

Manitoba Municipal INSURANCE PROGRAM

GENERAL INSURANCE PROGRAM AND LIABILITY OVERVIEW

Liability Risk Management

Recreation Programs And Outside Users of Facilities

Presented By:

Rudy Penner - Director, Risk Management

&

Drew Woytko – Manager, Commercial Service

April, 2022

AMM Insurance Program Contacts

Commercial Insurance



Kristin Keating – ext. 6154
Commercial Insurance Advisor
EMAIL: kristin.keating@westernfgis.ca



Charmaine Borcelis – ext. 6008
Commercial Insurance Advisor
EMAIL: charmaine.borcelis@westernfgis.ca



Drew Woytko – ext. 7274
Manager, Commercial Service
EMAIL: drew.woytko@westernfgis.ca



Rudy Penner – ext. 6163
Director, Risk Management
EMAIL: rudy.penner@westernfgis.ca

Employee Benefits



Jordan Lontajo – ext. 6576
Program Manager
EMAIL: jordan.lontajo@westernfgis.ca



Albert Liu
Benefits Administrator
EMAIL: ebamm@westernfgis.ca

- Topics to Review
 - ✓ Property & Liability – Coverage Overview
 - ✓ Exposure to Liability Claims
 - ✓ Liability Insurance for Outside User Groups
 - ✓ Use of Waiver Forms & Informed Consent Forms
 - ✓ Risk Management & Loss Pools

The Manitoba Municipal Insurance Program Includes:

Property

- Buildings and Contents and Mobile Machinery (including Fire Department Vehicles)
- \$10,000,000 blanket limit (or higher)

Liability

- General - \$50,000,000.
- Automobile - \$10,000,000.* (with \$5,000,000 underlying Autopac or SPF#1)
- Public Entity Management Liability (Errors and Omissions) - \$5,000,000.
- Environmental Impairment Liability - \$1,000,000.

Crime

- \$500,000.

Boiler and Machinery -

Accident Coverage for Volunteer Workers - Optional

Property Insurance - Structure

3.	Limit as Per Certificate	Catastrophe Insurance (Large, Unpredictable Losses)	Commercial Insurance
2.	\$1,000,000. Per Loss, \$4,000,000. Annual Aggregate	Provincial Loss Pool (Medium and Somewhat Unpredictable)	Losses up to \$1,000,000. Per Loss; Self-Insurance
1.	\$2,500. Or as specified on certificate	Individual Municipality Maintenance Deductible (Small and Very Predictable)	Each and Every Loss; Self-Insurance

Property Insurance – Coverage

- “Full All Risks” Coverage including increased costs due to by-laws
- Fire, Lighting, Explosion, Smoke
- Windstorm, Hail, Collapse
- Vandalism, Burglary, Theft
- Glass breakage
- Water damage
- Sewer back-up

- Property Covered

- Just about anything – if it is on the Statement of Locations/Items Insured
- Property Excluded:
 - Animals
 - Licensed Automobiles
 - Sewers, drains and watermains located outside the “premises”
 - Watercraft over 26 feet
 - Bridges, benches, parking meters, fire hydrants, etc. unless listed on the Statement of Locations/Items Insured
 - Land or land value
 - Property used in the marijuana trade
 - Money, tickets, stamps and securities (covered under Crime)

