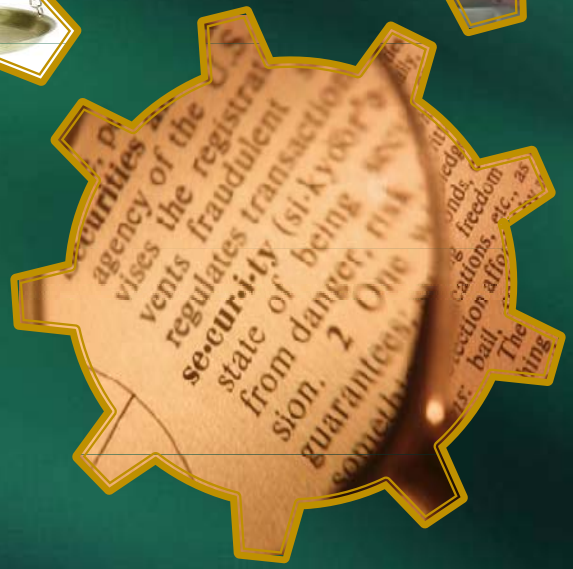
Risk Management Seminar

2011



Risk Management Fund

Why We Ask…

Incidents – Administration – Claims

Risk Management Fund
The Beginning

- Established in 1995 following the loss of Sovereign Immunity
  - Assumed coverage for most of the State's liability exposures
- Replaced employee defense under the State Bonding Fund

Risk Management Fund
Generally . . . What Is Covered?

Third-Party Claims For Damages Resulting From:

- An Occurrence
- Wrongful Act
- Claim Made Because of Bodily Injury, Personal Injury, or Property Damage
- Public Officials' Liability
- Accident
- Error or Omission
- Professional Liability
- Any Combination Thereof

Risk Management Fund
Generally . . . What Is Covered?

- The State may only be held liable for money damages for:
  - an injury caused by the negligent or wrongful act or omission of a state employee
    - acting within the scope of their employment
    - under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state

Risk Management Fund
Generally . . . What Is Covered?
. . . continued

- or an injury caused from some condition or use of tangible property (vehicle, equipment, leased/rented facilities)
  - under circumstances in which the state, if a private person, would be liable to the claimant

Risk Management Fund
Fundamental Inquiries

Risk Management Fund
Legal Principles/Terms

Liability

- Legal responsibility for one's acts or omissions

Tort

- A wrongful act for which damages can be sought by the injured party (excluding breach of contract)

Negligence

- Failure to use reasonable care or act as an ordinarily prudent person would under the circumstance

Risk Management Fund
Legal Principles/Terms

Elements– Negligence Claim

- **Duty**
  Having an obligation or responsibility to someone
- **Breach of Duty**
  Not meeting that obligation
- **Proximate Cause**
  Was any harm directly related to the breach of duty?
- **Injury**

Risk Management Fund
Legal Principles/Terms

Scope of Employment

state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment

lawfully assigned to the employee by competent authority or law

Risk Management Fund
Statutory Exclusions

- Fund cannot pay damages excluded by statute
- Currently **19 SPECIFIC EXCLUSIONS**, such as:
  - Criminal Acts
  - Discretionary Immunity
  - Public Duty Doctrine
  - Damage to State-Owned Property
  - Liability Assumed Under Contract

N.D.C.C. § 32-12.2-02 (3) (a-s)

Risk Management Fund
Reporting Forms

SFN 50508	SFN 51301	SFN 53601
• **Incident Report**: For injuries to both non-employees and employees, as well as property damage.	• **Motor Vehicle Report**: For incidents or accidents involving state-owned, rented, or courtesy/leased vehicles.	• **Medical Services Incident Report**: For incidents related to medical treatment or services provided by the State. (Generally not for employee injuries.)

OPEN RECORDS EXEMPTION

Complete and submit the report forms on-line at www.nd.gov/risk/.

