

## **AMM District Meetings June 2005 – Address by Art Elias**

Good afternoon ladies and gentlemen. Our firm, HED Insurance, has worked with the AMM for many years in respect of the Municipal Insurance Program, including both the property/casualty insurance, and the health & dental program.

While I am the person from HED that you see each year at your District Meetings and at the November Convention, there are a number of people from HED involved in your account, including Ken Fingler and Bert Walker.

Ken/Bert, please stand so people can recognize you.

Ken is responsible under agreement with the AMM for the provision of risk management and loss prevention services to municipalities, and Bert is involved in both claims and in policy wordings and coverages.

Ken/Bert will be here for the balance of the day with me and you should feel free to see any of us with any individual questions that you may have.

**My report today includes 5 topics that the AMM wanted me to cover. They are:**

1. The April 1, 2005 renewal and the program rebate cheque you've just received.
2. Some changes in Workers Compensation benefits that affect your volunteer firefighters and the accident insurance you have under the AMM Insurance Program.
3. The health & dental program.
4. Insurance coverage for claims for the collapse of roofs.
5. Outside contractors and what insurance they should have, including both contractors that you hire to do work for the municipality, and independent contractors who perform services on behalf of the municipality in place of employees.

**1. First, respecting the 05 Property/Casualty renewal and the current rebate:**

You probably are aware that all 197 municipalities in Manitoba outside Winnipeg participate in this Program.

A year ago the AMM sent back rebates out of the property/casualty self-insurance loss pool totaling \$1,000,000, which represented 15% of municipalities' April 1, 2004 premiums.

Now, a further \$919,000, or 14% of the April 1, 2005 renewal premiums has just been sent to your offices. This rebate follows a renewal rate reduction of 7% April 1, 2005.

Rebates like this are made possible by two factors:

**First**, because claims have on the whole been reasonable. Over the years, routine claims average a total of \$2.5-3,000,000 per year. And we've had no really big claims, or high-claims years.

This is quite different than Manitoba Public Schools, who have a similar Program, and who had a \$10,000,000 fire in February 2005 when the school in Moose Lake burned down.

**And second**, because of the structure of your program in that it has a significant self-insurance component. Each year, a portion of your premiums go into a self-insurance trust fund held by the AMM. A certain portion of claims are paid out of this self-insurance fund, and if money is left over at year-end, rebates like this are made possible.

It is important to understand that even though the program has such a self-insurance component, no matter how high claims might be in any year, there is complete protection for municipalities because

excess claims are the responsibility of the excess insurance carrier. The self-insurance loss pool can never be in a deficit position.

Each year we have to strike a balance between the level of self-insurance, versus the premium we have to pay to the insurance company for the overall program protection. We tend towards as high a level of self-insurance as possible, because whatever money doesn't get sent to an insurance company but instead stays with the AMM has the possibility of ending up as rebates.

At one AMM Board Meeting I was asked whether we could reduce the overall premiums that municipalities are charged at the beginning of each year, by reducing the level of self-insurance.

The answer is yes, but that is just not a good idea. If the self-insurance was at a lower level, there likely wouldn't be any rebates, and the premium we'd have to pay to the commercial insurer would be higher. Once you pay money to an insurer you never see it again.

For example, if the present \$4,000,000 annual self-insurance trust fund was reduced to \$3,000,000, the premium to the insurer would likely increase by about \$500,000, because the insurer would be taking on the risk over \$3,000,000, rather than only over \$4,000,000. And because the fund was less, there wouldn't be these types of \$1,000,000 rebates. So on a bottom line basis, you'd have traded \$1,000,000 for \$500,000....just not a good idea.

One last point – even though routine claims have averaged \$2.5-3 million in recent years, in the current year after only two months, claims are already \$1,500,000. If you extrapolate this for the entire year, claims might be \$9,000,000 in 2005-06. The point is you just never know how many or how much in claims there are going to be, and you can't count on these types of \$1,000,000 annual rebates.

## **2. Workers Compensation Benefits for Volunteer Firefighters**

As you know, volunteer firefighters are covered by Workers Compensation for injuries and disabilities that happen while fighting a fire. Up to now, the benefits that the Workers Compensation Board provides to volunteer firefighters have just not been adequate.

The AMM has been lobbying literally for years to get some of the current restrictions removed. And finally that's happening.

### **There are 3 problems with current WCB benefits:**

1. The disability income benefit provides for only 90% of a person's net income. This means that whenever a person is injured and therefore unable to work, that person has a financial loss even after receiving WCB benefits. Even to try to provide a top-up benefit under the Municipal Insurance Program

accident coverage doesn't work, because WCB presently has a provision whereby if a person receives benefits from any other source, the WCB benefit will be reduced on a dollar for dollar basis.

The only alternative therefore, is for fire departments through Municipalities to obtain a disability income benefit from private insurance that totally replaces the Workers Compensation's disability income benefit – an expensive proposition.

2. Up to now, WCB's maximum covered insurable annual earnings has been capped at \$58,260. This means that a person normally earning say \$75,000 would have a greater loss yet. Not only does he get hurt by the "90% of net" rule, but he collects nothing at all to replace that portion of his salary over the \$58,260 cap.
3. The third problem has been the "onus of proof" requirement. For a firefighter to collect anything in respect of say, contracting cancer, he has to prove the cancer was caused from being a firefighter. This can be very difficult.

### **Here's how these issues are now being resolved:**

1. WCB is now removing the offset provision. This means that while WCB benefits will still only be 90% of net pay, private

insurance can be acquired for the 10% differential without there being an equivalent reduction off the WCB benefit.