Building Coverage

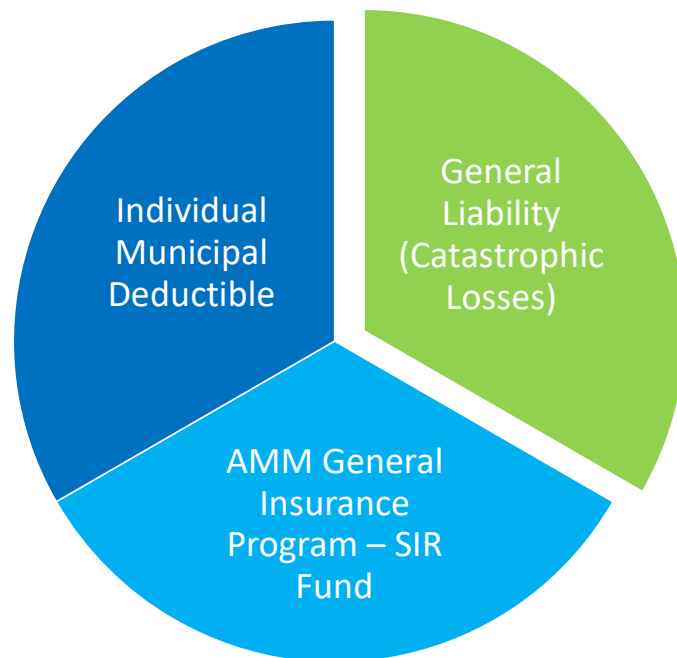
- Building Cost Valuation System used for Premium Calculation
- Building Replacement Cost Values based on Boeckh building evaluation system and costs experienced in actual claims files

OPTIONS:

- **Guaranteed Replacement Cost**
(Up to Blanket Limit) if insured to building cost valuation.
Full cost to replace including increased costs due to by-laws
- **Option 1: Agreed Value**
Reduced Agreed Building value if no plan to rebuild the facility but would replace it with another structure – Value based on new structure. (i.e. replace old rink with a community hall) Subject to agreed value limit but no depreciation on partial losses
- **Option 2: Actual Cash Value**
(Depreciated Value) if no plan to replace building. Partial losses subject to depreciated cost as well.

Liability Insurance - Structure

(General)



General Liability Limit:

\$50,000,000

- Coverage for major catastrophic losses
- Insurance Company pays majority of claim settlement, above and beyond Loss Pool limit

AMM General Insurance Program – SIR Fund

- Self Insured Retention (SIR) Fund
- Pays up to \$750,000 per loss, with an annual maximum of \$2,500,000

Individual Municipal Deductible:

\$2,500

- Applicable to all covered Liability losses

Liability Insurance - General

- **\$50,000,000 Limit (with Umbrella and Excess Layers)**
- **Bodily Injury and Property Damage Claims**
 - Arenas, curling rinks, halls
 - Playgrounds
 - Sporting events
 - Sidewalks/parking lots
 - Members of the public
- **Additional Insureds:**

Boards, committees and commissions, and members thereof, and volunteers, which own or operate halls, rinks or other public facilities, and others as agreed.
- **Defence Costs** are not included in the above limits

Important Extensions & Terms

- \$2,500. deductible (“Self-Insurance”), deductible not applicable to legal defence costs for most losses
- Employees/Volunteers as additional insureds
- Employers’ Liability coverage
- Blanket Contractual Liability
- Personal Injury Liability (Libel, slander, etc.)
- Wrongful Dismissal claims are covered only for 90% of legal defence costs and/or award of damages, but excluding severance, to a maximum of \$100,000 per claim
- Coverage for harassment, discrimination, humiliation subject to a limit of \$200,000 per claim/per certificate,
- Professional Liability Coverage for Firefighters, Police, and EMTs. Limit \$2,000,000

What is Negligence & Legal Liability?

Legal Liability Basis:

- **Duty of Care** - Obligation to exercise “reasonable care” with respect to the interests of others, including protection from harm
- **Standard of Care** - Level of service, attention, care or protection that one person owes to another according to the law
- **Vicarious Liability** - Liability that an organization takes on for the actions of those who function on its behalf.
- **Joint and Several Liability** – Should any party to the action be unable to pay for the damages, the onus to pay can fall entirely onto any one of the other parties to the action.

