



Performance Audit of CEO/Risk Management

January 24, 2012

Why the Audit was Conducted

Over the last ten fiscal years, the County has paid \$174 million in Workers' Compensation and \$108 million in Liability claims expenses. Accordingly, the proactive management of the County's risk exposure in these areas is a critical responsibility. As a result, the Board of Supervisors directed the Office of the Performance Audit Director to conduct an audit of CEO/Risk Management (RM) to bring increased transparency to the operation and to provide County policy makers, executive management, and the public with a comprehensive assessment of RM's performance.

Key Audit Recommendations

This audit report offers 26 recommendations to strengthen RM's operations, the most important of which include:

- Development of effective analytics and management reports in order to identify and proactively manage the County's operational risk exposures.
- Implement substantial changes to the County's Return to Work program to ensure its success.
- Modification of RM's proposed new cost allocation methodology for charging agencies/departments for the cost of Workers' Compensation and Liability claims expenses.
- Collection and analysis of additional data concerning RM's Legal Defense Panel and its subcontractors.
- Automation of RM operations to increase efficiencies.
- Development of a Countywide Enterprise Risk Management capability to proactively identify and address *all* risks facing the County.

What the Audit Found

Key Strengths

The current Risk Manager has made several significant improvements to RM's operation over the past few years:

- RM staff is very knowledgeable in the majority of its assigned functions and aggressive in their pursuit of protecting public funds.
- RM provides excellent training to County agency/department staff in Contracts Insurance and Safety and Loss Prevention.
- RM has an effective balance of in-house and contract staff performing the County's risk management activities.
- RM has enhanced its review of managed care services for Worker's Compensation cases and directed the initiation of enhanced protocols for the utilization review process on medical treatment and ancillary medical services.
- RM has made several cost saving changes to its commercial insurance program.

Key Opportunities for Improvement

There are 26 formal findings, the most important of which include:

- RM's Workers' Compensation and Liability activities are primarily focused on the processing of claims. RM has not yet achieved the best practice capability of assisting agencies in proactively managing the risks that cause these claims, a major part of its stated mission. A critical step in developing this capability is the preparation of metric reports as a prerequisite to identifying, understanding, and managing risks. The audit team has developed a collection of analytics that lays the foundation for RM to provide this information going forward.
- The Return to Work program implemented in 2011 has several critical deficiencies that are sources of frustration to agencies/departments.
- The proposed new charging methodology to allocate Workers' Compensation and Liability costs to agencies/departments has several issues that need to be addressed prior to implementation.
- RM does not collect data on total hours billed by contract attorneys nor does it track the costs of subcontractors used by the County's Legal Defense Panel firms.
- The Worker's Compensation program is a highly manual operation that leads to inefficiencies and hinders RM staff's ability to be consistently responsive to agency/department needs.
- The current procedure for funding the long-term financial costs of Workers' Compensation and Liability claims does not currently incorporate Board input.
- The County's Risk Management Policy has not been updated since 1974.

FINAL REPORT



Performance Audit
of
CEO/Risk Management



January 24, 2012

Office of the Performance
Audit Director

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Executive Summary

Preface

Public agencies are exposed to a variety of risks during the normal course of business. These risks include such exposures as employee injuries, various types of liability claims filed against the organization (e.g., excessive use of force, automobile accidents, water main breaks, employment lawsuits), and non-performance by contractors. To address these exposures, public agencies typically establish a risk management office that includes such functions as: Workers' Compensation, Liability Claims Management, Contracts Insurance, and Safety and Loss Prevention. The County of Orange performs these functions through its CEO/Office of Risk Management (RM).

Managing risk is a necessary but costly component of government. Indeed, at the County of Orange, total Workers' Compensation and Liability costs over the past 10 years have been \$174 million and \$108 million, respectively. Yet, in spite of the magnitude of these expenses, the inner workings of RM have not been the subject of significant scrutiny. As a result, the Orange County Board of Supervisor's (Board) directed the Office of the Performance Audit Director (Office) to conduct this audit to thoroughly review the RM operation and to provide County policy makers, executive management, and the public with a comprehensive assessment of RM's performance.

After months of extensive research and analysis, the audit team has determined that since the arrival of the current Risk Manager in 2008, many notable improvements have been and continue to be made, including changes that have resulted in cost savings to the County, the development of detailed policies and procedures, and improved service and support provided to agencies/departments. Although RM has improved greatly over the last several years and is, overall, a well-performing organization, there are some significant opportunities for improvement, particularly in RM's data analysis and reporting capabilities, automation of administrative and Workers' Compensation activities, and in correcting implementation deficiencies in the Countywide Return to Work (RTW) program.