Risk Management Fund
What To Report

- All incidents or accidents, including near misses, that could result in potential liability exposures to the State or result in a WSI claim.
- Potential liability exposures arise if someone has or may claim to have:

Risk Management Fund
Reporting Procedures

- All incidents/accidents should be reported using the Online Incident Reporting System at www.nd.gov/risk/
  - Within 24 hours of the occurrence or notification
  - Very serious or sentinel events may also warrant immediate and initial notification to Risk Management by telephone
- State employee must fill out the reports

Risk Management Fund

Prompt Reporting

Late or Inaccurate Reporting Could Jeopardize the Defense of a Claim or Lawsuit!

Risk Management Fund
Information to Include on the Report

- All facts that would assist Risk Management and agency risk management contacts in the review of the accident/incident
  - Supervisor, Department Head, or other person that can verify scope of employment in cases likely to result in claims;
  - In cases involving leased property, the contract(s);
  - Any other applicable documentation, such as waivers, correspondence, policies and procedures;
  - Pictures;
  - In cases involving driving, describe the purpose of the trip/travels generally & specific purpose at the time of the accident;
  - Description of the general conditions, environment, weather, etc.

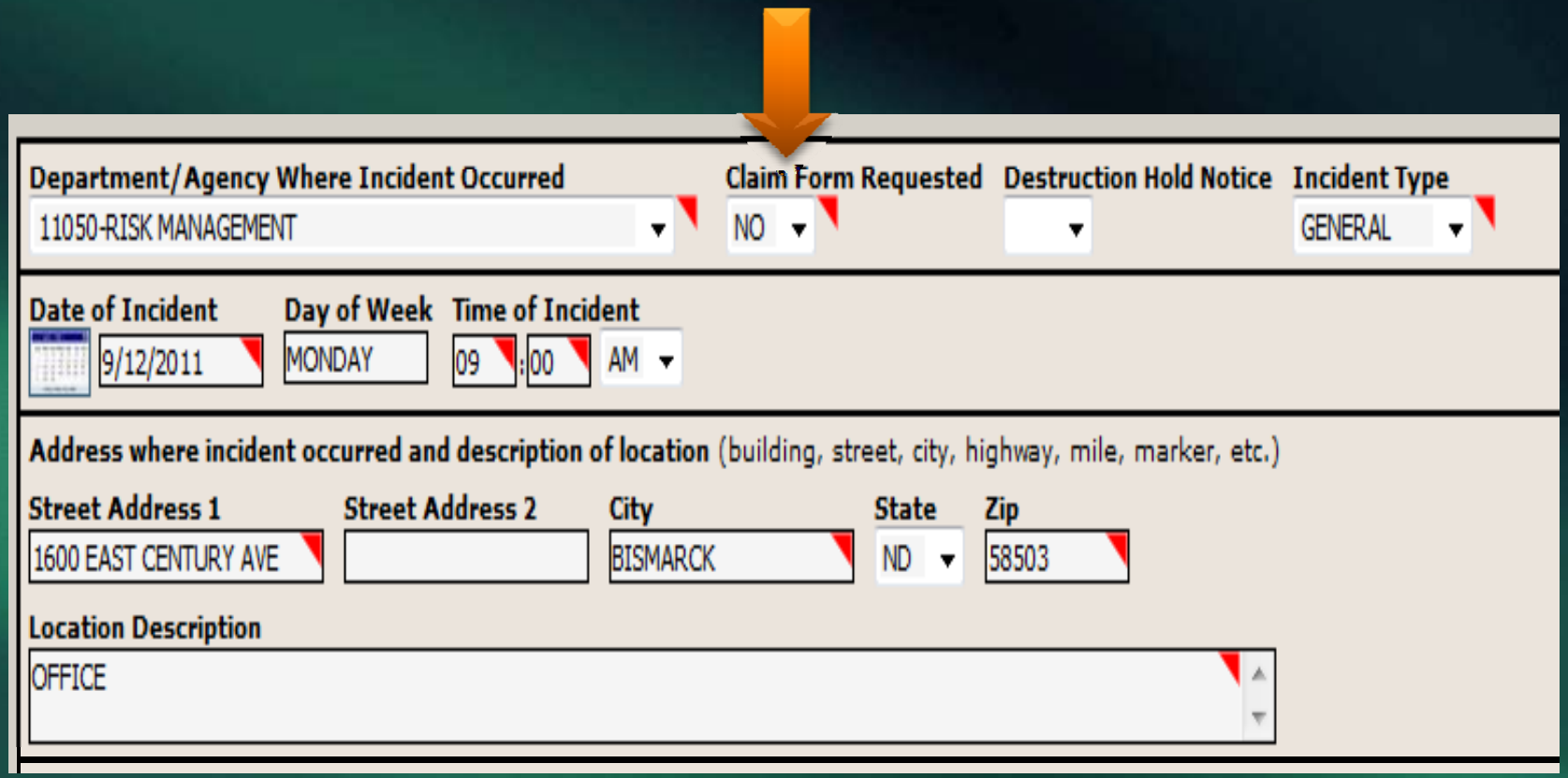
Risk Management Fund
What The Report Should Do

