**CITY AND COUNTY OF SAN FRANCISCO**
**BOARD of SUPERVISORS**

**OFFICE OF THE LEGISLATIVE ANALYST**

OLA # 025-99

TO: HONORABLE BOARD OF SUPERVISORS

CC: CLARICE DUMA

FROM: GLYNN WASHINGTON, Legislative Analyst

DATE: OCTOBER 15, 1999

RE: JUDGEMENT AND CLAIMS REPORT

## SUMMARY OF REQUESTED ACTION

The Honorable Board of Supervisors has requested that the Office of Legislative Analyst review other jurisdictions to explore best practices for reducing the amount of claims awards paid in the City and County of San Francisco.

## EXECUTIVE SUMMARY

This document surveys existing municipal risk programs management programs and explores best practices for reducing tort liability exposure. Recommendations are based on the consensus opinion of risk management specialists.

## JUDGEMENT AND CLAIMS BACKGROUND

***San Francisco***

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The City of San Francisco will pay approximately $17 million in tort damage awards for FY 98/99. Last year, after settling several long-standing damage claims, claims expenditures ballooned to over $29,000,000. For the two years previous, however, payouts remained fairly steady, averaging around $16,700,000. Damages per department range from under $200 to over $7,000,000 (see attached expenditure chart). The City Attorney's Office has been responsible for rigorous claims processing, resulting in lower payouts for similar claims than the private sector. Basic risk management responsibility in the City; however, is diffuse. Individual departments make risk management decisions, rather than centralizing functions under a single risk management office. Each department assumes responsibility for risk prevention programs, insurance management, and liability review, but damage claims are paid directly out of the City General Fund — not out of individual department budgets. Special fund departments (such as the Port and the Airport) pay their own claims awards, largely by enrolling in insurance plans. The City employs no fiscal incentives encouraging individual departments toward greater risk management efforts.

The Department of Administrative Services does maintain a two-person risk management office, with some risk management functions delegated to individual departments. The Risk Manager, Keith Grand, serves in a largely advisory capacity, making recommendations to individual departments concerning risk management issues. The City Risk Manager assumes responsibility for the purchase and management of insurance for certain city properties, and has created a standard protocol detailing the types of insurance that contractors with the City must have in place. The Risk Management Office is also active in bond and insurance matters relating to small-businesses contracting with the city. However, departmental risk management decisions do not reside with the City Risk Manager, but are left to the discretion of the individual departments.

The following chart details the City's claims and settlement expenditures for the past three fiscal years. The numbers aggregate all claims weighed against departments, including those that are not amenable to risk management reduction, such as contract dispute damages:

**SAN FRANCISCO TORT SETTLEMENT EXPENDITURE**

| | **FY 98/99** | | **FY 97/98** | | **FY 96/97** | |
|---|---|---|---|---|---|---|
| | Department | Claims Amount | Department | Claims Amount | Department | Claims Amount |
| **Top Claims Departments** | MUNI | $9,719,064 | MUNI | $9,033,123 | MUNI | $7,387,505 |
| | Department of Public Works | $1,431,405 | Department of Public Works | $1,161,652 | Department of Public Works | $1,445,093 |

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| | | | | | | |
|---|---|---|---|---|---|---|
| | Police | $976,553 | Police | $3,931,899 | Police | $2,812,938 |
| | Sheriff | $420,021 | Sheriff | $8,926,935 | Sheriff | $202,083 |
| | Recreation and Park | $183,908 | Recreation and Park | $840,862 | Recreation and Park | $636,191 |
| | Fire | $702,545 | Fire | $1,023,586 | Fire | $547,974 |
| **All Other Departments** | | $3,646,068 | | $4,241,528 | | $3,854,300 |
| **Total Claims** | | **$17,079,564** | | **$29,159,585** | | **$16,886,086** |

Source: San Francisco Controller's Office

## JURISDICTIONAL RISK MANAGEMENT

Governmental policy makers have only recently discovered the risk management arena as a source of potential cost savings. Most municipalities have only rudimentary risk management programs in place. Even areas that take risk management functions seriously have been hampered by the lack of municipal risk management data. As demands to provide increased services force cities to make closer examinations of their budgets — many have determined that skyrocketing cost of settlement payouts can be reduced, if effective strategies are implemented early enough to prevent accidents from happening in the first place.

