

# Chapter Thirteen

## *Managing Risk*

### § 13-1. Overview

Local governments struggle to reduce the risk of liability while still providing a broad range of public services. Every service or facility provided by a municipality creates a new set of risks. In recent years, more emphasis has been placed on risk management as a way to both reduce the exposure to liability and increase safety.

One of the most common ways to manage risk is to purchase insurance. Many people do this without even realizing it is a risk management action. While towns should not rely on insurance as their only means of responding to risk, insurance coverage is an important safety net in case a lawsuit or a loss happens. To help towns obtain insurance coverage, the Association established the MAT Agency in 1988.

The Association took a significant step toward improving the protection of its members by sponsoring the creation of the Minnesota Association of Townships Insurance and Bond Trust (MATIT). MATIT is a Joint Powers self-insurance pool created under Minnesota law. Establishing MATIT allowed towns to work together to insure themselves rather than having to purchase insurance on the commercial market. The creation of MATIT enabled townships to establish self-insurance programs and to bring all the self-insurance programs under a single trust. Most Minnesota towns now obtain their insurance through MATIT.

The following briefly describes the MATIT self-insurance programs. Please note that these descriptions are very general and do not provide an interpretation of the coverages. The existence and scope of coverage always must be determined under the facts of a given situation.

#### Inside this chapter

13-1. Overview.....	81
13-2. Consolidated Liability Coverage.....	82
A. Errors and Omissions.....	82
B. General Liability & Property.....	82
C. Clerk & Treasurer Bond.....	82
13-3. Workers' Compensation .....	82
13-4. Other Coverages. ....	83
13-5 Other Means of Managing Risk.....	83

## § 13-2. Consolidated Liability Coverage

To simplify the lives of town officers regarding their insurance coverage, MATIT developed a package policy which combines a town's coverages in a single package, which includes:

- Comprehensive Liability Coverage
  - ◆ General Liability (GL)
  - ◆ Errors & Omissions (E&O)
    - \* with Planning & Zoning
  - ◆ Property Coverage
  - ◆ Inland Marine Coverage
  - ◆ Automobile Coverage
  - ◆ Commercial Crime Coverage
  - ◆ Optional Volunteer Firefighter Coverage for townships owning & operating their own fire departments
- Clerk & Treasurer's Performance Bond

### A. Errors and Omissions

Public officials' liability insurance, or Errors and Omissions (E&O) coverage, is a coverage that protects the town, its officers, and employees. In general, the E&O policy applies to claims made against the town for wrongful acts arising out of the discharge of duties on behalf of the town. A duty to defend a town against covered claims (i.e., provide an attorney and pay related defense costs) is included in the policy. Claims challenging a board's decision regarding the establishment of a cartway, road improvement project, or rejection of a liquor license application are examples of the type of

claims to which this applies. These claims result in the highest number of litigated claims because there is nearly always disagreement on whether the town or its officers did anything wrong.

Excluded are claims related to criminal acts, pollution, governmental fines or penalties, personal injury, and property damage. Claims arising out of condemnation and eminent domain are also excluded, but the policy does provide for some of the costs of defense.

### B. General Liability & Property

Another part of the Consolidating Liability Coverage is Property, Auto & Liability (PAL). This offers a wide range of coverage to towns, including general liability, property, owned auto, hired and non-owned auto, valuable papers, inland marine, crime, computer, employer's liability, and firefighter liability coverage.

### C. Clerk & Treasurer Bond

Town clerks and treasurers are required by the statute to give their board a bond before entering upon the duties of office. The bond is conditioned on the faithful discharge of the clerk and treasurer's duties, and additionally covers deputy clerks and deputy treasurers. MATIT provides these bonds and notifies the county auditor of their existence.

## § 13-3. Workers' Compensation

Workers' Compensation is a statutory program that provides payments to employees for injuries or diseases that arise out of and during employment. All employers are responsible for paying Workers' Compensation benefits to employees who are entitled to them. While Workers Compensation insurance pays these benefits for those with insurance. Towns without Workers Compensation insurance pay these benefits from the town treasury.

Many towns believe that because they contract

for services, they do not have employees. That is not always the case. Election judges, for instance, are considered employees for the purposes of Workers' Compensation.

Important for town officials is that **MATIT's Workers' Compensation insurance also covers elected officials injured while performing work for the town.** Elected officials are otherwise not generally covered by the Workers Compensation statutes and not entitled to any benefits if injured.

## § 13-4. Other Coverages

Towns may need insurance policies or bonds others than those listed above. Examples of these other coverages include law enforcement liability, special events, liquor liability, and additional bond coverage. The MATIT can work with towns to determine if additional insurance is needed and help them in acquiring that coverage.

## § 13-5. Other Means of Managing Risk

There are a variety of other opportunities for towns to manage their risk. The starting point for many of these efforts is the ever-increasing number of worker and workplace safety requirements. One program required by the Occupational Safety and Health Act (OSHA) for towns with employees engaged in certain activities is the Workplace Accident and Injury Reduction Program (AWAIR). Minn. Stat. § 182.653, subd. 8. Towns covered by this requirement need to develop a written plan that assigns responsibility to implement safety reviews and programs. An annual review of the plan is required.

Some towns use safety checklists as a way of reducing potential problems. These checklists cover everything from playground safety to road maintenance and inspection duties. By establishing a written list of items to consider when carrying out an activity the board can reduce the likelihood that something will be missed and the completed lists can serve as documentation of maintenance activities and reviews.

Another significant means of limiting liability is for the board to establish policies regarding how it performs certain activities. For instance, boards should give serious thought to adopting a snowplowing policy. A town is in a

much better position to defend against a snow-related claim when it can show that it was carrying out its activities in accordance with a carefully considered written policy. Caution must be taken with the adoption of written policies, however, because they can also be used against the town if the board fails to follow it. Therefore, if a board determines a written policy would be beneficial, draft it very carefully, update it as needed, and be sure it is being properly implemented. It is a good idea to review all board policies as part of the town's reorganization meeting.

One of the most common ways to shift all or a portion of risks to others is by agreement. Contracts for services should contain a hold harmless and indemnification clause, protecting the township from claims caused by the contractor. Making sure that contractors the town works with are adequately insured is another important step in managing the town's risk. ***MATIT recommends that all persons receive certificates of insurance from contractors showing coverage of at least \$1.5 million in liability coverage.*** This amount is equal to the tort cap limit in Minn. Stat. § 466.04 subd. 1 (a) (3) & (7). The amount can be reached by either carrying the full amount in liability coverage, or carrying a smaller liability limit and then having an umbrella policy; for example, a \$ 1 million liability policy and a \$1 million umbrella policy would meet the requirement.

In some cases the town board can require a person to include the town as an additional insured on their insurance policy; i.e., when a person seeks to rent out the town hall, or when a landowner is asking the town's permission to encroach in the right-of-way. Being named on someone else's policy provides an additional layer of protection for the town.



# NOTES

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