

2013 Risk Management Seminar

# Risk Management Pre-Conference Seminar

BACK TO THE BASICS—A PRIMER FOR  
RISK MANAGEMENT CONTACTS

2013

## Introduction to Risk Management

- ❖ Loss of Sovereign Immunity
  - *Bulman v. Hulstrand Const.*, 521 N.W.2d 632 (N.D. 1994).
- ❖ 1995 Legislature responded by enacting NDCC Chapter 32-12.2
  - Risk Management Fund.
  - Process for submitting claims.
  - Limitations on State liability.
  - State employee defense and indemnity.

## Introduction to Risk Management

- ❖ Prior to the establishment of the Risk Management Fund:
  - Agency purchased insurance for various exposures.
  - Limited state employee defense available through State Bonding Fund.
  - Immunity barred action against the State; state employee personal exposure.

## Introduction to Risk Management

- ❖ Risk Management Fund
  - Responds to liability that would require multiple lines of coverage if secured through private insurance (e.g. Professional E&O, D&O, Auto, etc.)
  - RM Fund is not “insurance” and does not operate like traditional private insurance products (e.g. no permissive driver coverage like under personal auto policies).

## Introduction to Risk Management

### ❖ Coverage is Defined by Statute

- NDCC 32-12.2-02. Liability of the state - Limitations - Statute of limitations.
  1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. \* \* \*

## Introduction to Risk Management

### ❖ Coverage is Defined by Statute

- NDCC 32-12.2-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim for money damages brought against the state or a state employee for an injury caused by the state or a state employee acting within the scope of the employee's employment whether in the state or outside the state.
2. "Injury" means personal injury, death, or property damage.
3. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.

## Introduction to Risk Management

- ❖ Coverage is Defined by Statute
  - NDCC 32-12.2-01. Definitions continued.
    4. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
    5. "Property damage" includes injury to or destruction of tangible or intangible property.
    6. "Scope of employment" means the 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.

## Introduction to Risk Management

- ❖ Coverage is Defined by Statute
  - NDCC 32-12.2-01. Definitions continued.
    7. "State" includes an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
    8. "State employee" means every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
    9. "State institution" means the state hospital, the life skills and transition center, the state penitentiary, the Missouri River correctional center, the North Dakota youth correctional center, the North Dakota vision services - school for the blind, the school for the deaf, and similar facilities providing care, custody, or treatment for individuals.

## Introduction to Risk Management

- ❖ Certificates/Proof of Insurance
  - Traditional certificate of insurance cannot be provided as the RM Fund is not insurance.
  - Substitute document – Certificate of Financial Responsibility – has been created by Risk Management. <http://www.nd.gov/risk/>
- ❖ Additional Insured
  - No person or entity can be named/made an additional insured to the RM Fund.

## Introduction to Risk Management

- ❖ Contributions
  - NDCC 32-12.2-07. Risk Management Fund - Appropriation.
    1. The director of the office of management and budget shall implement and administer a program of self-retention against liability for the state through the establishment of a risk management fund. Each entity of the state shall participate in the program by contributing the appropriate share of its costs as determined by the director.
  - Independent actuarial review every 2 years.
    - FTE, vehicle & other equipment, and loss history.
    - Accurate information is critical.
  - Discount Program. Adoption of proactive loss control practices can reduce required contributions.

## Introduction to Risk Management

- ❖ Approved Liability Insurance Purchases
  - Aircraft Liability.
  - Medical Malpractice for faculty, residents, students at UND School of Medicine.
  - Legal Aide Clinic at UND Law School.

## Introduction to Risk Management

- ❖ Excess Liability Insurance Program
  - Excess Insurance policy purchased by RM.
  - Addresses extraterritorial exposures and claims where statutory caps do not apply or have been invalidated.
  - Up to \$10 million in coverage with various limitations/exclusions.

## Introduction to Risk Management

- ❖ All Risk Insurance Program
  - Coordinated means of insuring unique and expensive equipment that is not covered by Fire and Tornado.
  - Voluntary program.
  - Agency is responsible for scheduling.
- ❖ Property Coverage (Fire & Tornado) and Fidelity Coverage (State Bonding Fund) are administered through the Special Funds Division of the Insurance Department.

## Introduction to Risk Management Workers Compensation Program

- ❖ 2001 Legislature established single State account with WSI to be administered by the Risk Management Division of OMB.
- ❖ All State entities must participate unless exempted by the Director of OMB.
- ❖ Authorized/directed the RM Division to enter into deductible contracts with WSI.
- ❖ Statewide return-to-work program.

## Introduction to Risk Management Workers Compensation Program

- ❖ NDCC 65-04-03.1. State entities account - Continuing appropriation - Report to budget section.

1. The organization shall establish a single workforce safety and insurance account for state entities covered by chapter 32-12.2. The organization shall use the combined payroll, premium, and loss history of selected agencies to determine future experience rates, dividends, assessments, and premiums. Classifications and premium rates must be based on the hazards and risks of the different occupations covered by this account. The payroll reporting period for this account is for a fiscal year of July first through June thirtieth. The office of management and budget shall furnish combined payroll information to the organization in a format prescribed by the organization.

## Introduction to Risk Management Workers Compensation Program

- ❖ NDCC 65-04-03.1. State entities account - Continuing appropriation - Report to budget section – continued

2. Workforce safety and insurance premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management workers' compensation fund. The state investment board shall invest this fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in this fund, and interest and income received on investments are appropriated on a continuing basis for the purposes of this fund. The purposes of this fund are to pay workforce safety and insurance premiums for state agencies, workforce safety and insurance claims costs not covered by the deductible contract, and costs associated with workers' compensation loss control programs. The risk management division of the office of management and budget shall administer this fund. Section 54-44.1-11 does not apply to this fund.

## Introduction to Risk Management Workers Compensation Program

- ❖ NDCC 65-04-03.1. State entities account - Continuing appropriation - Report to budget section – continued
  3. A state entity covered by chapter 32-12.2 shall participate in the risk management workforce safety and insurance program unless exempted by the director of the office of management and budget.
  4. The risk management division of the office of management and budget shall administer the account's internal workforce safety and insurance return-to-work program. Every state entity is required to participate in the return-to-work program. The program may include assigning employees to agencies other than the agency for which the employee worked on the date of the injury.
  5. The office of management and budget may adopt rules to administer the risk management workforce safety and insurance program.

## Introduction to Risk Management Workers Compensation Program

- ❖ Agencies do not pay WSI premiums. There is only a single State of North Dakota account which is assessed and pays a premium based upon the deductible/retained layer.
- ❖ Contributions to the RMWCP Fund are based, in part, upon the guaranteed cost premium an agency would be assessed by WSI without the single account and large deductible.
- ❖ Agencies do not receive WSI declared dividend credits. Dividend credits are applied to the single State account premium.

## Introduction to Risk Management Workers Compensation Program

- ❖ Purpose of the Program – Reduce Workers Compensation Costs.
  - Assumption that State could do a better job of containing costs and reducing workplace injuries.
  - Implementation of Statewide return-to-work program. N.D. Admin. Code chapter 4-11-02.
  - Adoption of proactive loss control practices. RMWCP Discount and Dividend Program can reduce required contributions.

Questions?