
White Paper

**Management Elements of the Board of Trustees of
State Institutions of Higher Learning's Self-
Insured Workers' Compensation Plan and Self-
Insured Tort Claims Plan**

Introduction

This paper is provided by the IHL Office of Risk Management to aid in better understanding how the IHL Self-Insured Workers' Compensation Plan (WC Plan) and the IHL Self-Insured Tort Claims Plan (Tort Plan) function. These plans were established to provide an efficient business process of management to the functions of preventing and paying claims against the Board of Trustees of State Institutions of Higher Learning and its entities (IHL).

The WC Plan was established in 1989 to meet the system's obligations under Mississippi Workers' Compensation law. The WC Plan is authorized and reviewed annually by the Mississippi Workers' Compensation Commission.

The WC Plan must furnish to claimants any medical, surgical, and hospital care that is required by the nature of the work related injury/illness and/or recovery process. The WC Plan must also pay indemnity benefits required by statute if an employee is out of work more than five days due to a work related injury/illness.

The Tort Plan was established in fiscal year 1994 after passage of the Mississippi Tort Claims Act (MTCA). The Tort Plan is authorized by statute contingent on approval and annual review by the Mississippi Tort Claims Board (MTCB).

The Tort Plan is responsible for third party claims for which IHL is legally responsible through the MTCA. Examples of the type claims protected by the Tort Plan are premises liability, automobile liability, professional liability and directors and officer's liability, including but not limited to, liabilities arising from Section 1983 through 1987 of Title 42 of the United States Code. Also liabilities from actions brought in foreign jurisdictions.

The common management elements of the WC Plan and the Tort Plan are:

1. Administration of Claims
2. Litigation Management
3. Safety and Loss Control Management
4. Financial Risk Management
5. Regulatory Authorization and Relations

Administration of Claims

The Board of Trustees contracts with a third party claims administrator (TPA) to provide third party claims management services for both the WC Plan and the Tort Plan through a dedicated claims unit. These services include, but are not limited to, management of claim files and their associated costs, investigation and payment of claims, and litigation management. To perform these services, the TPA must possess the resources, flexibility, innovation, and commitment to service that provides value beyond simple "claims payment".

The process begins when the claim is forwarded to the TPA by IHL. When the claim is received by the TPA it is reviewed, a file is setup and it is assigned to a claims representative. The claims representative contacts the entity reporting the claim and the claimant to determine the facts of the incident. The investigation process may include an on-site inspection of the accident scene, interviews with staff and witnesses, etc. Upon completion of the investigation the claims representative makes a determination as to compensability and either denies the claim or determines the value of the claim and authorizes payment.

Some of the key responsibilities of the TPA are to provide an adequate number of dedicated professionally trained claim staff, to conduct a thorough investigation of each reported incident, claim or loss to the extent necessary, to arrange for independent investigators or medical or other experts to the extent deemed necessary, and payment of losses and expenses. In addition, to perform all reasonable and necessary administrative and clerical work in connection with claims or losses, to administer the litigation process, including the review of legal bills and assisting attorneys, to maintain a current estimate of expected total cost of each qualified claim or loss, and to provide for reserve calculation tracking, investigating and pursuing subrogation possibilities on behalf of IHL. Further responsibilities include participating in the training of IHL and its personnel who are involved in the processing of claims or losses, and loading and maintaining claims data for all claims, whether open or closed.

Litigation Management

There are two primary scenarios which would require an attorney: 1) a suit is filed and served on IHL and/or its employees; and 2) workers' compensation settlement.

Litigation is often expensive and therefore a management process has been established to maximize the legal dollars expended. The TPA administers the workers' compensation and MTCA litigation process in accordance with best practices and the assignment and appropriate Litigation Management Agreement. The Office of Risk Management, with the assistance of the TPA, oversees all other tort claims litigation such as professional, directors and officers, and Section 1983 through 1987 of Title 42 of the United States Code.

The Attorney General's Office (AG) assigns all defense attorneys involved in workers' compensation claims and suits. These are attorneys selected from the AG's approved list that have signed risk management's Litigation Management Agreement. Additionally, the AG approves all workers' compensation litigation payments after review of the invoices by the TPA and Office of Risk Management.

The Office of Risk Management assigns all defense attorneys, using the MTCB approved attorney list, involved in tort claims with an assignment letter of instructions and a Litigation Management Agreement. The Office of Risk Management approves all tort legal expenses after review by the TPA and transmittal to the AG.

Safety and Loss Control Management

The goal of safety and loss control management is to assist IHL in providing the safest possible environment for employees, students and visitors on campus. Through safety and loss control efforts, lives may be saved and costs to the WC Plan and the Tort Plan are reasonable and manageable. The Office of Risk Management provides on-site assessments, accident reviews, data analysis and employee education and training. Due to limited staff and resources, it is necessary to involve campus staff to accomplish goals.

Some of the safety and loss control programs that positively effect claims cost by providing a safer environment are Fire Safety, Environmental Quality, Emergency Preparedness, Transportation and Fleet Safety, and Education and Training.