Liability Negligence:

- Doing something other than what a “reasonable” person would do (or not do) which results in injury or damages
- Being found negligent leads to being legally obligated to pay for the damages
- Organizations are liable for the actions of their employees and volunteers
(Vicarious Liability)
- Organizations could be held liable for the actions of parties using their facilities
(Joint and Several Liability)
- Organizations could be held liable for the actions of parties added as Additional Insureds such as contractors, if not restricted to their operations.
(Joint and Several Liability)

Liability Coverage:

- The Municipal Liability Insurance does **NOT** extend to cover groups / committees unless named on the policy.
- The Liability does **NOT** automatically extend to include outside parties that provide services to the municipality nor to parties that rent or use municipal facilities or equipment.
- In some Limited situations – Outside parties (providing services normally provided by the RM) may be eligible to be added to the Municipality's Insurance.
- Prior approval must be obtained from Western.

Liability Coverage

What kinds of activities may be acceptable to add to Municipal Insurance Program?

- Community Festivals, Special Events or Recreation Programs that would otherwise be run by the Municipality
- These events must be low risk, non-profit, volunteer and community based. Not private party, individual or for-profit activities.

Are We Covered For That?????

- A citizen trips and falls on a piece of sidewalk that has heaved, falls and breaks a leg and demands compensation.
 - If municipality was unaware of the hazard, there is defence under Municipal Act.
 - If municipality had been aware, from a previous complaint by a citizen or inspection, municipality is negligent.
 - Covered either way. Entitled to a defence in the first case and payment of Third Party's claim in the second.
- Huge rainstorm leads to the backing up of sewers in a small area of town.
 - Unless the municipality was negligent (ex. did not start lift station pumps), the claim from any Third Parties (citizens) will be defended. If there was negligence by the municipality, compensation will be negotiated with the Third Parties.
- A player in a hockey game at the local arena is injured by the check of another player and sues the RM as well as the coaches and player for his injuries.
 - If there is no negligence on the part of the RM the policy will provide a defence.

Exposure to Liability Claims

AEDs

Are there liability concerns with installing AEDs?

Liability is low as long as units are maintained in good working order.

- Provide signage with clear instructions
- Securely anchor unit to wall to prevent removal
- Securely lock case with a breakable lock
- Alarm unit to prevent tampering
- Conduct daily visual checks (power light on / no tamper)
- Conduct monthly checks (operational / battery charging)
- Record all service checks

Exposure to Claims

- Municipalities or committees regularly rent their facilities out to third parties (outside users).
- Many do not ask about insurance because they are afraid the user will not rent the facility from them!
- What can happen? Accidents seldom happen – Right?
- Why worry? Rural people don't sue – Or do they?

But, If an accident happens –Who is responsible?

Exposure to Claims

- Municipalities or committees that rent their facilities out to third parties (outside users) may be **held liable** for the actions of that outside user **if**:
 - The Outside User does **not** carry adequate liability insurance coverage or sufficient assets to satisfy assessed damages;
 - The Outside User does **not** sign a hold harmless agreement;
 - The RM or committee does **not** adequately supervise the event or properly maintain the facility / grounds.

Example 1

- Outside user group rents the community hall for a fund raising social.
- One of the user group members rents the hall and gets the liquor permit. (The “Social Host”)
- During the event a guest slips and falls on a patch of liquid spilled on the floor.
- Guest is seriously injured and cannot work for 6 weeks.

What do you think would happen next?

Example 1

What usually happens!

- Guest will undoubtedly sue!
- Lawsuit names the social host as primary responsible party for hosting the event and;
- Lawsuit also names the hall committee and municipality as secondary responsible party because it was their facility.

Example 1

- Social host may be found negligent for not cleaning up liquid. (As he / she were operating the event)
- Social host would likely then be held liable to pay for injuries.
- If social host does not have insurance, the guest will go after any assets the host has to cover the damages.
- Without insurance the social host could lose house, RRSPs and other assets.

Note: Often the “social host” is the one with No Assets!!

Example 1

- If not enough assets, courts will look for someone that can pay for the damages;
- That someone who can pay for the damages is very likely going to be the hall committee and the municipality.
- Where is that payment for the damages going to come from?
- From the Loss Pool! – Basically from your own pocket!!