Local governments perform differing task from one area to the next, decreasing the value of direct side by side risk management comparisons. Following is a listing of risk management initiatives in various jurisdictions:

## COMPARATIVE RISK MANAGEMENT SUMMARY

| MUNICIPALITY | RISK MANAGEMENT INITATIVES |
|---|---|
| **Oakland** | Recently instituted program to "charge back" damage claims to individual departments. |
| **Los Angeles** | Recently instituted program to "charge back" damage claims to individual departments. |
| **Philadelphia** | Recently completed a system audit by Price Waterhouse, recommended variety of process changes, including speeding up attorney claims processing method. |

| | |
|---|---|
| **New York** | Recently appointed risk manager, no system-wide risk management function in place. |
| **Contra Costa County** | Developed elaborate claims tracking system, enabling risk manager and department heads to track claims patterns, and institute strategies. |
| **San Bernardino County** | 1) *Increased investigation of various accident sites*. A squad of investigators arrives at any accident scene involving the county (usually within 45 minutes of the incident) to photograph the site and interview witnesses. In this manner they are able to determine who is at fault and quickly resolve claims. If a determination is made to defend a particular claim, they have already gathered evidence to buttress the County's position.<br>2) *Management Level Risk Policy Coordination.* Department heads and high level department managers meet regularly to coordinate risk management strategy. There exists a high level focus across departments on minimizing tort exposure. Inter-departmental commissions meet to develop risk reduction programs.<br>3) *Office has sufficient power*. The Office of Risk Management is empowered to shut down departments once a determination is made that public risk exposure rises to unacceptable levels. Basic risk management functions are concentrated in the Office of Risk Management. |
| **San Diego County** | Department heads must appear before the County Board of Supervisors in order to personally explain any award over $20,000 and the steps being employed to reduce further expenditures. |

Source: Office of the Legislative Analyst, San Francisco, from interviews with City and County risk managers.

## INFORMATION GATHERING

Several municipalities have found increased information gathering ability a necessary first step in tackling risk management functions. Contra Costa County — even though risk management functions are minimal, has placed a high priority on claims tracking. According to Ron Harvey, Contra Costa County Risk Manager, this allows departments to track claims patterns in order to reduce further costs. In San Francisco, even if a department knows the amount of damages assessed against it, absent more detailed analysis, such information alone provides little guidance in preparing strategies reducing claims exposure.

Aggressive accident claims tracking can have other benefits as well. In San Bernardino County, according to Risk Manager, Pamela Thompson, a squad of investigators arrives at any accident scene involving the County (usually within 45 minutes of the incident) to photograph and interview witnesses. If a determination is made to defend a claim, they have already gathered evidence to buttress the County's position. In San Bernardino County, information gathering is incorporated into the standardized claims tracking process, allowing decision makers to see where liabilities occur, and highlight adjustments necessary to reduce claims exposure. The San Francisco City Attorney's Office, too, employs "instant information gathering" techniques in order to defend against claims. This information is fed into claims tracking software that can organize claims information in a variety of ways. Some City departments have responded to the new technology by requesting specific claims information in addition to their basic monthly claims report, other departments have not.

**DEPARTMENTAL ACCOUNTABILITY**
In San Francisco, as in most other municipalities, litigation losses for most departments are paid through an appropriation from the General Fund. Damage awards are not tied to individual department budgets. Finding that this practice serves as a disincentive for City departments to reduce claims, several jurisdictions have started experimenting with "charging back" claims awards to department budgets. According to Oakland's City Risk Manager, Jon Ingenthron, Oakland will implement a program tying departmental budgets to tort awards beginning this current fiscal year. In effect, individual departments will have to pay for claims and judgment awards out of their budgets in order to encourage increased accountability. Departmental accountability can be achieved in the following ways:

1. ***Design the system in order to capture the current condition.*** Often, accidents that have happened several years ago are settled in later years. Subtracting an earlier year's settlement from a later year's budget, reduces the incentive for departments to address current problems. Instead, Oakland has devised a scheme whereby the value of each claim is estimated at the time of injury. The estimated value of the claims award is then deducted from the department's current budget. By employing such a method, current budgets reflect current successes or problems.

