risk managers and industry experts from government and private entities here in Washington State and throughout the United States, who shared their expertise and experience with us.

If you have any questions regarding this audit, please contact the Auditor-in-Charge, Jane Dunkel, at 206-684-7892, janedunkel@seattle.gov or me at 233-1095, davidg.jones@seattle.gov.

Sincerely,

A handwritten signature in black ink that reads "David Jones".

David Jones
City Auditor

Attachment

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Purpose

Seattle City Councilmembers Jean Godden and Bruce Harrell asked the Office of City Auditor to review risk management best practices implemented by public entities within Washington State and around the country. Specifically, they are most interested in best practices that address:

1. Organizational and legal approaches to implementing risk management strategies;
2. Methods for identifying and implementing loss control initiatives; and
3. Options for allocating and funding judgment and claims costs.

The City Council requested this review to identify ways the City of Seattle (City) can improve its risk management policies and procedures and reduce future liability.

In 2010, the City paid \$11.08 million out of its Judgment and Claims Subfund to settle claims and lawsuits against the City. Of this, \$2.9 million was for claims settlements, \$3.1 million in lawsuit settlements/judgments, and \$5.08 million in claims handling and litigation expenses. See Appendix I for more information on the City of Seattle's claims and settlements.

The City of Seattle's Risk Management Division and the Seattle City Attorney's Office (CAO) have worked together to create a draft Enhanced Loss Control Procedures (ELCP) Program. The draft ELCP is a formal risk reduction framework that focuses on reducing loss occurrences from happening again from the same or similar causes. In addition to creating an organizational structure that provides departments with enhanced training, support, and data about their losses, the draft ELCP also includes mechanisms that are intended to hold departments accountable for their efforts to reduce their losses. We found the draft ELCP to be consistent with the risk management practices our research of industry trends and survey of other jurisdictions identified as most promising. For more information on how the City's draft ELCP reflects promising practices, see pages 7-11.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See Appendix II for a description of our methodology.

Results in Brief

The jurisdictions we surveyed¹ varied in their organizational and legal structures and no one structure stood out as a risk management best practice. We also found that it is very difficult to identify best practices in loss control that are supported by outcome data—i.e., cases in which reductions in losses can be directly attributed to cost prevention and control activities.

¹ These jurisdictions include: The cities of Los Angeles, Long Beach, Oakland, and Sacramento in California; Honolulu, Hawaii, and King County, Pierce County, Snohomish County and Spokane County in Washington State. See Appendix V for a summary of our survey results.

Nevertheless, we were able to identify five promising practices that are becoming more commonly accepted as risk management industry standards:

1. Clear expectations from management and buy-in from frontline employees;
2. A process for identifying and prioritizing risks and determining their root causes;
3. A method for developing realistic and achievable mitigation strategies;
4. A system for regularly gathering and reporting data on claims losses; and
5. A commitment to continually reviewing priorities, refining strategies, and sharing what works across the organization.

The City of Seattle's draft ELCP is consistent with these five promising practices in risk management. Accordingly, we recommend that the City adopt these new policies and procedures for a trial period and periodically evaluate their effectiveness.

We found one tool, the Cost of Risk index, which is generally accepted as a standard industry measure of risk management effectiveness. We recommend that the City's Risk Management Division calculate the City's annual Cost of Risk index, track it over time, and compare it to the Cost of Risk index for similar jurisdictions.

Finally, we found that the costs for a jurisdiction's judgments and claims include not just the amounts settled upon, but also insurance premiums, legal costs, and the cost of the staff who manage claims. Jurisdictions basically have three options for covering these costs: 1) self-insuring by setting aside reserves to cover expected claims, 2) purchasing insurance so that a third party covers catastrophic claims, or 3) a combination of the first two options. All of the jurisdictions we reviewed, except Honolulu, use the third option: a combination of setting aside reserves and insuring against catastrophic losses. These jurisdictions varied in the amount of projected losses they fund in a given year. Jurisdictions that allocate their claims costs to operating departments (not all of them do so) do so on the basis of claims loss history, risk exposure, or a combination of the two. Only one jurisdiction, King County, incorporates a direct financial incentive into its cost allocation methodology.

Background on Risk Management

Public entities differ from businesses in many ways, but both assume risk in pursuit of their objectives. Risk is not inherently bad: it is simply a measure of the relative probabilities that an entity will fall short of, meet, or exceed its objectives. Risk is always present because activities seldom produce exactly the results expected.

The Risk Management Process, Public Entity Risk Institute, 2011

What is Risk Management?

According to the Public Entity Risk Institute, risk management is "the process of dealing with uncertainty and trying to achieve the best outcome for the entity in a changing environment."

Risk can be addressed in one of four ways: acceptance, transfer, avoidance, or mitigation. *Accepting risk* means continuing to perform an operation without taking measures to mitigate, insure against, or transfer the risk to another party. *Transferring risk* can occur through

contractual risk transfer in one of two ways: indemnification or insurance². Risk can be *avoided* by ceasing the activity that causes the risk. This is often not an option for public entities, because they may be mandated by law to provide specific services to the public. *Mitigating risk* involves assessing the likelihood and potential impact of an event occurring and identifying actions that can reduce either or both of these components.

Traditionally, risk management functions in public entities have included one or more of the following:

1. **Risk financing**, including financing losses through insurance, self-insurance or risk pooling³;
2. **Claims administration** (including tort claims⁴, workers' compensation claims, or both);
3. **Loss prevention and control**, which may include inspection, investigation of losses, assessment, the development of mitigation strategies, monitoring the implementation of corrective actions, and/or tracking and reporting loss data;
4. **Insurance procurement**; and
5. **Indemnification**.

More recently, many private and public sector organizations have embraced a more comprehensive approach to risk management that identifies and analyzes all the major barriers that could affect an entity's ability to achieve its goals and objectives and then adopt strategies to overcome these barriers. This approach is referred to as *enterprise risk management*. We found two large public entities in Washington, the State of Washington and the University of Washington, which are implementing this approach. See Appendix III for more information on their approaches.

Challenges to Comparing Risk Management Performance across Jurisdictions

There are three main factors that make it difficult to compare the performance of public entity risk managers across different jurisdictions in the United States. They are a jurisdiction's 1) legal environment, 2) size, and 3) mix of services provided.

- 1) Legal environment. The legal environments within which jurisdictions operate vary widely from state to state. For example, Washington State is one of only nine states in the United States without any form of tort damage cap at the state or local level. In addition, public sector (sovereign) immunity protections⁵ are limited in Washington State and typically

² Indemnification refers to an agreement to shift the financial consequences of accidental loss arising out of a defined activity from one entity to another.

³ Risk pooling is when a group of insurance companies or members of a non-profit insurance agency combine assets, enabling them to provide or obtain an amount of insurance substantially more than could be provided to, or obtained by, individual companies or public entities. Pools may be formed voluntarily or mandated by the governing entity to cover risks for which insurance is not available in the voluntary market, such as coastal properties subject to hurricanes.

⁴ A tort is a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases, as well as intentional wrongs that result in harm. Tort claims against a public entity can result from personal injury; bodily injury; property damage, including third-party vehicle collisions; financial loss; or loss of business or damage to reputation, when a claimant believes an injury is the fault of the public entity or its employee.

⁵ Sovereign immunity is "a legal doctrine, rooted in English law, precluding the institution of a suit against the sovereign [government] without its consent. . . . In England, it was predicated on the concept that "the sovereign can do no wrong." In the United States, "the federal government and nearly every state have passed tort claims acts allowing them to be sued for the

extend only to employees and officials of state and local governments but not the government entities themselves. Finally, under Washington State law, in all tort claims involving multiple defendants, liability is considered “joint and several” when defendants are held to have some percentage of fault and the plaintiff is held to be fault free. This means that if one defendant cannot pay, the remaining defendants must make the claimant whole, even if they are minimally at fault. Five other states have both modified “joint and several” liability laws and no tort caps: California, Hawaii, Iowa, New Jersey and New York. Governmental entities in these states, along with Washington State, are at greater risk of being held legally liable to pay larger judgments than jurisdictions in the other 44 states. Consequently, one might expect their risk management practices to be different from those of public entities in states with legal limits on liability. See Appendix IV for a summary of state policies related to “joint and several” liability, sovereign immunity, and tort damage caps.

- 2) Size. A jurisdiction’s size, in terms of population and/or geographic area, affects its risk exposure. Generally, larger jurisdictions have greater exposure.
- 3) Mix of Services. The mix of services a jurisdiction provides significantly affects its exposure. Operations vary widely in the risk they present, and some are inherently more risky than others. For example, airports, bus service, electric utilities, and police or fire departments all carry risks unique to their operations. For this reason, it may be inaccurate to compare liability losses between jurisdictions that provide a very different mix of services, even if these jurisdictions operate under similar state laws and are of similar size.

Responses to Seattle City Council Questions

Organizational and Legal Structures for Implementing Risk Management

The jurisdictions we surveyed varied in their organizational structures and no one structure stood out as a risk management best practice. In some, the legal department is responsible for claims management and the risk management unit handles workers’ compensation, subrogation⁶, contract indemnification, and insurance requirements. In others, the risk management unit handles both claims adjustment and workers’ compensation. In some jurisdictions, including Seattle, the personnel or human resources department handles workers’ compensation claims. Finally, some jurisdictions hire third party administrators to handle third party liability claims, and the risk management unit or legal department has oversight responsibility. See Appendix V for a comparison of risk management organizational and legal structure among ten jurisdictions, including Seattle.

negligence, but not the intentional wrong of government employees.” Our point here is that the State of Washington’s waiver of sovereign immunity law is very broad in comparison to many other states’ laws.

⁶ Subrogation is the “substitution of one person in place of another with reference to a lawful claim, demand, or right, so that he or she who is substituted succeeds to the rights of the other in relation to the debt or claim...The purpose of subrogation is to compel the ultimate payment of debt by the party who, in equity and good conscience, should pay it.” In this context, it refers to the efforts of a public entity to seek reimbursement of claims it has paid from the party responsible for the damage or the responsible party’s insurer.

