

TITLE: Liability Claims Administration Guide

BOARD/COMMITTEE

ACTION: Board and Claims Committee 3/17/88
Reviewed and approved 2/19/2009
Approved 9/9/09

SUBJECT: The proper procedure for handling claims

**CITIES AND VILLAGES MUTUAL INSURANCE COMPANY
LIABILITY CLAIMS ADMINISTRATION GUIDE**

This guide has been developed to assist members in the administration of liability claims. Within these guidelines, the Member may select the degree to which it will control its claims administration procedures.

STANDARDS FOR CLAIMS MANAGEMENT

Efficient and professional claims management will follow these standards:

1. Determine a course of action based on prompt investigation of each claim.
2. To avoid costly litigation, settle and pay promptly all claims of clear liability.
3. Reduce or avoid legal fees by seeking fair settlements of claims in which the Member is likely to be liable.
4. Vigorously resist fraudulent claims or claims of questionable liability.

EXISTING CLAIMS PROCEDURE

Members are self-insured for claims that do not exceed its self-insured retention (SIR). For covered claims greater than their SIR, up to applicable policy limits, Members are insured through CVMIC or through a group purchase option.

CVMIC administers liability claims and makes recommendations for final approval or denial by the Member (See Settlement Authority *Pages 8 & 9*).

All incidents, claims, and suits shall be reported to CVMIC as soon as possible. The steps below are to be followed in a typical liability claim.

RECEIVING THE CLAIM

- A Notice of Claim form is provided to the claimant by the Member (*Page 28*).
- The Member's municipal clerk or other appropriate party receives the original Notice of Claim from the claimant or from an attorney on behalf of the claimant.

- Copies of the Notice of Claim are immediately sent to CVMIC, the municipal attorney's office, the claims coordinator and the municipal employee responsible for risk management functions.
- The Member should send the claimant a Receipt of Notice. This form will advise claimant of receipt of the claim and procedures to be followed. (*Page 30*)

INVESTIGATING THE CLAIM

- The Member's claims coordinator conducts a preliminary investigation of the claim and shall immediately forward the following information to CVMIC:

the Claims/Loss Notice form or equivalent form (*Page 28*) filled out as completely as possible, police or paramedic reports, statements from employees or other witnesses, pictures and/or diagrams of the accident scene, lease agreements, any information regarding whether the Member had prior notice of an unsafe condition, names of involved employees along with daytime and evening telephone numbers and any other relevant information.

(Important Note: Because this information may be protected by attorney work product privilege, it is not available to the claimant or his/her legal representative. Any request by the claimant for information should be referred to your attorney or CVMIC. However, this does not prevent the claimant's counsel from obtaining essentially the same information by conducting his own investigation.)

- When CVMIC receives the "Notice of Claim" (*Page 28*) form and other pertinent information from the Member, the information is evaluated and additional information is requested as needed.
- Upon completion of its investigation, CVMIC makes a recommendation to the Member to accept, compromise, or deny the claim.

SETTLEMENT OF CLAIMS BY MEMBERS

To save time and administration costs, property damage claims that have little or no risk of developing into large claims may be handled by the Member. The opportunity for a member to handle a property damage claim is at the sole discretion of CVMIC and requires advance approval and shall be subject to the members self-insured retention.

Only property damage claims may be settled internally. All other claims including property damage claims that require a reserve greater than the internal settlement level must be submitted to CVMIC. CVMIC staff will work with members but has sole authority to determine whether a notice of claim will be recorded as an incident or a claim.

When a settlement has been reached, a signed property damage Release (*Page 34*) is obtained.

For all claims - after the claim is settled and all expenses have been compiled, the Member must forward a signed Release. Copies of the documentation substantiating the claim costs may be required by CVMIC. This documentation shall be submitted within 90 days of final settlement of the claim.

SETTLEMENT OF CLAIMS

The Member's claims coordinator will be the primary contact with CVMIC regarding the settlement of claims over the internal settlement level. A procedure is in place requiring members to sign off on settlements in excess of their internal settlement authority.

CVMIC shall be notified when the Member has consented to a settlement offer. CVMIC then contacts the claimant, obtains a signed release, and forwards it along with a voucher to the member for payment of their self-insured retention. Upon approval, a check is processed and sent to the claimant.