Example 2

- The bathroom in the community hall is badly damaged during an outside user event.
- Can you hold the renter responsible for the damages?
- Probably not! Unless they signed a rental contract with a damage waiver. (Included in the Outside User Form)
- Do you have a rental contract with a damage waiver?

If not, make that a priority!

Damage Waiver

This is to certify that (I) (My organization), while occupying said facilities, will provide and be responsible for adequate adult supervision and the security of municipal property and will abide by all rules and regulations as established by the MUNICIPALITY. I (we) agree to pay for any damages incurred to property and/or equipment and to pay rental fees as outlined. The permit holder (user group) will protect, indemnify and hold harmless the MUNICIPALITY and its agents from all claims for damages that may arise out of the use of buildings, grounds or equipment by the permit holder. If liability insurance premium is not indicated above, the permit holder (user group), agrees to obtain his/their own liability insurance for this event.

Dated this _____ day of _____ 200_____

Signed (Contact person): _____

Damage Waiver

- A signed damage waiver allows you to go after the renter / user group for any damages to your facility that occurred during the rental period.
- Without the damage waiver you may have to pay for damages such as broken lights, tables or chairs, missing or expended fire extinguishers, damaged toilets and sinks or even damaged sports equipment such as basketball hoops etc.

Make the user take responsibility for their actions!

Facility Use Agreements

- Compliance to laws and regulations
- Responsible for injury to spectators and visitors
- Loss or damage to property
- Assignment of lease
- Liability insurance
- Hold harmless clause

Liability Insurance for Outside Users of Municipal Facilities

Outside User Liability – Portal – NEW*

Webinar Sessions – A how to guide on creating Outside User Liability Policies through the “AMM Outside User Liability Portal”.

- May 3rd, 2022 at 2:00 PM CST
- May 4th, 2022 at 10:00 AM CST
- AMM Site <https://www.palcanada.com/amm>

Outside User Liability

- Western has long recommended that municipal facilities require outside users, such as hall and arena renters, have liability insurance to protect themselves and the municipality.
- Does this mean that ALL outside users need to buy special insurance to cover them to rent the facility?
- No – Most organized groups / teams already have liability insurance that will cover them for many of these rentals.
- Even most homeowner policies will cover the homeowner for rentals for events like birthday parties/anniversaries

Outside User Liability

- Many outside user groups like scouts, guides, Kinsmen, Kiwanis etc. ,most organized sports teams and even many homeowners have liability insurance that will cover them for the facility rental.
- All they need to do is confirm coverage to the hall committee by providing a copy of their policy.

Note: Most liability policies will not extend to cover events where liquor is served. Additional insurance is required.

Homeowner policies do not cover liability of sports teams or volunteer groups.

Outside User Liability

- This insurance was not always easy for some users to obtain and was often very expensive.
- It usually requires completion of an application prior to quotation and premium payment separate from facility rental
- Western Financial has arranged for a group liability policy that can cover these outside users at the time of the facility rental without an additional application.
- Premium is then included with the rental fee.

Outside User Liability

- This policy can be accessed by all municipal facilities by completing a very simple application form for the use of municipal facilities.
- This application form also provides the mechanism for the municipality to formally make the user group responsible for damages arising out of the use of the property by them.
(Includes a Damage Waiver)

Outside User Liability

- This application form also formalizes other terms such as rent, charges for services provided and allows access to an economical, simple means for the user group to meet liability insurance requirements, if they do not otherwise have coverage.
- This form allows for a full description of the period of use and any other terms such as the nature of the use or any equipment to be provided.

Outside User Liability

- If the user group does not already have insurance or cannot provide confirmation they need to purchase insurance.
- Their representative simply signs the application and you fax it to the Western office.
- All fees, including the premium for liability insurance, is collected prior to allowing use of the facility.

Outside User Liability Example

- An Ontario facility allowed a nursing school to hold a diabetes testing clinic in the facility.
- Nursing students used multi-needle test guns.
- Malfunction – needles were re-used on several clients.
- Possible blood contamination.
- Multi-million dollar lawsuit.
- Nursing school not insured for running clinics.
- Facility may be held liable to damages.