Methods for Identifying and Implementing Loss Control

Challenges to Proving the Impact of Loss Prevention Activities

We found that it is very difficult to identify best practices in loss control that are supported by outcome data, i.e., cases in which reductions in losses can be directly attributed to cost prevention and control activities. Experts in the field of risk management and risk managers from other jurisdictions confirmed this challenge. Major factors that contribute to the difficulty of establishing a direct relationship between loss prevention activities and their impact include long time lags and extenuating circumstances.

1. **Long time lags can occur between when a loss prevention activity is implemented and when the impact of the activity is visible in the outcome data.** For example, often a significant amount of time (three to five years) can elapse between the time an event that generates a claim occurs and when that claim is resolved. This is due to the time it takes to submit a claim (sometimes claimants wait until the legal deadline, which can be as long as three years), the time it takes to process and settle a claim, the statute of limitations for filing a lawsuit, and the time it takes to settle or try a lawsuit.⁷
2. **Extenuating circumstances can also impact the frequency and severity of claims;** for example, if a program expands or services change during the period in which a loss control or prevention activity was implemented.

In addition, we found that:

3. Some jurisdictions are reluctant to share their loss data because they do not want to create additional exposure for their entity;
4. The field of risk management has not developed a list of standard metrics that are used by a majority of entities, which would enable comparison of metrics across jurisdictions; and
5. Often the data that is available is proprietary, and can only be obtained through membership in an organization or by hiring a consultant who has access to it.

What Can Be Measured

Because of the factors described above, we found that some public and private entities gauge the effectiveness of their risk management programs using a Cost of Risk index⁸. The Cost of Risk index is a tool for measuring the overall costs associated with running the risk management operation (including actual claims expenditures per year, insurance premiums, risk management staff salaries and benefits, materials and supplies, consultants and contractors) as a percentage of the entity's total operating expenditures. We identified two organizations that gather comparative data on the Cost of Risk index: The Risk Management Society (RIMS) and the International City County Management Association (ICMA).

⁷ According to the City's Risk Management Director, these time lags can be addressed by tracking and recording incurred losses on a loss year basis, rather than losses on a paid year basis.

⁸ For example, the City of Eugene, Oregon, Spokane County, Washington, and Sacramento, California all calculate and report this index in their annual reports.

Recommendation 1:

The City of Seattle should calculate the City’s annual Cost of Risk index, track it over time, and compare it to the Cost of Risk index for similar jurisdictions.

Promising Practices for Addressing Loss Control

We found that the following promising practices for loss control are emerging as industry standards:

1. Clear expectations from management and buy-in from frontline employees on the importance of loss prevention and control;
2. A process for identifying and prioritizing risks and determining their root causes;
3. A method for developing and implementing realistic and achievable mitigation strategies;
4. A system for regularly gathering and reporting data on claims losses and the results of loss control efforts; and
5. A commitment to continuously review priorities, refine strategies and share what works across the organization.

We reviewed the draft City of Seattle’s Enhanced Loss Control Procedures (ELCP) and found them to be consistent with these risk management promising practices.

Recommendation 2:

Because we found that the City’s draft ELCP reflect the industry’s most promising practices, we recommend the City adopt these new policies and procedures for a trial period and periodically evaluate their effectiveness and revise them accordingly.

In the section below, we provide an example of how another jurisdiction has implemented each promising practice, and then follow it with a reference to how the City of Seattle’s draft ELCP addresses the same issue.

Promising Practice #1: Both Tone at the Top and Frontline Buy-In Are Critical

Sacramento, California – Risk Teams

Sacramento, California demonstrates its tone at the top through the creation of Risk Teams. The Risk Teams develop department-specific or inter-departmental initiatives for reducing risk; often these efforts involve specialized training or accommodations for front-line staff.

Risk Teams are formed for each major city department. The teams include departmental executives and division managers as well as the city’s risk manager and loss prevention staff. The goals of the Risk Teams are to eliminate accidents, monitor losses, improve safety and regulatory compliance, and maintain effective communication and customer service. Based on an analysis of losses from the previous year, the Risk Team identifies a number of initiatives for reducing risk. The initiatives may include specialized training, such as confined space and trenching/excavation training. Or, an initiative may include the development of an accommodation, such as a workspace redesign to mitigate fatigue. Or, an initiative may result in the change of a practice, such as conducting risk management investigations of “near misses.”

Officials from Sacramento indicated that the work of the Risk Teams has had positive results. Outcomes from their efforts include:

- Workers' compensation claims frequency and cost decreased over the last 5 years;
- As a result of the decrease in claims costs, the City of Sacramento was able to reduce their workers' compensation reserves by \$12,500,000 over the last 3 years;
- General liability claims frequency has remained steady without an increase since 2005; and
- The cost and frequency of auto liability claims decreased over the last 3 years.

How the City's Draft Enhanced Loss Control Procedures (ELCP) Address This Practice

The City's draft ELCP calls for the formation of a Risk Management Advisory Group (RMAG), comprised of senior-level staff within the seven City departments with the largest incurred third party losses, the City's Risk Management Director, the Risk Management Division Operational Risk Manager, and the City Attorney's Office Torts Section Director.⁹ This structure, along with increased attention from the Seattle Mayor and City Council, should send a strong tone-at-the-top message that risk management is a priority in the City of Seattle.

In addition, the appointment of Risk Management Coordinators in each of the same seven departments, who are tasked with "communicating a risk management culture to rank-and-file employees", and encouraged to involve all relevant department personnel in analyzing the root causes of losses, has the potential to engage front-line personnel, if implemented as intended.

As can be seen in the table in Appendix V, pages 50-51, in five out of the ten jurisdictions we compared, the risk management division is responsible for, or oversees, workers' compensation. In contrast, in the City of Seattle, a unit within the Personnel Department covers workers' compensation matters. According to some of the risk managers from other jurisdictions with whom we spoke, often the strategies used to protect government workers are the same as the ones needed to protect both the public and government property. For example, safe driver training and monitoring employee driving records can help prevent automobile accidents. Since automobile accidents can potentially injure government workers, damage City property and/or cause personal injury or property damage to the public, the same training programs can address more than one potential risk simultaneously. Because of the potential overlap between issues faced by third party liability claims adjusters and workers compensation claims adjusters, and worker safety specialists, we believe representatives from workers' compensation and worker safety units should be included in the oversight and coordination teams proposed under the draft ELCP.

Recommendation 3: We recommend that the Risk Management Advisory Group (RMAG), include a senior staff representative from the Personnel Department Employee Health Services Division, and that representatives from the Personnel Department's worker safety and workers' compensation units participate in the Risk Coordinators' meetings.

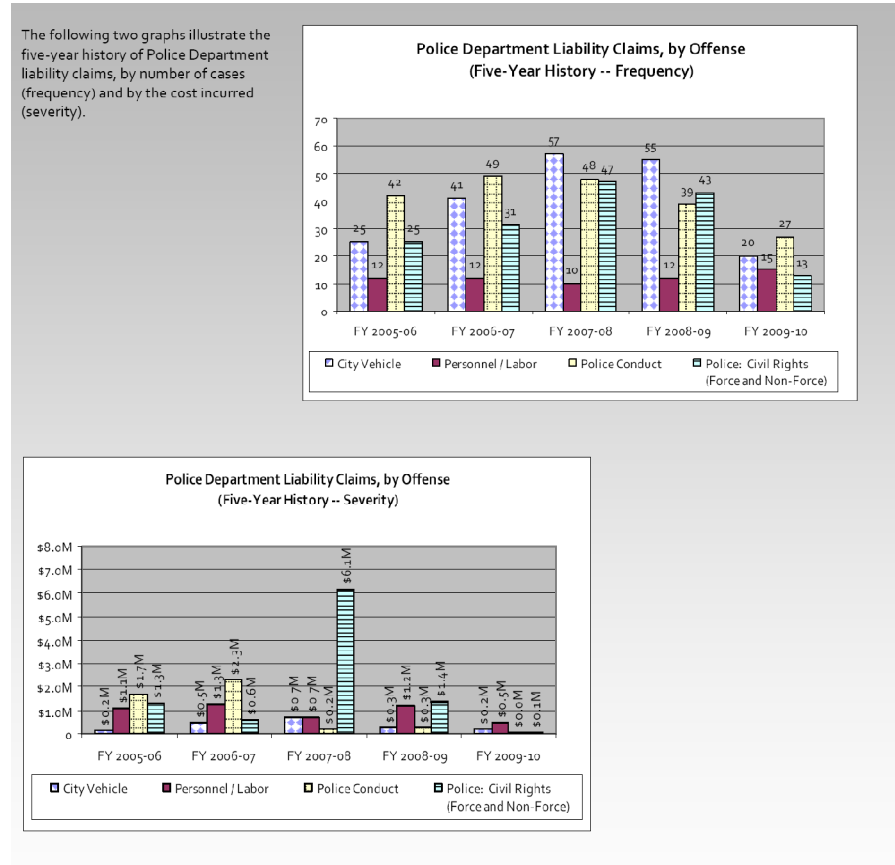
⁹ Under the current proposal, the City's Budget Director, Finance Director, and City Attorney's Office Civil Division Chief are Ex officio members of the RMAG.

Promising Practice #2: Identify and Prioritize Risks and Determine Their Root Causes

Oakland, California – Frequency and Severity Tracking

The City of Oakland tracks frequency and severity of claims based on the type of claim for each city department. This allows the risk manager and city leaders to identify high risk areas and to conduct further analysis to attempt to determine root causes.