Claims with an attorney and all lawsuits will be set up as a formal claim to ensure oversight by CVMIC and compliance with the requirements of excess carriers, Insurance Commissioner and standards set by the Board of Directors. CVMIC has full authority to make the determination as to whether or not a claim is set up as a formal claim or incident. Matters set up as a claim will be billed back to the member at the rate established by the Board.

DENIAL OF CLAIMS

A claim will be denied when it is determined that the Member is not liable, when the claim has not been filed in a timely manner, or when a negotiated settlement cannot be reached. A recommendation by CVMIC claims staff to deny a claim may be sent by letter or e-mail to the Member.

If a claim is denied, the claimant may either drop the matter or file a legal action within the appropriate statute of limitations. A settlement can still be authorized if the parties reach an agreement before a case is decided in court.

All claim denials should be made in accordance with the internal procedures established by the Member, CVMIC and Wisconsin Stat. Sec. 893.80(1). All denials must be made by sending Form (Page 32) from the municipal clerk's office by certified mail to both the claimant and the claimant's attorney.

**CITIES AND VILLAGES MUTUAL INSURANCE COMPANY
LIABILTY RISK MANAGEMENT GUIDELINES**

1. Each Member shall appoint an official or employee of the Member to serve as liaison between the Member and the Mutual for all matters relating to risk management. The appointed official or employee will be responsible for risk management of the Member. (Risk Management means the process of identifying, evaluating, reducing, controlling, transferring and eliminating risks through various methods, such as purchasing insurance funding claims payments, legal defenses of claims and controlling losses and claims reserves).
2. Each Member shall utilize effective loss prevention practices, and shall consider and act upon all recommendations of the Mutual concerning the reduction of unsafe conditions. (Loss prevention means developing techniques for changing or removing conditions which would be likely to cause loss).
3. Each Member shall maintain or have maintained records of claims which provide, at a minimum, the following information by fiscal year: number of claims (open and closed), amounts paid, amounts reserved and the total amount incurred (allocated expenses shall be included). If losses are capped, the potential excess amount shall be indicated. Detailed descriptions of loss shall be provided for all losses incurred in excess of 50% of the Retained Limit. Loss records will be provided for the preceding five years.

Copies of records maintained shall be submitted to the Mutual as directed by the Executive Director, Underwriting Committee, Claims Review Committee, or other duly constituted committees.

4. The Member shall use only qualified personnel to administer its liability claims.
5. The Member shall litigate suits using qualified defense counsel experienced in tort liability. The Mutual shall retain the defense counsel for cases likely to exceed the Member's retained limit.
6. The Member shall use, as guidelines, the Mutual's Liability Claims Audit Control Guidelines and shall advise its claims administrator, that these standards are to be utilized in the Mutual's liability claims audits.
7. The Member shall furnish to the Mutual, written notice as soon as practicable of any potential or actual claims to recover losses or damages within or alleged to be within the scope of the Memorandum, in accordance with the following requirements:
 - A. A claim or occurrence which is, or is reserved at, an amount at least equal to, 50% of the Member's retained limit;
 - B. A claim or occurrence which is the result of an incident involving potential joint and several liability, if reserved at 50% of the Member's retained limit;
 - C. A claim or occurrence which is the result of incidents involving paralysis or brain damage, dismemberment or death;
 - D. An occurrence which results in two or more claims from the same incident if reserved in total at 50% of the Member's retained limit.
8. A claims administration audit utilizing the Mutual's Liability Claims Quality Control Guidelines shall be performed, at a minimum, of once every three years, or more often at the sole discretion of the Authority particularly if:
 - A. There is an unusual fluctuation or increase in the Member's claims experience or number of claims;
 - B. There is a change of liability claims administration firms; or in-house claims/litigation management;
 - C. The Member is a new Member.

In most cases, an audit will be performed on an "as needed" basis, but at least within twelve months of the above-mentioned event(s).

The claims audit shall be performed by a firm selected by the Mutual. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be furnished to the Mutual within sixty days of receipt of the audit.

9. Members with Retained Limits of at least \$50,000 shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) as requested, but at least every three years. Based upon the Actuarial recommendations, the Member shall maintain reserves and make funding contributions equal to or exceeding the "Marginally Acceptable" ranges of the actuarial report.
10. The Member shall furnish an annual audited financial statement to the Mutual.