2. ***Enact limits to the potential exposure of a department's budget.*** If a catastrophic damage award hits a particular department, risk managers have not sought to have the award completely absorbed by the affected department. The charge-back must be designed in such a way that it forces departments to pay attention to risk management, but does not threaten municipal service delivery. The City of Los Angeles has recently adopted a program that uses both incentives and sanctions to encourage departments to reign in litigation damages. According to Los Angeles Risk Manager, Richard Welsh, department budgets can be reduced for spending over a projected amount in claims. However, the departments are able to add 50% of any amount under a projected claims budget. Creating the details of such a plan, setting targets, determining appropriate sanctions and the like, proved a cumbersome, difficult process. However, Welsh expects significant positive results simply because the plan has made risk management an issue among department leaders.

3. ***Keep charge-back program simple.*** Oakland Risk Manager, Jon Ingenthron, emphasized the need to make any charge back system easy to understand. Ingenthron observed that one problem of an early draft of the Oakland charge-back plan was that it attempted to be "too fair" in assigning claims against departments, which made the program overly complicated and unwieldy. Ingenthron found Oakland department heads responding better to the program the more simply it was designed.

4. ***Modified charge back.*** Another possible alternative to a pure "charge back" option, may be the example set by San Francisco's Charter Amendment requiring the Police Department's budget to reflect its actual and projected litigation expenses. While the amendment enables policymakers to have a clear picture of how the department manages its claims burden — the General Fund is still accessed when excessive claims arise.

5. ***Automatic formalized review.*** In San Diego County, while department budgets do not absorb tort claims, department heads must appear before the County Board of Supervisors to explain any award over $20,000, and the steps employed to reduce further expenditures.

**VEHICLE/DRIVER MANAGEMENT**

According to Tim Armistead, of the City Attorney's Office, the amount of claims against particular departments in the City is largely a function of the amount of vehicles under a department's control. Armistead also emphasized that costly claims arise from any number of sources, including medical malpractice, police shootings, water damage from broken mains, etc. However, vehicle accidents do account for a significant portion of the claims against the City.

Currently, each Department manages its own fleet of vehicles. Other jurisdictions have found implementation of a centralized vehicle management system to be a cost-effective option. In addition to implementing a centralized vehicle maintenance program, San Diego County noticed that a small percentage of their drivers were responsible for a disproportionate share of accidents. San Diego enrolled in the "Pull Notice" program, whereby the California Department of Motor Vehicles notifies the Risk Management Office whenever there is an adverse change in the status of an employee's driving record. If an employee's driving record becomes flawed, the City then enrolls that driver in a driver simulation program to help improve that driver's road skills before an accident occurs. In San Francisco, vehicle-intensive departments do take advantage of the DMV's pull notice program. However, there is no standardized training regime once problem drivers have been identified.

**INTERDEPARTMENTAL COOPERATION**

One of the more dramatic examples concerning the fruit of increased risk management efforts has been San Bernardino County. Payouts for tort awards have plummeted from $12 million in FY 97/98 — to $7 million in FY 98/99. Pamela Thompson, San Bernardino County Risk Manager, attributed the county's success to increased attention to reducing litigation awards. Department heads and high level department managers meet regularly to coordinate risk management strategy. Inter-departmental commissions meet regularly to develop and shepherd risk management programs.

**CENTRALIZED POLICY DIRECTOR**

Pamela Thompson, San Bernardino County Risk Manager, gives credit for success in trimming litigation awards to the fact that her office has sufficient power. The San Bernardino County Office of Risk Management is empowered to shut down departments once a determination is made that public risk exposure has risen to unacceptable levels. San Bernardino County concentrates basic risk management functions, such as insurance review, vehicle maintenance, and general safety inspections in a single Office of Risk Management.

According to Joe Perriello, Risk Manager for the City of Philadelphia, even in a decentralized administrative environment, certain risk management decisions can be focused under a single body. Centralizing basic risk management functions, such as purchasing property insurance, implementing driver's safety programs, and vehicle maintenance, can save the City dollars by injecting economies of scale into the process. Keith Grand, the City Risk Manager, argues that if incentives for reducing risk exposure are spread through City operations, individual employees would be encouraged to make decisions in a risk adverse manner.