Below, are examples from the Oakland Police Department that show general liability claims from 2005 through 2010:



For workers' compensation claims, Oakland reports on the most common causes of injury:

Cause of Injury	Fiscal Year 2008-2009				Fiscal Year 2009-10			
	Number of Injuries	Total Paid	Total Incurred	Average Paid	Number of Injuries	Total Paid	Total Incurred	Average Paid
Person in Act of Crime*	47	\$508,153	\$4,042,862	\$10,812	43	\$463,714	\$838,968	\$10,784
Fall, Slip or Trip, NOC	20	\$226,498	\$443,774	\$11,325	16	\$154,427	\$284,420	\$9,652
Vehicle Collision	30	\$207,746	\$343,830	\$6,925	15	\$147,555	\$302,573	\$9,837
Cut, caught, punctured	10	\$4,123	\$17,030	\$4,123	13	\$36,255	\$88,804	\$2,789
Injured by; Animal or Insect	12	\$18,051	\$19,553	\$1,504	13	\$39,063	\$75,876	\$3,005
Strain; Repetitive Motion	13	\$20,941	\$76,213	\$1,611	13	\$49,809	\$91,481	\$3,811
Strain; Twisting	16	\$180,072	\$279,840	\$11,255	13	\$55,610	\$101,083	\$4,278
Injured by; Another Person	11	\$75,325	\$77,861	\$6,848	11	\$160,741	\$721,085	\$24,613
Cumulative	10	\$174,566	\$485,368	\$17,457	10	\$132,863	\$287,854	\$13,286
Physical Fitness	9	\$4,203	\$4,203	\$467	8	\$73,669	\$168,874	\$9,209
All Other Injuries	75	\$265,155	\$606,835	\$3,535	74	\$327,927	\$1,077,549	\$4,431

* The Person in Act of Crime cause of injury is skewed in FY 2008-09 due to the March 21, 2009 shooting of four police officers.

Source: City of Oakland Risk Management Annual Report Fiscal Year 2009-10

This focus on frequency and severity tracking allows the risk manager and City of Oakland officials to notice trends in risk types and prioritize resources for mitigation strategies based on data.

How the City of Seattle's Draft Enhanced Loss Control Procedures (ELCP) Address This Practice

The draft ELCP mandates the use of root cause analysis for incurred claims greater than \$100,000 and for incurred lawsuits greater than \$500,000. Departments will also be asked to perform a root cause analysis on all closed claims, if, upon review, the Risk Management Division determines that the department has not identified or implemented a loss prevention measure, or the loss prevention measure is deemed not appropriate or not likely to be effective.

Promising Practice #3: Develop Mitigation Strategies That Are Realistic and Achievable

Long Beach, California – Inspection and Active Remediation

The Long Beach, California risk manager indicated that one of the best mitigation strategies for reducing general liability claims is to show that the city has active programs for inspecting its facilities as well as remediation programs that offer quick response.

In Long Beach, the inspection program for city facilities consists of two parts: a self-evaluation for each department that is performed by the departmental safety officer, and an annual audit of city facilities utilizing three staff from risk management's occupational safety division. In addition, the city routinely tracks all city employees who drive, and monitors their driving records on and off the job. Risk management requires that all city employees complete a defensive driving class. They also obtain a monthly report from the state department of motor vehicles that indicates any changes in the driving records of city employees.

In addition, Long Beach can demonstrate that it has an active remediation program for potholes and broken sidewalks. As part of this program, they implemented an application for iPhones and smart phones that allow people to report potholes, sidewalk damage, etc. directly to their public works system for repair, with a goal of fixing the problem within 48 hours. See:

<http://www.longbeach.gov/news/displaynews.asp?NewsID=5079&TargetID=54>

The risk manager indicated that because the City of Long Beach has been so pro-active, many claims against it do not hold up in court.

How the City of Seattle’s Draft Enhanced Loss Control Procedures (ELCP) Address This Practice

Under the proposed ELCP, root cause analyses must result in mitigation strategies, which are called “Feasible Corrective and Preventive Action” (F-CAPA) plans. Departments’ risk management coordinators will be responsible for ensuring that these plans are implemented in a timely manner, and for developing recommendations to resolve operational barriers to such implementation.

Promising Practice #4: Regularly Gather and Report Data on Results

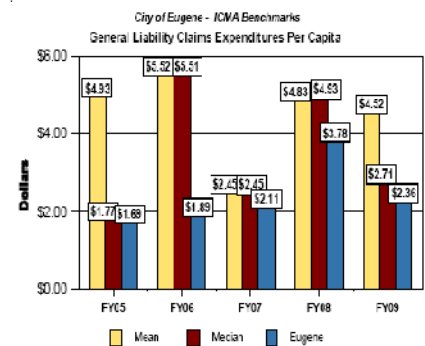
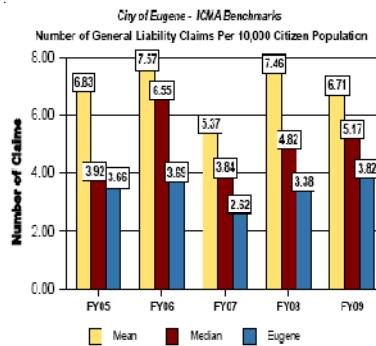
Eugene, Oregon – Annual Report

Among the jurisdictions we contacted, several (Oakland, California; Port of San Francisco, California; Spokane County, Washington; Clark County, Washington; and Eugene, Oregon) provide data on the results of their risk management efforts in an annual report. The 2010 Risk Report from Eugene, Oregon, can be found here:

http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_362664_0_0_18/RiskReport10.pdf

This report provided City of Eugene officials with high-level and detailed data including:

- Claims costs historically by frequency and severity;
- Performance against ICMA (International City Manager’s Association) benchmarks;
- A five-year history on the cost of risk and insurance premiums;
- Quantifiable savings achieved by risk management through its auditing and recovery efforts; and
- Employee participation in risk reduction strategies such as the city’s wellness program.



How the City’s Draft Enhanced Loss Control Procedures (ELCP) Address This Practice

Under the draft ELCP, the Risk Management Advisory Group (RMAG) will review loss data, including incurred and paid losses and loss trends by department, at least semi-annually and on an as-needed basis. Risk Management Coordinators will be responsible for working with the Risk Management Director, their department’s RMAG member and the City Attorney’s Office to “exercise operational loss control oversight over their department’s third party accidental losses.”

Promising Practices #5: Review Priorities, Refine Strategies, Share What Works—Loss Control is a Collaborative and Continuous Process

Oakland, California - Embedded Risk Management Services

Embedded Risk Management Services is an approach used in Oakland, California that epitomizes the collaborative and continuous nature of an effective risk management program. Oakland’s risk management officials indicate that they are always exploring opportunities and options for introducing innovations that can reduce the City of Oakland’s financial and risk exposures. “We frequently work behind the scenes, providing support and funding to departments that have interests in furthering these goals,” the risk manager stated.

For example, the risk management division staffs two positions, one in the Police Department to manage its internal medical office, and the other, a safety consultant in the Public Works Agency, to assist with its internal safety program. The safety consultant embedded in the Public Works Agency has the flexibility to provide customized training based on current needs.

Further, risk management officials attribute Embedded Risk Management Services with contributing to the recent 50% reduction in vehicle collisions and the 20% reduction in falls, trips, and slips in the Police Department. Furthermore, Embedded Risk Management Services is allowing Oakland to pursue grant funding for innovative strategies for improving police officer safety such as the use of driving simulators.

How the City’s Draft Enhanced Loss Control Procedures (ELCP) address this practice

The draft ELCP calls for the City’s Principal Risk Analyst in the Department of Finance and Administrative Services to monitor losses, and work with other members of RMAG to identify and revise ineffective loss mitigation strategies. RMAG members and Risk Management Coordinators will also be responsible for monitoring the effectiveness of all training that is performed as part of a loss prevention strategy.

Options for Allocating and Funding Judgment and Claims Costs

This section of the report focuses on Seattle’s allocation and funding of judgments and claims costs. A jurisdiction’s judgments and claims costs generally include claims and court settlements, insurance premiums, legal expenses, and the cost of the staff who manage claims. Jurisdictions basically have three options for covering these costs: 1) self-insuring by setting aside reserves to cover expected claims, 2) purchasing insurance so that a third party covers claims for large losses, or 3) a combination of the two. We found that among the jurisdictions we reviewed, all except one use the third option: a combination of setting aside reserves and insuring against large losses.

Key decisions for local jurisdictions with self-insured reserve funds include determining:

- The amount of funds to set aside each year and keep in reserve, and
- Whether and how to allocate these costs among operating units.

Determining the Total Amount to Hold in Reserves

We found that most local jurisdictions base their judgments and claims reserve calculations on either:

1. An in-house analysis, which takes into account historical loss data for claims paid for a specified period (five year, ten year, etc.)¹⁰ or
2. An actuarial analysis, which calculates estimated losses using historical loss data tied to the date of the event that caused the loss (referred to as the “accident or loss year”). These long-term projections are referred to in the insurance industry as “incurred but not reported (IBNR)” losses. IBNR losses include an estimate of the amount of liability for claims-generating events that have taken place but have not yet been reported or are likely to take place based on the actuarial analysis.

Once a jurisdiction has chosen the method by which they want to calculate their liabilities, they must then choose how much of this liability to fund. We found that, among the jurisdictions we surveyed, this amount varied from no funding at all (i.e., no reserves), to setting aside funding for next year’s expected payments only, to funding a portion of their projected long-term (IBNR) liability.

Calculation of Total Reserves in the City of Seattle’s Judgment and Claims Subfund

The City of Seattle does not use actuarial data to fund its Judgment and Claims Subfund. Rather, City staff determine how much to fund the Judgment and Claims Subfund and then fund one year of projected losses, plus a small, additional reserve (sometimes referred to as a “pay-as-you-go” system). This method sets aside the amount needed to pay claims in the next year, based on an analysis of historical claims losses and consultations with the City Attorney’s Office about outstanding litigation¹¹. In the past, Seattle city officials have also chosen to retain a small balance in their reserve fund over and above what they expect to pay in the next year.

How it works

Each biennium, the City Budget Office estimates what is needed in the Judgment and Claims Subfund to support payments for judgments and claims settlements related to General Fund departments. These estimates are based on a consideration of: 1) the anticipated payouts for the biennium, 2) expected payouts in the next year, and 3) consultations with the City Attorney’s Office about pending or ongoing tort litigation. Since 2002, based on these estimates, the City has contributed \$11 million annually to the Judgment and Claims Subfund for General Fund departments.¹² Some years this has resulted in a reserve or an end-of-year cash balance that remains after that year’s judgments and claims are paid.

¹⁰ In-house analyses sometimes also include estimates of the cost of legal settlements that are expected to occur in the next year.