Use of Waiver Forms And Informed Consent Forms

Waiver Forms / Informed Consent

- Properly worded waiver forms can reduce your exposure to liability for injury to participants when you clearly describe the risks and hazards that may be encountered with an activity or program
- Waivers have held up for adults who understand the risks
- Waivers have not held up for minors even when parents have signed the form
- Parents cannot sign away the rights of a child
- Informed consent form have gone a long way to reduce liability awards – contributory negligence.

Waiver Forms

- When using a waiver it is important that is clearly refer to the extent of its coverage so that there is no room left for doubt as to the waiver's application.
- Good practice to include a general statement of the inherent risks of the activity to leave no room for doubt as to the nature and extent of the risk the releaser agreed to assume.

Waiver Form Sample Part A

RELEASE AND INDEMNIFICATION FORM FOR RECREATIONAL ACTIVITIES (18 Years and Older)

Town / Municipality: _____
Organizing Committee: _____

Description of Activity: _____
Date(s) of Activity: From ____ / ____ / 20__ to ____ / ____ / 20__

THIS FORM MUST BE READ AND SIGNED BY ALL WHO WISH TO PARTICIPATE.

Elements of Risk:

Recreational physical activity programs involve certain elements of risk and injuries may occur while participating in such activities.

Following are examples of some types of injury which may result from participating in the above (Activity):

1. Scrapes, cuts, bruises
2. Strains, sprains, pulled muscles or ligaments
3. Possible fractured or broken bones (such as arms, legs, hips).

There may also be risk of other types of injury.

There also exists the risk of damage to my personal property.

Acknowledgement:

I, _____ understand and accept the above and provide the (Municipality) and the (Organizing Committee) with the following waiver of liability and indemnification agreement:

Waiver Form Sample Part B

Release and Indemnification Agreement:

I, _____ hereby release the (Municipality) , the (Organizing Committee) and its agents from any and all liability for any injury sustained by me, or damage caused to my belongings, regardless of how caused, resulting from my participation in the (Activity) on (activity date).

I further agree to indemnify and save harmless the (Municipality) and the (Organizing Committee) and its staff and agents from any and all suits, demands, torts, and actions of any kind which may be brought against its staff or agents for which it / they may become liable by reason of injury, loss, damage or death resulting from, or occasioned to, or suffered by any person or any property, by reason of any act, neglect, or default of mine.

Acknowledgement:

I have read the above. I understand that in participating in the above (Activity) I am assuming the risks associated with doing so. I further understand that there is **no coverage for injury to participants** provided with this activity.

Name of Participant: (print) _____

Signature of Participant: _____ Date: ____ / ____ / 20__

- **Loss Pools & SIR Fund**
- **Protected Self Insurance Fund (PSIP)**
 - \$9,000,000 – Property, \$625,000 – Equipment Breakdown
- **Self-Insured Retention Fund (SIR)**
 - \$2,500,000 – Liability, \$100,000 – Crime
- **Total: \$12,225,000 of member-owned funds**
- PSIP – Member-owned funds, held in trust, used to pay first portion of claims. Opportunity for return of premium
- SIR – Member-owned funds, surplus stays away from insurers same as PSIP, used to purchase coverage in concurrent years.
- On annual basis actuarial review is completed to find best balance of member-owned funds vs. excess insurance dollars to provide the most value to program participants. This is reviewed and approved by the AMM Board of Directors on an annual basis.

- **A Word About the Loss Pools**

- Funds are paid to ATCL and held by third party insurer
- It is YOUR Money! (Municipalities)
- Best reason to practice proper risk management.
- Reduce losses and obtain a return of premium.
- Funds are not “lost” to insurance companies as in traditional insurance structure
- ***Since 2010, almost \$19.75 million in surplus premiums have been returned back to Municipalities to reinvest in their communities!***

Questions ?

- THANK YOU