NOTICES

1. The Mutual shall furnish the Member written notification of the Member's failure to meet any of the above-mentioned guidelines.
2. The Member shall furnish a written response outlining a program for corrective action within thirty days of receipt of the Mutual's notification. Extensions may be granted under extenuating circumstances, at the discretion of the Mutual.
3. After approval by the Mutual of the Member's corrective program, the Member shall implement the approved program within sixty days. The Member may request an additional sixty days from the Mutual.

SANCTIONS

1. Failure to comply with these guidelines and a failure to cure such noncompliance as described in NOTICES Section 2 or 3 above (after notice as described in (1) above) shall constitute an event of default in accordance with the Liability Risk Coverage Agreement.

THE UNDERSIGNED HAS THOROUGHLY READ THE LIABILITY RISK MANAGEMENT GUIDELNES AND UNDERSTANDS THEIR MEANING. THE CITY/VILLAGE OF _____ AGREES THAT IT WILL MAKE EVERY EFFORT TO WORK WITH THE COMPANY TO BRING ITS RISK MANAGEMENT PROGRAM INTO COMPLIANCE WITH THESE GUIDELINES.

CITY/VILLAGE REPRESENTATIVE

TITLE: Liability Claims Quality Control Guidelines

BOARD/COMMITTEE

ACTION: Adopted upon admission to CVMIC

I. Background

These guidelines were adopted to clarify Company and member responsibilities in the administration of claims.

II. Claims Investigation

- A. Perform a factual investigation, including statements from participants and witnesses, within thirty days after learning of a claim.
- B. Develop information regarding liability issues including: immunities, comparative negligence, other potentially liable parties, and joint and several liability.
- C. Begin to develop information on damages.
 - 1. Property damage.
 - 2. Nature and extent of injuries.
 - 3. Medical costs.
 - 4. Lost wages.
 - 5. Other damages.
- D. Obtain and review insurance and contracts that may be in effect relating to specific accidents.
 - 1. Hold harmless and indemnity agreements.
 - 2. Additional insured provisions.
 - 3. Other applicable insurance.
- E. Obtain and hold defective products and/or other evidence. Obtain product information for the file.
- F. Utilize experts when appropriate.
- G. CVMIC will maintain membership in Claims Index Bureau.
 - 1. Report all Bodily Injury claims to the Claims Index Bureau.
 - 2. Follow up on Claims Index Bureau information.
- H. Have damaged property appraised.
- I. Make required reports to excess carrier.

III. Claims Requirements

All Claims shall be reviewed for compliance with reporting requirements established by the Insurance Contract, Wisconsin statutes or CVMIC policies and procedures.

IV. Documentation

- A. Reserves shall be established at the time the claim is opened and reviewed within thirty days.
- B. File shall contain documentation necessary to support the disposition of the claim, including photos, diagrams, plans, contracts, medical and law enforcement reports, and other relevant documents.

V. Files in Litigated Claims

- A. Defense attorney evaluation in file.
- B. Follow-up for investigation requested by defense attorney.
- C. Monitor claim defense expenses.
- D. Recommendations from defense firms regarding settlements and trial preparation.
- E. Results and expense documentation.

VI. Case Settlement Criteria

- A. An assessment of causation of the value of damages, the nature and severity of injury and liability.
- B. Timeliness.
- C. Consideration of contributions of other responsible parties.
- D. Supporting documentation.
- E. Authorization from Claims Committee and/or Board of Directors as required.
- F. Appropriate releases.

The policies and procedures written by CVMIC are intended to assist the member in understanding the Risk Management and Loss Control practices of the company. If there is any conflict between the policies and practices of the company with that of the insurance policy, the insurance policy shall take precedence.

RISK AVOIDANCE

1. Ensure compliance with City ordinances, codes and state statutes. Do not bend rules to favor special interest groups.
2. Carefully evaluate new or controversial programs before adopting them - relate analysis to assumption of risk.
3. All contracts which require City to assume risk should be examined, evaluated and, where possible, modified.
4. Avoid assumption of risk in service agreements with neighboring municipal corporations.
5. Impress on all officials and employees the importance of performing only the duties outlined in their job description. Avoid free-lancing especially in the law enforcement area.
6. Eliminate high speed vehicle chase
7. Survey all City locations so dangerous conditions can be identified and eliminated - comply with Safety Codes for public buildings.

RISK TRANSFER

1. Negotiate new contracts, leases, permits, etc. so risk is not assumed by the City.
2. Require all users of City property to indemnify and hold the City harmless for loss which results from their use of the facility.
3. Require evidence of insurance from users of City property. Establish limits of liability requirements and do not deviate therefrom. Where possible, require that the City be included as an additional insured.
4. Require evidence of insurance from all individuals and organizations which provide service to the City or sell goods to the City.