¹¹ According to the City’s Risk Manager, the cost of claims is relatively consistent over the years while the costs of lawsuits tend to be volatile and unpredictable.

¹² With one exception: in 2011, the amount contributed to the Judgment and Claims Subfund was \$10.3 million.

Chart I below shows the end-of-year fund balances for the Judgment and Claims Subfund for the years 2006 to 2010:

Chart I.

Year	Judgment and Claims Subfund End-of-Year Cash Balance
2006	3,818,937
2007	16,368,613
2008	13,551,259
2009	10,946,841
2010	15,142,576

According to City Council Resolution 30386, if the year end fund balance (reserve) amount is over 50 percent of what the City anticipates paying in judgments and claims in the following year, the General Fund supported departments should get a refund of a portion of their premiums. Should this occur, the refund would be in the form of a credit against their monthly allocations. According to the City finance analyst in charge of allocating the costs of the Judgment and Claims Subfund to departments, the City has not given departments any refunds since 2003.

Options for Allocating Judgment and Claims Costs

According to one industry expert, estimating the cost of potential losses, building a reserve to cover them, and allocating the costs of these reserves to departments are activities intended to meet four goals:

1. To cover the entity's aggregate losses for the period;
2. To avoid unnecessary budget disruptions;
3. To avoid subsidizing one department's decisions and activities at the expense of another department; and
4. To create risk charges that are loss sensitive, thereby providing incentive for loss control.¹³

The challenge is to avoid unnecessary budget disruptions (Goal 2) so ongoing operations are not adversely impacted by volatile events, while still providing some incentive for departments to try to minimize losses (Goal 4).

¹³ Business Insurance *Risk Management Best Practices*, 2001 Risk Manager of the Year, Dan Hartman, State of Oregon.

The nine jurisdictions we surveyed allocated costs to departments based on either:

1. The department's share of historical losses (loss experience), or
2. The department's share of historical losses and risk exposure (typically determined by indices that reflect the size of the department's operations).

To base cost allocation on a department's share of historical losses, the jurisdiction calculates the percent of the historical losses for which each department was responsible and allocates this percentage of the total cost to the department.

To base cost allocation on both historical losses and risk exposure, the jurisdiction adds measures of risk exposure to the calculation. Risk exposure can be measured by variables such as the number of employees in the department, the size of the department's payroll, or its operating budget. Cost allocation methodologies that factor in measures of both loss experience and risk exposure can be very complex. In addition, these two factors can also be weighted differently for individual departments, depending on the nature of the department's operations, their historic losses, and the goals of the entity. For this reason, some jurisdictions use actuaries to develop their cost allocation methodologies.

A final factor jurisdictions must consider when determining their cost allocation methodology is which costs to include in the cost allocation. For example, in some jurisdictions, the cost of excess liability insurance or other types of insurance, along with the overhead costs of the risk management function, are included in the cost allocation. The more costs that are included in the calculation, the greater the "loss sensitivity" of the methodology, because departments are held responsible for not only a portion of their claims losses, but also the additional insurance needed to cover any severe claims and a prorated share of the claims administration costs.

The City of Seattle Judgment and Claims Cost Allocation Process is Budget-neutral for General Fund Departments

Seattle's enterprise departments (Seattle City Light and Seattle Public Utilities) pay their judgments and claims costs based on actual expenses and these expenses are paid from revenues. This approach creates an incentive to minimize these costs.

In contrast, the City allocates funding to General Fund supported City departments to cover judgments and claims losses. Because the City later recoups these funds through monthly premium payments to the Judgment and Claims Subfund, the net effect of this methodology is that the cost is budget-neutral to the departments.

For instance, to allocate the cost of the Judgment and Claims Subfund to General Fund supported City departments, each biennium the City Budget Office determines the average percentage loss for all General Fund departments based on five years of historical loss data.¹⁴ Departments whose share of the aggregate loss is greater than 2 percent are charged a corresponding percent of the cost as an expense in their department's budget (i.e., a "premium"). Theoretically, the purpose of charging departments this premium is to highlight

¹⁴ Some of the General Fund supported departments with significant judgments and claims include: Fire, Parks, Transportation, and Police.

their cost of risk. A City Finance Department official told us that in practice, the premium is simply added to the department's budget without reducing any other part of the budget. Then, each year the premium amount in the department's budget is transferred to the Judgment and Claims Subfund on a monthly basis (1/12th of the total annual allocation each month) to pay claims. The Judgment and Claims Subfund is then responsible for all of the costs associated with paying a department's claims. If a department's payout for the year exceeds their total annual premium, there is no penalty to the department. On the other hand, if a department's payouts for the year turn out to be less than the premium they were charged, they are not given a rebate or carryover credit.¹⁵ Hence, the transaction is budget-neutral. Although departments who consistently reduce their losses will eventually see the impact of this in a reduction of their annual premium, this methodology offers little incentive for departments to manage losses more effectively because: 1) there is a significant time lag between the actions departments take to reduce their losses and the resulting impact on their premiums, and 2) funding is provided by the General Fund regardless of the amount of the premium.

Although Seattle's methodology for allocating judgment and claims costs to General Fund-supported departments takes into account each department's loss history, it does not include insurance premiums for excess liability insurance or overhead costs to operate the City's Risk Management function, which would result in higher judgment and claims costs. Because these costs are allocated to departments separately,¹⁶ the full cost of judgment and claims losses on a department's overall cost of doing business may not be clear to department managers.

For additional information on the financial policies governing the City of Seattle's Judgment and Claims Subfund, see Appendix VI, page 52.

Incorporating Financial Incentives into Cost Allocation

Our survey of other jurisdictions identified one local jurisdiction—King County, Washington—that incorporates a direct financial incentive into its cost allocation methodology. King County allocates to departments the total anticipated costs of judgments and claims that are expected to occur in the next year based on the departments' ten-year history of claims paid.¹⁷ Then, at the end of each year, the actual cost of each department's claims is reconciled to the original estimate of what these claims were expected to be. If a department's actual claims and judgment costs turn out to be less than what they were estimated to be, the department gets a credit for the difference against next year's contribution (referred to by King County as a "rebate").

We found that the 8 other jurisdictions we surveyed did not incorporate financial incentives in their cost allocation methodologies. Rather, they periodically provided their departments with data on their losses to encourage the departments to focus on loss prevention and control. According to the City of Portland, Oregon's risk manager:

¹⁵ Though City Council Resolution 30386 provides for a possible rebate to departments if claims are less than 50% of what was estimated, in practice there have been no rebates for many years, and excess funds are left in the Judgment and Claims Subfund as a reserve.

¹⁶ Similar to Judgment and Claims Subfund costs, these costs are allocated to departments based on five years claims history.

¹⁷ They also allocate a share of the premiums for excess liability insurance and any special program or insurance policy premiums that are unique to the department's operations based on this same ten-year claims history, and overhead costs for the Office of Risk Management, based on five years of claims history. Departments that have less than \$250,000 in claims paid over a ten-year period are not allocated a share of the cost.

Public entities need to be able to conduct business on an ongoing basis without fear that their operating budgets will be impacted by unusually large losses. The goal of the cost allocation methodology should be to smooth out losses. To ensure that local jurisdictions can pay all their claims while still equalizing the budget impact in any given year, it is important to collect enough reserves to cover the estimated losses in the budget period. This may mean that jurisdictions choose not to reduce departments' contributions to the reserve fund in the year immediately following a loss reduction.

Matter for Further Study

Subrogation

In the course of our work, we also considered the potential benefits of centralizing subrogation efforts, which are now handled by individual City departments in Seattle. Subrogation refers to the City's efforts to seek reimbursement for damages it has incurred from either: 1) the party responsible for the damage, or 2) the responsible party's insurer. Although we did not complete an in-depth study of the City's subrogation efforts, we interviewed staff from four departments—Seattle City Light (SCL), Seattle Public Utilities (SPU), Seattle Department of Transportation (SDOT), and the Seattle Police Department (SPD)—who are responsible for the subrogation of third party liability claims.

We found that each of these departments has unique challenges to managing this function, and that they vary in how they approach the task, the resources they devote to it, and the data they collect on the amounts they have recovered. For example, according to a Seattle Public Utilities official, the utility must rely on the accuracy of work order coding recorded by field staff to identify potential cases for recovery. In another case, a Seattle Department of Transportation official told us that the department has just revised its subrogation process and plans to evaluate whether devoting resources to subrogation is cost-effective for the department. Finally, according to a Seattle Police Department official, their biggest challenge is to obtain approval for the cost of the City's vehicle repair charges from insurance companies.

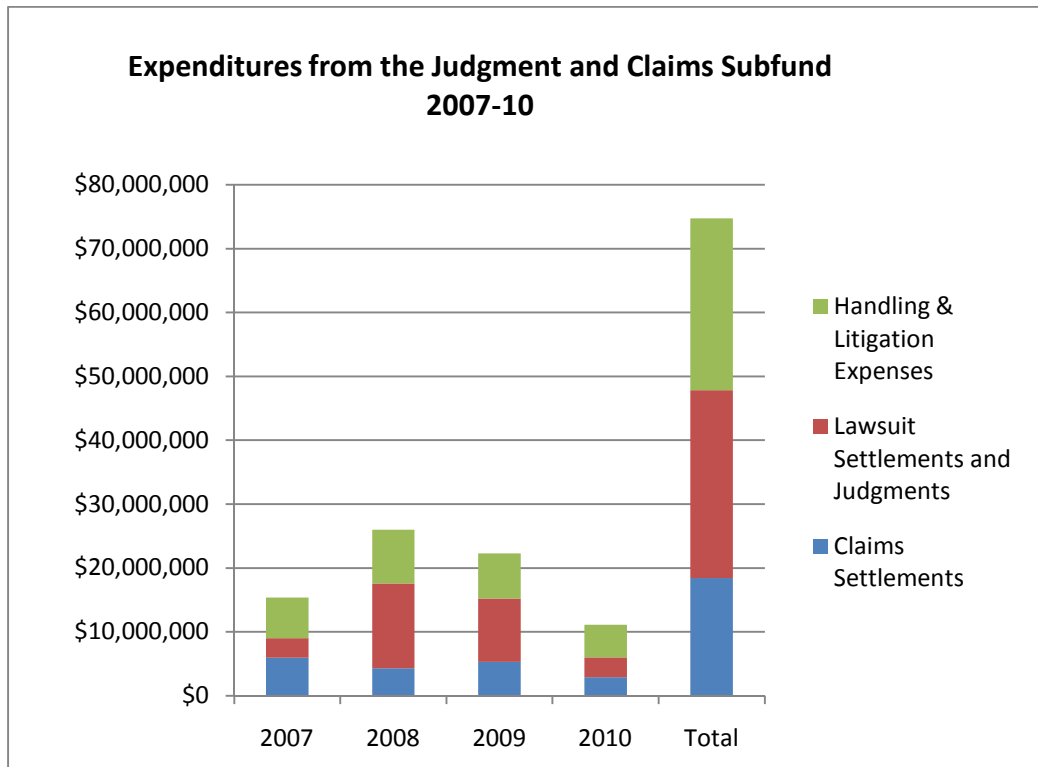
We discussed the pros and cons of centralizing the subrogation function with City managers responsible for this function. One manager noted that, in his view, it is necessary to have industry-specific expertise to manage subrogation successfully. Another manager, from a different department, noted that having a centralized, dedicated staff devoted to this function would allow more time to follow up on cases.