## RECOMMENDATIONS FOR SAN FRANCISCO

1. ***Institute standardized claims tracking procedures***. San Francisco could follow the example of other jurisdictions and place a renewed emphasis on claims information gathering and processing. Even if the total amount of damages attributed against a department is presented, this information may be of little use unless accompanied with a breakdown of how and why certain events occur. Many departments remain unaware of existing claims tracking software that can generate reports identifying problem patterns. Increased education concerning use of claims tracking software as a tool may assist departments in highlighting problems and reducing claims exposure.

2. ***Design a program charging department budgets for claim expenditures***. San Francisco could implement a program deducting some portion of damage awards directly from individual department budgets. Such a program would have the effect of internalizing judgment awards, and encouraging departmental focus on risk management issues.

3. ***Implement a Centralized Vehicle/Driver Management System***. A city the size of San Francisco should be able to benefit from the economy of scale inherent in a centralized vehicle/driver management system. Drivers who pose an obvious risk for serious liability

should be identified and assisted in upgrading their skills before accidents occur. The City could also expand its participation in the DMV's "Pull Notice" program, and enact programs to assist problem drivers before accidents happen.

4. ***Institute a formalized interdepartmental risk management working group.*** Implementation of a plan to reduce San Francisco's risk exposure will require a cooperative effort among all departments. Once incentives, such as a charge-back program, are enacted tying department budgets to risk management efforts, department heads and high level department managers could meet to coordinate risk management strategy with the City Risk Manager.

5. ***Concentrate risk management functions***. Currently, basic risk management decisions are decided at the whim of particular departments. Some departments have incorporated risk management efforts, while others have not. Departments should be required to engage in regular operational risk assessments. Formalizing expert risk management input for City operations could reduce the City's risk exposure, particularly for departments with the most claims.

6. ***Increase Department Head Accountability***. The City could institute a program whereby department heads appear before the Board of Supervisors to explain any claims over a certain amount, and explain steps being taken to reduce such claims.

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## MULTI-JURISDICTION CLAIMS COMPARISON CHART

| MUNICIPALITY | POPULATION | ANNUAL TORT CLAIMS | TOTAL MUNICIPAL EMPLOYEES | TOP LIABLITY DEPARTMENTS | SELF INSURED | OFFICE EMPOWERED BY | |
|---|---|---|---|---|---|---|---|
| **San Francisco** | **800,000** | **$16,000,000** | **30,000** | **1. MUNI**<br>**2. POLICE**<br>**3. Department of Public Works** | **Mostly** | **City Charter** | |
| New York City | 7,322,564 | $304,795,820 | 450,000 | 1. Health Service<br>2. Transportation<br>3. Police | Yes | Declaration of the Mayor's Office | |
| Philadelphia | 1,585,577 | $29,861,656 | 23,000 | 1. Health Services<br>2. Transportation<br>3. Police | Yes | Division of City Attorney's Office | |
| Oakland | 390,000 | $7,000,000 | 6,000 | 1. Police<br>2. Fire<br>3. Public Works | Yes | Division of Department of Retirement | |
| City of Los Angeles | 3,500,000 | $40,000,000 | 30,000 | 1. Police<br>2. Sanitation<br>3. Public Works | Yes | City Charter | |
| **CALIFORNIA COUNTIES** | | | | | | | |
| San Diego County | 2,000,000 | $7,000,000 | 1700 | 1. Public Works<br>2. Law Enforcement<br>3. Health Service | Yes | County Charter | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Contra Costra County | 800,000 | | 7,000 | 1. Health Service<br>2. Public Works | Partially | County Board of Supervisors Order | | |
| San Bernardino County | 1,600,000 | $7,000,000 | 16,000 | 1. Sheriff<br>2. Public Works | No | Ordinance establishes Department | | |

Source: Data generated by the Office of Legislative Analyst, San Francisco, from interviews with various City and County officials.
Note: This chart lists governmental organs which vary widely in services performed.

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