2. That earnings cap of \$58,260 is being removed and therefore WCB's benefit will be 90% of net income for all levels of earnings.

This means that the AMM Insurance Program accident insurance can provide a top-up level so that firefighters will not be in a loss position if they're unable to work because of an accident while fighting a fire.

3. Firefighters will now be covered for heart attacks, and for an expanded number of different types of cancer. Further, this coverage will now be automatic, without having to prove that the heart attack or cancer was caused by firefighting. This "presumption of coverage" is very important.

There are certain conditions and qualifiers....for example

- the heart injury/heart attack must occur within 24 hours of attendance at an emergency.
- there will be required a certain minimum of years of service as a firefighter for different types of cancer.
- Someone who gets lung cancer will be presumed insured by the WCB only if a non-smoker; if a smoker, then the onus of proof will go back onto the individual.

This new coverage applies to all volunteers diagnosed after the effective date of the change which likely is no later than January 1, 2006. Coverage also applies to persons who are no longer firefighters at the time of diagnosis as long as they qualify from the requirements of time of service sometime in their past.

WCB premiums for volunteer firefighters are presently very low – only \$25 per firefighter per year – and will understandably increase because of this expansion of coverage. But it sounds like the increase will be quite reasonable. And the premiums for the accident insurance under the AMM program will reduce.

I think that the AMM deserves a lot of credit for their persistence in eventually having these changes being put in place by the Government.

### **3. Health & Dental**

Your health & dental program now covers 126 corporations, 45 others like Conservation Districts, Recreation Districts and the like, for a total of 171 policy holders. There are a total of 1,202 employees and Councillors covered, involving an overall total of just over 2,000 persons when including family members.

Effective January 1, 2005, the program was converted to also be on a self-insurance basis. When first such self-insurance program was considered, I predicted to your Board that we should be able to reduce your premiums by about 10%.

When the coverage was converted January 1, there was an immediate 3% premium reduction. Now, after the first four months up to the end of April, the program has already developed a surplus of \$92,000, so it certainly appears that that 10% reduction will prove true.

I can already say that this program is sound and stable.

If you are from a municipality that does not presently participate in the AMM health & dental program, you should consider receiving a proposal from us for participation.

#### **4. Roof Collapse Claims**

Earlier this year, two neighboring municipalities were both unfortunate enough to sustain a roof collapse at one of their facilities, in one case a rink, and the other a hall. Roof collapse is insured under the program as long as it is caused by some type of outside force such

as a windstorm or snow load. One of these municipalities has a valid claim that likely will exceed \$150,000 because in their case the collapse could be directly related to snow load.

The other case isn't insured; in that case the loss happened at an old building that was originally constructed with a short life expectancy, and there was no snow load to which the collapse could be attributed.

Rather it was just a matter of the age of the building, and contraction and cracking of roof joists which in turn put extra stress on other joists and eventually resulting in such collapse.

You can't insure things for the peril of getting old. But if there is an outside cause such as snow load, then even if it happens to an older building, the insurance coverage is there.

There is a lesson to be learned here. If you have such older buildings and many if not most municipalities do, and you notice a sagging in the roof line of a building, then be careful. Call a contractor to take a closer look because maybe some fairly inexpensive reinforcing will prevent what otherwise can become an expensive roof replacement that may not be insured.

In HED's responsibility of running the Program for the AMM, we have a mandate to always search for a way to bring a loss within coverage. Yet we also have to be sure that we don't "give money away", and thereby end up being unfair to all other municipalities whose surplus

and rebate would be affected if we were too liberal in allowing claims to be paid.

## **5. outside Contractors**

There are two parts to this.

**One is where** an outside contractor is hired by a municipality, for example to do work on municipal buildings as was the case where a roofing contractor was hired to do some work on the community hall in Arborg. On account of improper use of a propane fuelled torch, the hall burned down. That roofer was negligent in causing that fire. The municipality is insured for the replacement of the hall under the AMM program.

What normally should happen in a case like this, is that we then should be able to recover the loss by suing the responsible roofing contractor, and recover the money paid out for your self-insurance fund. Here, that contractor had been hired even though he had no insurance for his negligence in causing the fire. And he certainly doesn't have \$1,000,000 himself. So we can't recover that loss.

The point is that you should be careful to require that people doing this type of work for you, first and foremost are qualified, and second, have liability insurance in case they are responsible for some damage to your property.

**The other issue** about independent contractors is if you hire a person to perform a municipal service that otherwise might be done by an employee of the municipality. Any injury or damage caused by an employee of the municipality is automatically insured under your liability insurance. A municipality, or any other employer, is responsible for the acts of its employees.

If instead of hiring an employee, you decide to have an independent contractor do such work, that contractor should have their own insurance because they're not automatically covered under your liability insurance.

This is because they're not an employee but rather such an independent contractor. But on the other hand they often can be covered under your policy but you have to ask us to have them added on your policy, by name.

And what is the difference between an employee and a contractor?  
How do you determine the difference?

The law provides that if you control what work is done and how it is done then the person doing the work is legally considered an employee and you are responsible for the actions of such person. On the other hand if you only control what is to be done but the person is on his own in deciding how to do it, then that person is not an employee and therefore your policy will not insure him. In this case

that person should have his own liability insurance, or should be added by name on to your policy.

Sometimes it's not easy to decipher whether a person would be legally regarded as an employee or as an independent contractor, so we ask that your CAO call us in any "grey" situation, and we'll work through it with you.

That's my report. If any of you have any questions right now I'd be happy to try to answer them. Ken, Bert and I will be here for the balance of the day as well if you need to look us up about anything on an individual basis.

Thank you for your attention.