Matter for Further Study

The Mayor and City Council may want to conduct further research to determine whether the City's current method of handling subrogation is the most cost-effective approach and ensures that the City is fully recovering all the costs to which it is legally entitled.

Appendix I: Background on the City of Seattle's Loss History

Chart II. Judgment and Claims Subfund Expenditures 2007-2010



Handling and Litigation Expenses are primarily for legal expenses, and include, among other things, the costs of outside attorneys, court reporters, expert witnesses, and professional and technical consultants used as part of the claims investigation process. Over the four year period, handling and litigation expenses of \$26,931,188 accounted for 36 percent of the total Judgment and Claims Subfund expenditures of \$74,767,406.

Lawsuit Settlements and Judgments are payments made to settle pending litigation, either as part of a legally negotiated agreement or a court mandated award. Over the four year period, lawsuit settlements and judgments amounting to \$29,417,741 accounted for 39 percent of the total Judgment and Claims Subfund expenditures.

Claims Settlements are payments made on behalf of City departments to settle claims against the department or its employees. Over the four year period, claims settlements of \$18,418,477 accounted for 25 percent of the total Judgment and Claims Subfund expenditures.

Chart III. 2010 Percent of Total Claims Filed against City Departments

Total claims filed = 1,395

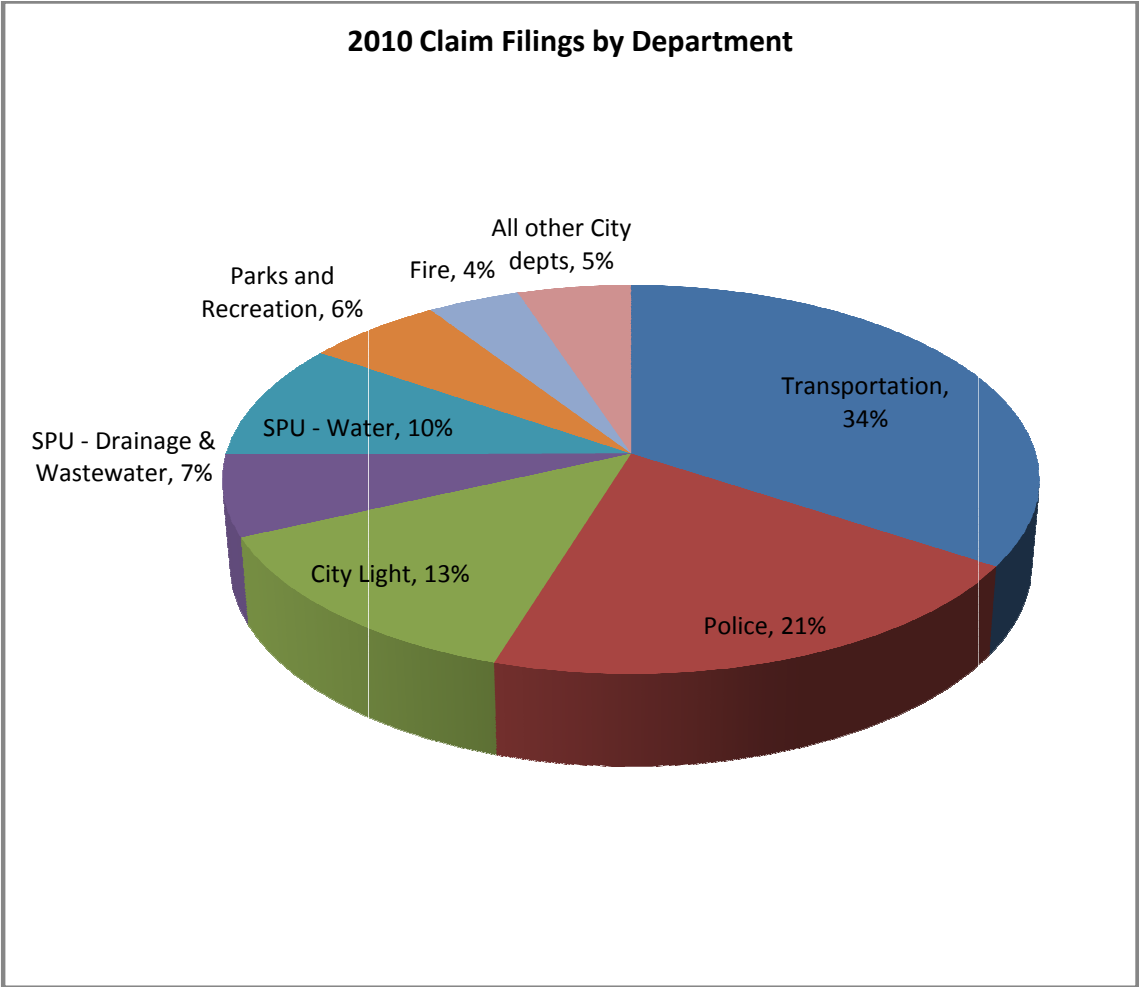
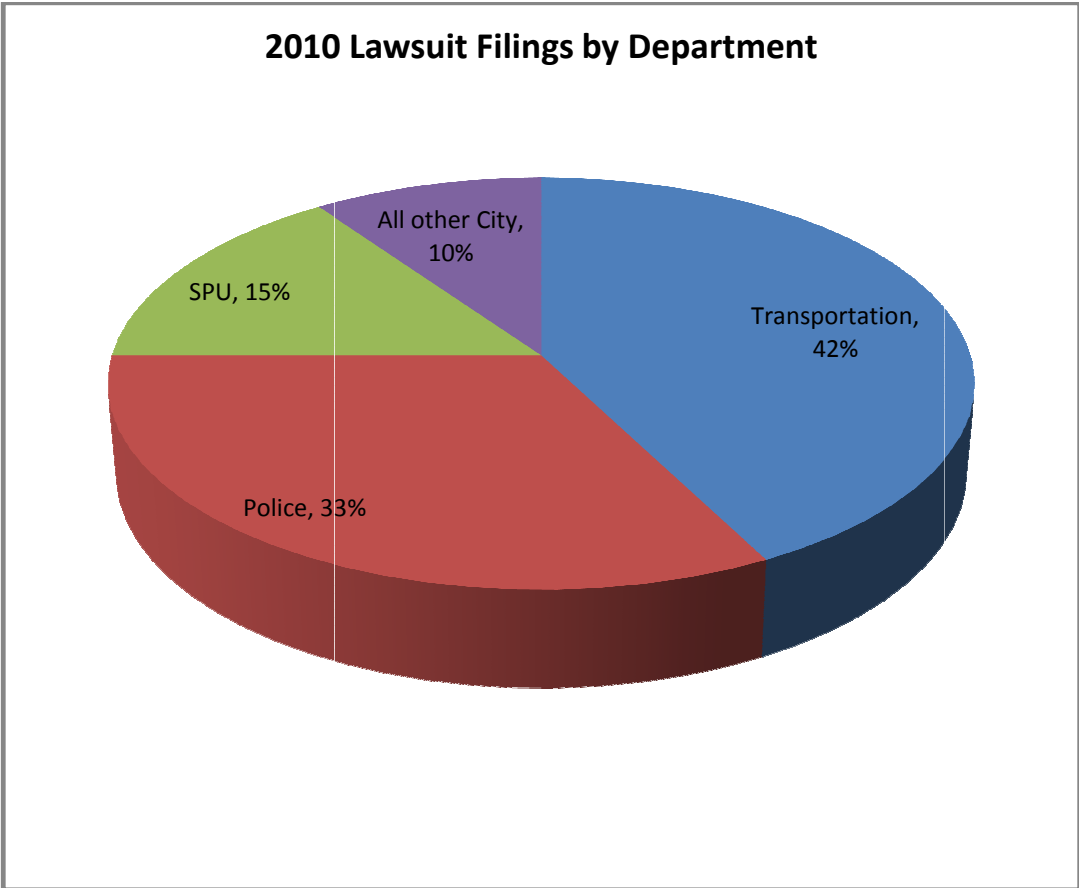


Chart IV. 2010 Percent of Total Lawsuits Filed against City Departments

Total lawsuits filed = 92



11 of 38 Loss Categories Accounted for 95 Percent of Total City Losses for 2000-2009

Of the \$37,611,823 the City paid in claims settlements (excluding lawsuit judgments and settlements) over the period 2000-2009, 11 loss categories accounted for 95 percent of the total losses for that period, as shown in Chart V below.