- Investigations should result in capturing the incident and related information
  - Determine what happened;
  - Why it happened;
  - Who was involved;
  - What policies/procedures/rules apply;
  - How it can be prevented from recurring.

Risk Management Fund
Claims

- If someone has indicated that they will be seeking reimbursement/payment for injuries or damages – select YES in the *Claim Form Requested* box on the report
- Risk Management will send the potential claimant a letter and Notice of Claim form
- Potential Claimant has 180 days from the date of the incident or was made aware of the incident to file a Notice of Claim (one year for death)

Risk Management Fund



Department/Agency Where Incident Occurred: 11050-RISK MANAGEMENT

Claim Form Requested: NO

Destruction Hold Notice:

Incident Type: GENERAL

Date of Incident: 9/12/2011

Day of Week: MONDAY

Time of Incident: 09:00 AM

Address where incident occurred and description of location (building, street, city, highway, mile, marker, etc.)

Street Address 1: 1600 EAST CENTURY AVE

Street Address 2:

City: BISMARCK

State: ND

Zip: 58503

Location Description: OFFICE

Risk Management Fund
We Come A Callin'

- If the preliminary report shows potential for a claim/lawsuit, even if a claim form has not yet been requested
- If a claim form has been requested and more information is needed to process the claim and make a determination on payment or not
  - Verify scope of employment; obtain documentation/pictures/diagrams; or simply get a better understanding of the situation
- If *Others Come A Callin'* (insurance agents, potential claimant, attorneys) refer them to Risk Management

Risk Management Fund
Claims Administration – Impacts Various Components

- **Proactive Loss Control Efforts**: risk identification, risk financing; risk control; corrective actions
- **Economic**: accuracy and credibility of claims reserves has a direct bearing on budgetary and planning efforts of the agencies
- **Public Relations**: even if not the most popular decisions, imperative that claims process operates in a prompt, efficient, fair, and professional manner

Risk Management Fund
Employee Defense & Indemnification

Fund will defend any tort claim against the State or state employee acting within the scope of employment at no cost to employee if:

Provides complete disclosure & cooperation in defense of a claim	Gives written notice of claim or demand to head of employing entity, Attorney General, & Risk Management within 10 days of being served with pleadings	Requests representation within 10 days of being served – use ***Request for Legal Defense and Representation*** form

Risk Management Fund
Odd & Ends

- Online Incident Reporting:
  - Remember the save button before submitting reports

  - SFN 50508 – If the incident does not involve both injured/involved and property damage sections – do not need to complete both sections. This form should <u>not</u> be used for any type of State vehicle damage.

Risk Management Fund

[+] add injured

INJURED/INVOLVED PARTICIPANT

save

Primary | Bodily Injury | Last Name | First Name | M.I. | Date of Birth | Age | Sex | Individual Status | WC Claim Filed? | Phone #

Street Address 1 | Street Address 2 | City | State (ND) | Zip

Province | Country | Postal Code

Describe Injury | Request Ergonomic Evaluation

[+] add owner

PROPERTY OWNER

save

Primary | Property Damage | Owner's Last Name | First Name | M.I.

Owner's Street Address 1 | Street Address 2 | City | State (ND) | Zip | Phone #

What was damaged? | Where can damaged property be seen? | State property damaged?

Risk Management Fund

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www.nd.gov/risk