The fire safety program involves safety assessments of the nearly 1700 buildings, their contents and activities within. It advises and assists in

compliance with the International Fire Code. It also administers and assists in campus fire safety programs such as simulations, drills and education.

The environmental quality program involves assessing procedures for handling, storage and removal of hazardous materials. It involves assisting with compliance with EPA guidelines, Department of Environmental Quality rules and state and federal laws.

The emergency preparedness program assesses the level of preparedness and planning of the system as well as each entity within the system in addition to updates, drills and exercises. It assists with threat and vulnerability assessment of facilities and events. Assistance is provided in obtaining available federal and state grant funding to address identified needs. The Office of Risk Management through this program works with the Mississippi Emergency Management Agency, Mississippi Homeland Security and the campus police departments.

The transportation and fleet program assists in maintaining compliance and safe operation of the approximately seventeen hundred owned road vehicles, several hundred off road vehicles, and thirty-five aircraft.

The education and training program is to create, conduct and train others to provide presentations and/or training sessions related to workplace safety and loss control, such as, workplace safety basics, workers' compensation basics, first aid, CPR, AED, management of blood-borne pathogens, back injury prevention, accident investigation, preventing and diffusing violence, defensive driving, supervisors role in workplace injuries, transitional work programs, accident and others as the need arises.

Financial Risk Management

The WC Plan and the Tort Plan are repositories of IHL's funds to pay for exposure management, claims, litigations and expenses; therefore, management of these funds is essential to their financial health.

Through the Office of Risk Management, a formal financial risk management program was initiated in 1998 involving various key parties with responsibility in the Tort Plan's and the WC Plan's funds. These parties are the IHL Office of Finance and Administration, the actuary, the investment manager, the claims auditor and the TPA.

The actuary provides the amount of assessment needed each year and the total ultimate loss exposure (liability) of the plans. These determinations are made using a historic claims approach. This allows the system to fund

the plans based on experience versus a state or national experience base. It also allows each entity to ultimately pay its own way, thereby providing an incentive to improve safety and loss control activities and functions. The TPA claims reports and the claims auditor's report on the TPA are two key pieces in the actuary's estimates.

The claims auditor, on an annual basis, opinions whether claims are being managed and handled appropriately, are in accordance with the agreement with IHL and determine whether reserves are appropriate. The amount of monies assessed annually will be affected if claims are over/under paid or the amount reserved is improper.

IHL is assessed in July of each year by the IHL Office of Finance and Administration. When the monies are received, the IHL Office of Finance and Administration immediately deposits and transfers them to the investment account in order for the investment manager to maximize return on the funds.

The Plan's reserve portfolio adheres to a disciplined asset/liability management approach to investing. It is what is often described as the "long tail" which characterizes claims reporting, processing and payment structure of the plan. The "long tail" arises from the fact that months and years may pass between the date of the occurrence and reporting the claim and the actual payment of a settlement. The reserve portfolios of the self-insured plans are managed using sound asset/liability management techniques. The design of the maturity distribution/maturity schedule of the reserve portfolio is structured in line with the estimated liability cash outflows, matching either on a cash basis or on a duration weighted basis. The maturity distribution for the plan must obviously conform to state statute in regards to maximum maturity length.

The maturity distribution is structured according to annual actuarial assumptions of occurrences and incurred but not reported claims. The maturity distribution need not match the liabilities on a dollar for dollar basis, yet must be managed in accordance with the estimated cash outflows, both on a short term basis (payments and settlements) and for the long term (income). Given the underwriting uncertainties inherent in the management of a plan, it is obvious that investment income must provide financial stability for the plans' reserves. Investment income is to smooth over the peaks and valleys of the underwriting cycle.

The TPA pays losses and expenses, excluding settlements, indemnity payments and mileage reimbursements, three (3) times a month - on the tenth, twentieth, and last day of the month. This enhances the investment manager's ability to maximize the investment return on the plans' funds.

Regulatory Authorization and Relations

As previously stated, both the WC Plan and the Tort Plan have to be authorized by a regulatory agency. There are statutory and agency requirements on an annual basis as well as special reports requested.

The Tort Plan is authorized by statute contingent on approval and annual review of the MTCB. The plan has to annually provide an actuary report, claims audit report, list of participants and assessments due and collected from each, audited financial statement, excess insurance policies, TPA contract and year end litigation expense report.

The WC Plan is authorized and annually reviewed by the Mississippi Workers' Compensation Commission. The plan has to annually provide an actuary report and audited financial statement.

The Office of Risk Management has to maintain a working relationship with each agency throughout the year. A result of this relationship was that the Mississippi Workers' Compensation Commission requirement of participation in and assessments from the Mississippi Workers' Compensation Guaranty Fund was determined to be an unnecessary financial burden on IHL and its WC Plan. The Commission requested and the legislature changed the law to reflect such. Another positive result is the recent change in Mississippi Code, Section §71-3-75 (2). This allows the WC Plan to self-insure its workers' compensation liability to fund only the known portion of their claim liability. The known portion of the plan's liability is the present value of the estimated ultimate cost of claims reported to the plan.