Chart V. City of Seattle: Number of Claims Settlements (Excluding Lawsuits) and Total Cost
City of Seattle Loss Categories for 2000-2009

Event/Loss type	Total number of settlements	Total cost for 2000-2009	Percent total cost
Sewer (SPU)	1,182	\$12,066,286	32.1%
Fleet (multiple departments)	2,721	6,365,571	16.9%
Police Action (SPD)	1,040	3,494,331	9.3%
Water Line (SPU)	625	3,267,886	8.6%
Fall (SDOT)	926	2,989,236	8.0%
Flood (SPU)	432	2,326,664	6.2%
Power Line (SCL)	187	1,646,863	4.4%
Construction (multiple departments)	1,456	1,616,948	4.3%
Street Defect (SDOT)	2,015	784,465	2.1%
Facilities (multiple departments)	491	564,356	1.5%
Tree Damage (multiple departments)	421	545,031	1.5%
Other (27 categories)	4,577	1,944,186	5.1%
Total:	16,073	\$37,611,823	100%

Source: Department of Executive Administration 2009 Annual Report – Judgment/Claims

Appendix II: Methodology

To respond to the Seattle City Council's request to conduct a review of best practices in risk management, we started by obtaining background information on risk management. To do this, we interviewed representatives from industry associations (for example, the Public Entity Risk Institute), completed on-line courses in risk management, and interviewed a sample of risk managers from other jurisdictions (Denver, Colorado; Austin, Texas and Sunrise, Florida). We also conducted a literature review of risk management industry standards. Based on this research, we asked the Seattle City Attorney's Office to provide us with a comparison of the state laws governing tort claim settlements against public entities.

Next, to obtain comparative information about what other public entities are doing, we met with officials from two Washington state public entities, and conducted a telephone survey of nine jurisdictions located either in Washington State or in states with a legal environment related to third party liability claims that is similar to Washington State's. Where possible, we obtained and reviewed copies of other jurisdiction's annual and/or actuarial reports. We also interviewed the director of the Washington Cities Insurance Authority and representatives of local chapters of the Public Risk Management Association (PRIMA) and the Risk Management Society (RIMS).

Finally, to understand the City of Seattle's Risk Management Program, we worked with the City of Seattle's Director of Risk Management and the Operational Risk Manager to obtain information on how the City's program is structured and what the plans are to enhance it. We reviewed the City of Seattle's risk management annual reports for the years 2006-2009, and the draft annual report for 2010, and worked with the City's Risk Management Coordinator to understand what loss data is currently available to departments. We interviewed risk managers from three major City departments, the accounting firm responsible for conducting actuarial analyses for the City, and the City's insurance broker.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix III – Enterprise Risk Management: Two Case Studies in the State of Washington

Case Study 1: The University of Washington

The University of Washington (UW) first considered enterprise risk management (ERM) in 2005, in response to a few claims with large financial payouts. UW's Office of Financial Management requested a literature search on enterprise risk management, which resulted in a February 2006 white paper. The white paper recommended a "three-legged" approach to implementing ERM:

1. Form a President's Advisory Committee on ERM to prioritize risk areas for in-depth assessment, discuss key emerging risks, and report to the President annually on the institution's risk map and recommended mitigations;
2. Form a Compliance-Operations-Financial Council, to bring together campus experts to identify risks, ensure information is available to the University community, and recommend ways for interested parties to report problems; and
3. Conduct risk assessments, either by department or issue-area (using standard measures of likelihood and impact), assess current controls in place to reduce these risks, prioritize residual risks and recommend possible mitigation strategies.

According to UW's Enterprise Risk Management Toolkit (*Summary Version*):

The University of Washington has defined ERM based on its interpretation of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) model¹⁸. UW views ERM as integrating risk discussions into strategic deliberations, and identifying the interrelations of risk factors across activities.

Characteristics of UW ERM include:

- Assessing risk and opportunity in the context of strategic objectives;
- Viewing risk and opportunity holistically, not functionally; and
- Covering all types of risk: compliance, operations, financial, strategic and mega.
Compliance risk is risk that is created by failing to follow federal, state or local laws,

¹⁸ COSO was formed in 1985 to sponsor the National Commission on Fraudulent Financial Reporting, an independent private sector initiative which studied the causal factors that can lead to fraudulent financial reporting. COSO's mission is to provide thought leadership through the development of comprehensive frameworks and guidance on enterprise risk management, internal control and fraud deterrence designed to improve organizational performance and governance and reduce fraud. COSO's ERM framework was "designed to offer organizations a commonly accepted model for evaluating risk management efforts. This framework provides guidance to help organizations build effective programs for identifying, measuring, prioritizing, and responding to risk."

regulations or University policy. *Operations risk* is risk that may affect ongoing day-to-day management processes (customer service, supply chain, etc.). *Financial risk* is risk that may result in loss of assets or financial resources. *Strategic risk* is risk that may affect an organization's ability to achieve its goals or objectives. *Mega risk* is large-scale external risk, or mega-trends that impact human health, a business sector, the environment or societies, for example, how changes in demographics, such as an aging population, are likely to affect demand for services.

Since 2006, UW ERM has completed over thirty assessments to evaluate hundreds of risks and opportunities with input from faculty, staff, students, and outside subject matter experts.¹⁹

In addition, in 2009-2010, UW's President's Advisory Committee on Enterprise Risk Management focused on demographics and provided a forum to discuss how changes in student, faculty, and donor demographics may produce challenges and opportunities to the University in coming years.

To implement ERM, UW's Office of Risk Management has developed an eight-step process. For more information on this process (or to order a copy of their revised toolkit) see <http://f2.washington.edu/treasury/riskmgmt/advice/ERM>.

Case Study 2: The State of Washington

In 2006, Governor Gregoire named Enterprise Risk Management (ERM) as a "best practice" for all 165 Washington state agencies. The Risk Management Division of Washington State's Office of Financial Management (OFM) was charged with helping all agencies implement robust ERM programs. Agencies are held accountable for their ERM implementation efforts; ERM progress is reported every quarter to the Governor through her Government, Management, Accountability and Performance (GMAP) program.

OFM's Risk Management Division began its statewide ERM implementation project by obtaining outside ERM training for its agency executives. Based on the executives' positive response, the Risk Management Division's staff (a) developed a flexible seven-step ERM process that accounted for the many varied business functions within the state, (b) instituted a pilot program to test this program, (c) designed easy-to-use ERM tools, and (d) began a comprehensive training program with all large executive agencies. As of 2011, staff had trained more than 40 agencies and 2000 agency staff. In addition, they use a specially developed "maturity model"—a scoring tool that measures an agency's progress in mastering ERM—and reports these scores for the state's largest agencies²⁰ annually to GMAP. Since beginning the ERM program, as measured by an independent actuary, statewide outstanding tort liability has decreased by more than 10 percent.

According to OFM's February 2010 publication *Risk Management Basics*:

Traditional risk management focuses on mitigating losses. The risk manager follows up on an event and analyzes loss information to determine if the agency should change its

¹⁹ See UW Enterprise Risk Management 2010 Annual Report, pg. 4.

²⁰ Agencies with over 100 FTEs.

operations or policies to better protect the organization, clients, and employees from similar losses.

ERM is a risk management method that begins with goals. ERM looks at important agency goals (not just accidents or lawsuits) and the risks connected to each goal. In this context, a “risk” is anything—good or bad—that could stop you from reaching a goal. Once a goal is clearly defined, ERM uses a simple process to identify, evaluate and prioritize all the risks to achieving it. After the most severe risks are identified, a treatment plan is developed for each that matches the organization’s level of control, risk appetite, and available resources.

The Risk Management Division reports the following lessons learned²¹ from their experience with ERM to date:

- The right ERM approach is the one that fits the complexity and culture of your group.
- All methods include structured ways to:
 - Use goals to set context;
 - Understand risk appetite/tolerance;
 - Identify risks;
 - Assess their relative severity;
 - Treat/mitigate severe risks; and
 - Measure performance.

For more information on the State of Washington’s Enterprise Risk Management Program, see <http://www.ofm.wa.gov/rmd/erm/erm.asp>

²¹ See “Implementing Enterprise Risk Management in State Government,” Drew Zavatsky, November 7, 2008 presentation to the North Carolina State University ERM Initiative.

Appendix IV State Policies Related to Joint and Several Liability, Sovereign Immunity (Nature of Waiver), and Tort Damage Caps

Note: States in red text have laws with unique characteristics. See descriptions of these states' laws below.

APPENDIX IV								Prepared by City Attorney's Office, City of Seattle	
JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES					
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)			
				State	Local	State	Local		
AL	Battle v. Morrise: 93 So. 2d 428 - Ala: Supreme Court 1957; Matkin v. Smith: 643 So. 2d 949 (Ala. 1994)			Immune. Ala. Const. art. 1, § 14	Immunity with waiver for acts of employees within scope of employment and road maintenance. Ala. Code § 11-47-190		\$100,000/\$300,000 [FN298]. Ala. Code § 11-47-190		

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
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				State	Local	State	Local
AK		§ 09.17.080(d) – no exceptions		Partial waiver with immunity for discretionary acts. [FN299]. Alaska Stat. § 09.50.250	Partial waiver with immunity for discretionary acts and certain governmental functions. Alaska Stat. § 09.65.070	\$400,000 to \$1,000,000 for non-economic damages. Alaska Stat. § 09.17.010	
AZ		§ 12-2506 – exceptions: acting in concert/as an agent of another party, injury's under Employers' Liability Act (concerning railroad companies)		Partial waiver with immunities for governmental functions. Ariz. Rev. Stat. § 12-820 et seq.			