RISK CONTROL

1. Take advantage of the psychology of self insurance.
2. Keep communication lines open.
3. Keep politics out of loss adjustments.
4. Rely on experts to handle loss adjustments, e.g., administrative services firm representatives, City Attorney, etc.
5. React quickly after occurrences are reported.
6. Insist that claimants be contacted frequently - "humanize" the loss adjustment process.
7. Use diplomacy when dealing with employees and outsiders.
8. Cultivate the leaders of Union groups - impress upon them the importance of employee cooperation and the need to adhere to establish safe work practices.
9. Keep employees informed with respect to the City retains - explain how self funded losses can affect corporate assets.
10. Periodically review and update plans for handling disasters in the City.
11. Survey all locations to ensure that building evacuation plans are clear an up-to-date.
12. Monitor housekeeping conditions at all City locations.
13. Carefully monitor monthly loss listings to identify problem areas and employees - take corrective action.
14. Hold parties responsible for damage to City property - establish restitution programs.
15. Charge-back losses to each department as an expense.

INSURANCE REQUIREMENTS FOR CONSULTANTS

A. INSURANCE REQUIRED.

Consultants shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of the work hereunder by the Consultant. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. City may require a review of the latest audited financial statements of the Consultant. At the option of the City, neither the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies upon the filing of a claim or lawsuit where the insurer denies coverage.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Workers' Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages shall be subject to all of the insurance requirements that are applicable to the Consultant. No subcontractor shall be permitted to commence work until all required coverages have been obtained and certificates and endorsements thereof are filed with the City.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be borne by the general Consultant and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

B. GENERAL ENDORSEMENTS.

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, the City does not represent or warrant that coverage and limits will be adequate to protect the Consultant, subcontractor, their agents or any project engineer.
3. Cross-Liability Coverage. If the Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to the City.
5. Additional Insureds. The City, its officers (elected and appointed), employees, agents and volunteers must be named as additional insureds as their interests may appear on the Consultant's liability insurance policies which insures the City up to the required limits. Additional insured status shall be endorsed onto the respective insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Consultant's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
7. Waiver of Subrogation. Consultant waives all rights against the City, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Consultant is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
10. Indemnification. The policies shall contain an acknowledgement by the underwriters that the Consultant shall indemnify and save harmless the City against any and all claims resulting from the wrongful or negligent acts or

omissions of the Consultant or other parties acting on its behalf under the Contract to which the insurance applies; and that the hold harmless assumption on the part of the Consultant shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees.

C. MINIMUM LIMITS AND OTHER PROVISIONS.

1. WORKER'S COMPENSATION INSURANCE.

Workers Compensation Insurance:

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and materialmen shall furnish to the Consultant and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Consultant.

2. GENERAL LIABILITY INSURANCE.

a. Coverage. Coverages must include, but are not limited to the following:

"Occurrence" Coverage Form must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following:

Premises and Operations

Products and Completed Operations, applicable for at least one year following acceptance of the work

Personal Injury with Employment Exclusion deleted

Unlicensed Mobile Equipment

Explosion, Collapse and Underground Hazard Coverages

Blanket Contractual (Independent Consultant's Protective)

Broad Form Property Damage

Contingent Coverage for Subcontractors

Care, Custody and Control Coverages for City Owned or Purchased Materials at the Work Site

- b. Minimum Limits of Liability:
 - Per Occurrence Limit: \$1,000,000
 - Policy Aggregate: \$2,000,000
 - Personal Injury Limit: \$1,000,000
 - Fire Damage Limit: \$ 50,000
 - Medical Expense Limit: \$ 5,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- a. Coverage. Coverage must be as broad as CA 00 01 Ed. 1992) - Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Consultant or Subcontractors, including vehicles and equipment owned by the City if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as determined by the EPA) shall require a minimum of the Pollution Liability Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90) to address damages and clean-up costs.

- b. Minimum Limits of Liability:

Minimum Limits are the same as specifications for General Liability Insurance.

4. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

- a. Coverage. Standard form; coverage provided on a claims-made basis with at least one year extended reporting period; to include all liability assumed by the Consultant for the Project.

- b. Minimum Limits of Liability:

Minimum \$1 Million (project specific).

5. UMBRELLA POLICY

Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements set forth herein.