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
AR		<p>§ 16-55-201 (Arkansas Civil Justice Reform Act of 2003) § 16-55-203: insolvent defendants – portions deemed unrecoverable may be distributed to those defendants with >10% fault; defendants with 10-50% fault may not have their share increased by more than 10%; defendants with 50%+ may not have their share increased more than 20%</p>		<p>Claims commission. Ark. Code Ann. § 19-10-201 et seq.</p>	<p>Immune except to extent of insurance. Ark. Code Ann. § 21-9-301 et seq.</p>	<p>\$10,000 with exception for death and disability benefit claims. Awards over \$10,000 referred to General Assembly. Ark. Code Ann. § 19-10-215</p>	<p>Insurance limits. Ark. Code Ann. § 21-9-301 et seq.</p>

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				State	Local	State	Local
CA			Cal. Civ. Code Ann. § 1431.2 – Joint & Several Liability for economic damages, Several Liability for non-economic	Statutory scheme of liabilities and immunities. Cal. Gov't Code § 810 et seq.			
CO	§ 13-21-111.5 – exception: acting in concert			Partial waiver with immunity for governmental functions. Colo. Rev. Stat. § 24-10-106		\$150,000/\$600,000. Colo. Rev. Stat. § 24-10-114	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
CT		<p>Conn. Gen. Stat. Ch. 925 § 52-572(c): exceptions – unrecoverable non-economic damages will be distributed based on defendants proportion of total liability, economic damages will be distributed based on defendants proportion of remaining liability (minus insolvent defendant)</p>		<p>State claims commissioner; tort lawsuits only if allowed by commissioner. Conn. Gen. Stat. § 4-160</p>			

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
DE	10 § 6301, 8132			Immunity for governmental functions and discretionary acts. Del. Code Ann. tit. 10, § 4001	Immunity except for vehicles, buildings, and pollution. Del. Code Ann. tit. 10, § 4012	None.	\$300,000 or insurance limits. Del. Code Ann. tit. 10, § 4013
FL		§ 768.81(3): note - plaintiff's liability does not bar recovery, regardless of proportion		Waiver for acts or omissions which would create liability for private person. [FN300]. Fla. Stat. 768.28		\$100,000/\$200,000 or insurance limits. Fla. Stat. 768.28	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
GA			<p>§ 51-12-31: several liability when plaintiff has some degree of fault.</p> <p>§51-12-32: when claimant not at fault (“absent moral turpitude”), liability is joint & several</p>	<p>Partial waiver with immunities for governmental and operational functions. Ga. Code Ann. § [FN301]. Ga. Code Ann. § 50-21-23 et seq.</p>	<p>Immunity for municipalities with waiver for ministerial acts. Ga. Code Ann. § 36-33-1 et seq.</p>	<p>\$100,000,000/\$3,000,000. Ga. Code Ann. § 50-21-29</p>	<p>\$100,000-\$500,000/\$300,000-\$700,000 for negligent use of motor vehicle claims. Ga. Code Ann. § 36-92-2</p>
HI			<p>§663-10: J&SL for economic damages; for non-economic in limited cases, public liability several except for established flaws in highway design/maintenance</p>	<p>Partial waiver with immunity for discretionary functions and no joint and several liability (except for highway maintenance and design claims). Haw. Rev. Stat. §662-1 et seq., § 663-10.5</p>			

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
ID		§6-803: exception – acting in concert		Partial waiver with governmental immunities. Idaho Code Ann. § 6-902 et seq.		\$250,000 for non-economic damages (adjusted annually in accordance with state average annual wage). Idaho Code Ann. § 6-1603	
IL			§ 735 ILCS 5/2-1117: J&SL for defendants with >25% liability	Court of Claims. 745 Ill. Comp. Stat. 5/1	Partial waiver with governmental and operational immunities. 745 Ill. Comp. Stat. 10/2 -101 et seq.	\$100,000, but no limit for cases arising from the operation of a State vehicle. 705 Ill. Comp. Stat. 505/8	
			§ 735 ILCS 5/2-1118: exceptions – environmental and medical mal practice torts				

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
IN		§ 34-51-2-8		Partial waiver with governmental and operational immunities. Ind. Code § 34-13-3-3		\$300,000-\$700,000/\$5,000,000. Ind. Code § 34-13-3-4	
IA			§ 668.4: defendants with >50% of liability are joint & severally liable for economic damages only	Partial waiver with governmental and operational immunities. Iowa Code §669.1 et seq.	Partial waiver with governmental and operational immunities. Iowa Code §670.1 et seq.		
KS		§ 60-258		Partial waiver with governmental and operational immunities. Kan. Stat. Ann. § 75-6104		\$500,000 or insurance limits. Kan. Stat. Ann. § 75-6105	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
KY		§ 411.182		Board of Claims. Ky. Rev. Stat. Ann. § 44.070 et seq.	Partial waiver with governmental immunities. Ky. Rev. Stat. Ann. § 65.200 et seq.	\$200,000/\$350,000. Ky. Rev. Stat. Ann. §44.070 et seq.	
LA		Civil Code Art. 2324: exception – acting in concert		Waiver of immunity. La. Rev. Stat. Ann. § 13:5101 et seq.		\$500,000 (non-economic damages). La. Rev. Stat. Ann. § 13:5106	
ME	14 § 156-A: J&SL when plaintiff's liability is less than defendants'			Immunity except for specified vehicle, real property, pollution and road maintenance claims. Me. Rev. Stat. Ann. tit. 14, § 8104-A		\$400,000. Me. Rev. Stat. Ann. tit. 14, § 8105	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
MD	§ 11-102			Partial waiver with immunity for malicious or grossly negligent employee acts. Md. Code Ann., Cts. & Jud. Proc. § 5-522	Partial waiver with immunity for discretionary acts. Md. Code Ann., Cts. & Jud. Proc. § 5-507	\$200,000. Md. Code Ann., State Gov't § 12-104	\$200,000/\$500,000. Md. Code Ann., Cts. & Jud. Proc. § 5-303

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
MA	Mass. Gen. Laws Ch. 231B, §1: proportion of fault is determined by defendants for purposes of right of collection after judgment is satisfied			Partial waiver with governmental immunities. Mass. Gen. Laws ch. 258 §§ 2, 10		\$100,000. Mass Gen. Laws ch. 258 § 2	
MI		§ 600.6304: exception – medical malpractice when plaintiff is not at fault		Immunity for governmental functions with liability for vehicles, highway maintenance, and proprietary functions. Mich. Comp. Laws §§ 691.1401-1419			

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
MN			§ 604.02: J&SL when defendant is >50% liable, acting in concert, intentional torts, environmental torts	Partial waiver with governmental and operational immunities. Minn. Stat. § 3.736	Partial waiver with more extensive immunities. Minn. Stat. § 466.03	\$300,000-\$500,000/\$750,000-\$1,500,000. Minn. Stat. §§ 3.736, 466.04	
MS			§ 85-5-7: J&SL applies to those with >30% fault to the extent necessary for plaintiff to recover 50% of damages owed.	Waiver of immunity except for discretionary acts and government functions. Miss. Code Ann. §§ 11-46-5, -9		\$500,000. Miss. Code Ann. § 11-46-15	
MO			§537.067: J&SL when – defendant has >50% fault, or acting as an employee of party	Immunity except for vehicles and dangerous property. Mo. Ann. Stat. § 537.600.		Approx. \$300,000/\$2,000,000. Mo. Ann. Stat. § 537.610	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
MT			§ 27-1-703: J&SL for defendants w/ >50% fault, acting in concert. Unrecoverable damages distributed amongst defendants (proportionately amongst those with <50% fault)	Waiver to extent that a private person would be liable. Mont. Code Ann. §§ 2-9-101 et seq.		\$750,000/\$1,500,000. Mont. Code Ann. § 2-9-108	
NB			§ 25-21, 185.10: J&SL for economic damages; non-economic damages several except when acting in concert	Claims Board with exemptions for governmental functions and legislative review of large claims. Neb. Rev. Stat. § 81-8, 209 to 235	Partial waiver with governmental and operational immunities. Neb. Rev. Stat. § 13-901 to 927		\$1,000,000/\$5,000,000. Neb. Rev. Stat. § 13-926

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
NV		§ 41-141: exceptions – strict liability, intentional & hazardous waste torts, acting in concert, and manufacturing liability.		Waiver of immunity with specific exceptions, including for discretionary acts. Nev. Rev. Stat. 41.031 et seq.		\$75,000-\$100,000. Nev. Rev. Stat. 41.035	
NH			§ 507:7-e: J&SL for defendants w/ >50% fault, and acting in concert,	Claims Board (under \$50,000); partial waiver with discretionary immunity. N.H. Rev. Stat. Ann. 541-B:1 et seq.	Immune except for vehicles, premises, and road maintenance. N.H. Rev. Stat. Ann. 507-B:2	\$475,000/\$3,750,000. N.H. Rev. Stat. Ann. 541-B:14	\$275,000/\$925,000. N.H. Rev. Stat. Ann. 507-B:4

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
NJ			2A:15-5.3: J&SL for defendants w/ >60% fault, those acting in concert and environmental torts. Those w/ <5% fault may not have their proportion increased.	Partial waiver with governmental and some operational immunities. N.J. Stat. Ann. §§ 59:1-1 to 59:12-3			
NM		§ 41-3A-1: exceptions – intentional tort, acting in concert, manufacturing liability and torts impacting public safety		Immunity except for vehicles, property, law enforcement, and, certain specified operational functions. N.M. Stat. Ann. §§ 41-4-1 to -29		\$200,000-\$400,000/\$750,000. N.M. Stat. Ann. § 41-4-19	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
NY			CVP 1601: J&SL for economic damages. J&SL for non-economic damages for defendants w/ >50% fault	Waiver to the extent a private person would be liable. N.Y. Ct. Cl. Act § 8			
NC	G.S. 1A-1, Rule 20			Claims Board; waiver of immunity to extent that private person would be liable. N.C. Gen. Stat. § 143-291	Immune except to extent of insurance and large cities have the option to waive immunity. N.C. Gen. Stat. §§ 160A-485, -485.5	\$1,000,000. N.C. Gen. Stat. § 143-299.2	Insurance limits. N.C. Gen. Stat. § 160A-485

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
ND		§ 32-03.2-02: exceptions – acting in concert and those who ratify or adopt the act for their benefit		Partial waiver with governmental and some operational immunity. N.D. Cent. Code§ 32-12.2-02	Partial waiver with immunity for certain governmental functions. N.D. Cent. Code§ 32-12.1-03	\$250,000/\$1,000,000. N.D. Cent. Code§ 32-12.2-02	\$250,000/\$500,000.
OH			§ 2307.22: J&SL when defendant is >50% at fault, and when acting in concert; for economic damages only. Defendants are severally liable for non-economic damages	Court of Claims; waiver to extent of private party liability. Ohio Rev. Code Ann. § 2743.01 et seq.	Partial waiver with immunity for discretionary acts & governmental functions. Ohio Rev. Code Ann. § 2744.01 et seq.		\$250,000 (non-economic damages). Ohio Rev. Code Ann. § 2744.05

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
OK			§23 15: J&SL when defendant is >50% at fault or acts with willful disregard.	Partial waiver with liability to extent of private parties and immunity for governmental and many operational functions. Okla. Stat. tit. 51, §§ 151-72		\$25,000-\$200,000/\$1,000,000. Okla. Stat. tit. 51, § 154	
OR		§ 31.610: unrecoverable damages are distributed proportionately amongst other defendants		Partial waiver with immunity for tax collection, discretionary acts, claims covered by workers' compensation, and certain other claims. Ore. Rev. Stat. § 30.265		\$1,500,000-\$2,000,000/\$3,000,000-\$4,000,000. Ore. Rev. Stat. § 30.271	\$100,000-\$666,700/\$500,000-\$1,333,300. Ore. Rev. Stat. §§ 30.272-3

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
PA	§ 42 7102: plaintiff may choose which defendant to recover full amount from as long as their liability does not equal the combined liability of defendants. Defendants have right of contribution			Immunity except for vehicles, roads, medical claims, liquor sales, and certain other functions. 42 Pa. Stat. Ann. § 8522	Immunity except for vehicles, care of property and animals, street and sidewalk maintenance, and dangerous utility service facilities. 42 Pa. Stat. Ann. § 4542	\$250,000/\$1,000,000. 42 Pa. Stat. Ann. § 8528	\$500,000. 42 Pa. Stat. Ann. § 8553
RI	§ 10-6-2			Waiver to extent of private liability. R.I. Gen. Laws 9-31-1		\$100,000, but no limit for proprietary functions. R.I. Gen. Laws 9-31-2, -3	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
SC	§15-38-20			Waiver to extent of private liability with specific exemptions for discretionary and some governmental functions. S.C. Code Ann. § 15-78-40, -60		\$300,000-\$1,200,000/\$600,000-\$1,200,000. S.C. Code Ann. § 15-78-120	
SD			§ 15-8-15.1: J&SL for defendants with >50% of fault. Defendants with <50% cannot be responsible for more than twice their proportion of fault.	Waiver to extent of insurance coverage. S.D. Codified Laws § 21-32-16	Waiver to extent of insurance coverage. S.D. Codified Laws § 12-32A-1	Insurance limits. S.D. Codified Laws § 21-32-16	Insurance limits. S.D. Codified Laws § 21-32A-1
TN		McIntyre v. Balentine (833 SW 2d 52 - Tenn: Supreme Court 1992)		Immune except for vehicles, roads and real property. Tenn. Code Ann. § 29-20-101 to 408		Insurance limits. Tenn. Code Ann. § 29-20-311	

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
TX			Civ. Prac. Rem. Code § 33.013: J&SL for defendants w/ >50% fault or acting with specific intent in concert to commit a felony	Partial waiver with immunity for discretionary acts and some governmental functions. Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq.		\$100,000-250,000/\$100,000-\$500,000. Tex. Civ. Prac. & Rem. Code Ann. § 101.023	\$100,000/\$100,000-\$300,000. Tex. Civ. Prac. & Rem. Code Ann. § 101.023
UT		78B-5-818, 819: exception – if fault of party immune from liability is >40%, it is reduced to zero and distributed amongst liable defendants.		Partial waiver with governmental immunities. Utah Code Ann. § 63G-7-301		\$233,600-\$583,900/\$2,000,000. Utah Code Ann. § 63G-7-604	

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State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
VT		12 § 1036		Partial waiver with governmental immunities. Vt. Stat. Ann. tit. 12, § 5601	Waiver to extent of insurance coverage. Vt. Stat. Ann. tit. 29, § 1403	\$250,000/\$1,000,000. Vt. Stat. Ann. tit. 12, § 5601	Insurance limits. Vt. Stat. Ann. tit. 29, §1403
VA	§8.01-443			Partial waiver to the extent of private liability. Va. Code Ann. § 8.01-195.1 et seq.		\$100,000 or insurance limits. Va. Code Ann. § 8.01-195.3	
WA			§ 4.22.070: J&SL when acting in concert and plaintiff not at fault. Parties immune from liability do not count towards the allocation of fault				

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JOINT & SEVERAL LIABILITY POLICIES				PUBLIC TORT LIABILITY POLICIES			
State	Joint & Several Liability (11 States)	Several Liability (20 States)	Modified (19 States)	Nature of Waiver		Damage Limits (41 States)	
				State	Local	State	Local
WV			§55-7-24: J&SL when def. is >30% at fault, acting in concert, or environmental tort.	Partial waiver with governmental and operational immunities. W. Va. Code § 29-12A-1 to -18		Insurance limits. W. Va. Code § 29-12A-9	
WI			§ 895.045: J&SL for economic damages when defendants are >50% at fault or acting in concert. Does not apply to punitive damages.	Partial waiver with immunity for discretionary decisions. Wis. Stat. § 893.80		\$250,000. Wis. Stat. § 893.82	\$50,000 generally, \$250,000 for motor vehicle accidents. Wis. Stat. §§ 893.80, 345.05
WY		§ 1-1-109		Immunity except for vehicles, premises, medical and law enforcement. Wyo. Stat. Ann. § 1-39-101 to -121		\$250,000/\$500,000 generally, \$1,000,000 for medical claims. Wyo. Stat. Ann. § 1-39-118, -110	

Descriptions of States Whose Laws Have Unique Characteristics

Alabama: This is one of the two states whose joint and several liability (J&L) policies have been established via judicial action. In *Battle v. Morris* the Alabama Supreme Court ruled that, absent applicable statute, trial courts do not have the authority to apportion damages to liable parties and that the satisfaction of the judgment takes priority over apportionment of fault. This has been reaffirmed on several occasions, most recently in *Matkin v. Smith*. Strong public sector immunities and damage caps are maintained by statute, however.

Georgia: The only other state that, like Washington State, maintains J&L for defendants when the claimant has no fault. This is coupled, however, with damage caps and limits on immunity at both the state and local levels.

Hawaii: Maintains a unique policy for J&SL as well as public sector immunity, with specific limitations and exceptions. J&SL is maintained for economic damages. Non-economic damages are subject to restrictions in order to be J&S. Of note is the exception to both public sector immunity and several liabilities in regards to roadway design, signage and maintenance. In order for a public sector entity to waive its immunity and be susceptible to J&SL for these claims, the entity must have had reasonable prior notice of a previous injury under similar circumstances (giving the entity, in effect, one warning before being held liable).

New York: Similar to Washington State policy in regards to a lack of any damage cap in addition to few restrictions on J&SL. The claimant must show that the entity itself was negligent, rather than an individual within that entity.

Tennessee: The second of two states to establish liability policy via the courts, *McIntyre v. Balentine* established the doctrine of comparative fault and limiting liability as several and not joint.

Appendix V: Comparison of Risk Management Organizational and Legal Structures and Staffing for Seattle and Nine Jurisdictions Surveyed

Jurisdiction	Liability Claims Adjustment	Workers' Compensation	Subrogation Third party Liability Claims	Subrogation Workers' Compensation	Insurance including Contract Review
City of Long Beach	City Attorney	Risk Management	City Attorney	City Attorney	Risk Management
City of Oakland	City Attorney	Risk Management	Third Party Administrator	Third Party Administrator	Risk Management
City of Los Angeles	City Attorney	Human Resources	Office of Finance ²²	City Attorney and Human Resources	Risk Management
City of Honolulu	City Attorney Third Party Administrator for auto liability	Human Resources	Data Not Available	Data Not Available	Data Not Available
City of Sacramento	Third Party Administrator	Risk Management	Risk Management	Risk Management oversees Workers' Compensation	Risk Management
King County	Risk Management	Human Resources	Risk Management	Risk Management	Risk Management

²² Supported by City Attorney, Risk Management and outside contractors, as needed.

Jurisdiction	Liability Claims Adjustment	Workers' Compensation	Subrogation Third party Liability Claims	Subrogation Workers' Compensation	Insurance including Contract Review
Pierce County	Risk Management	Third Party Administrator, Risk Management oversees	Risk Management, in coordination with Prosecuting Attorney's Office	Third Party Administrator, in coordination with Risk Management	Prosecuting Attorney
Snohomish County	Prosecuting Attorney	Third Party Administrator, Prosecuting Attorney oversee	Risk Management	Third Party Administrator	Risk Management and Prosecuting Attorney
Spokane County	Risk Management	Risk Management	Risk Management	Risk Management	Risk Management
City of Seattle	Risk Management	Human Resources	Operating departments	Human Resources	Risk Management

Appendix VI: Financial Policies Governing Seattle’s Judgment and Claims Subfund

The purpose of the City of Seattle’s Judgment and Claims Subfund is to act as a self-insured reserve fund to cover losses and related legal expenses due to legal claims and judgments against the City.

The City of Seattle’s Judgment and Claims Subfund is primarily guided by financial policies for the fund outlined in City Council Resolution 30386. Resolution 30386 was adopted in 2001 when the City conducted a comprehensive review and revision of many of its financial policies. The resolution addresses the Judgment and Claims Subfund structure, expenditures, revenues and fund balances, payments, reporting and evaluation requirements.

Resolution 30386 addressed the challenge of department accountability for losses by directing the Department of Finance to allocate a portion of the cost of funding the Judgment and Claims Subfund to some General Fund supported departments. Before Resolution 30386 (2001), the City made a direct transfer to the Judgment and Claims Subfund from the General Subfund to cover all General Fund supported department expenses made against the Judgment and Claims Subfund. Starting in 2003, the first City budget biennium after the adoption of Resolution 30386, some General Fund departments’ budgets included an expense for judgments and claims. These charges are referred to in the resolution as premiums. According to a former City official, the purpose of including premiums in General Fund supported departments’ budgets was twofold:

1. To create a greater awareness in General Fund departments about the costs of judgments and claims, and
2. To provide an incentive for these departments to reduce those costs. The intent was to motivate departments to track whether the claims and judgment costs they incurred in a given year were greater or less than the premium they were charged, and to take action in response to this information.