Given the magnitude of RM as a cost center, it is reasonable to expect that implementation of the recommendations contained in this audit will result in savings as the County enhances its ability to proactively manage its organizational risks and increase its use of automation.

Methodology

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that the audit team plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on audit objectives. The audit team believes that the evidence obtained in this audit provides a reasonable basis for its findings and conclusions based on audit objectives.

Data collection methods used by the audit team included: interviews of all RM staff, intensive research of risk management best practices, analysis of RM expenditures and funds, interviews of management representatives from the largest users of risk management services, a review of a sample of Liability files, an examination of RM's use of contractors, and a review of actuarial and other studies previously conducted.

The audit team has categorized its findings and recommendations according to priority, with *Priority 1* indicating significant financial, legal, or operational risks are involved that require immediate attention; *Priority 2* indicating moderate financial, legal, or operational risks that RM should begin addressing within six months; and *Priority 3* indicating operational or administrative processes that RM should begin addressing within one year.

Background Information

Organization

RM reports to the County Financial Officer (CFO) and provides its services with 23 positions, across the following areas:

- Administration & Financial Management (including Commercial Insurance)
- Contracts Insurance
- Liability Claims Management
- Safety & Loss Prevention
- Workers' Compensation
- Return to Work (RTW)
- Americans with Disabilities Act (ADA) Title II Compliance

RM's operations in the areas of Safety & Loss Prevention, ADA Title II Compliance, and Return to Work follow the County's decentralized structure, with agencies/departments responsible for program implementation and RM serving as a central coordination point to provide oversight and support as needed. Countywide functions wholly centralized within RM are Commercial Insurance, Contracts Insurance, Liability Claims Management, and Workers' Compensation.

In addition to County staff, RM also utilizes contractors for the following activities:

- Workers' Compensation claims administration, audits, and cost containment services
- Defense litigation of Liability and Workers' Compensation claims filed against the County
- Insurance brokerage services
- Actuarial services

Expenditures & Revenues

In terms of expenditures, RM budgets for the administration of its various programs, as well as for self-insuring its Liability and Workers' Compensation claims, through its two Internal Service Funds (ISF 294 and 293, respectively). Property & Casualty (Liability) ISF 294's FY 2011/12 total expense budget is \$24.7 million: \$10.4 million (or 42.1%) of these appropriations are for various commercial insurance policies and insurance recoveries (i.e., pass-through expenses to other agencies); \$11.8 million (or 47.8%) are for Liability judgments and damages; and the remaining \$2.5 million are for other administrative expenses. For Workers' Compensation ISF 293, the FY 2011/12 total expenditure budget is \$31.1 million: \$25.7 million (or 82.6%) of these appropriations are for Workers' Compensation insurance claims; the remaining \$5.4 million are for administrative costs, including the contract with its third party administrator.

RM's revenue sources for both ISFs are: (a) charges to agencies/departments, and (b) interest earnings on accumulated assets.

RM Accomplishments

The current Risk Manager has instituted positive changes to the RM operation that have either enhanced or led to a number of operational strengths, the most significant of which include the following:

- ❑ RM staff is very knowledgeable in the majority of its assigned functions and aggressive in their pursuit of protecting public funds.
- ❑ RM streamlined its commercial insurance program by consolidating various small liability and property insurance policies under a master program, utilizing CSAC-EIA (a joint powers authority) to purchase its property insurance coverage needs which resulted in reduced costs and enhanced insurance coverage on the County's behalf, and placing the insurance brokerage services on a fee-based contract as opposed to the previous commission-based approach.
- ❑ RM has an effective balance of in-house and contract staff performing the County's RM activities.
- ❑ RM has enhanced its review of managed care services provided by the County's TPA, York. An outside managed care audit was conducted and has resulted in the initiation of enhanced protocols for the utilization review process on medical treatment and ancillary medical services.
- ❑ RM has developed Workers' Compensation and safety metrics that focus on incidence, frequency and severity rates and modified duty statistics. Bi-annual reports have been presented to key agencies/departments, which include trend analysis and recommendations for risk mitigation efforts.
- ❑ RM provides excellent training to County agency/department staff in the Contracts Insurance and Safety areas.

Summary of Audit Findings & Recommendations

The audit's 26 findings and recommendations for each of RM's functional areas are summarized on the following pages.

Administration and Financial Management

- ❑ The primary policy that delineates RM's authority (the 1974 County Risk Management Policy) should be updated to reflect current practices. (Finding 1, page 10)
- ❑ RM should develop a Board policy that guides the CFO and Risk Manager in funding the long term liabilities associated with Liability and Workers' Compensation claims, and a procedure for reporting commercial insurance placements (i.e., purchases) twice per year to the Board. (Findings 2 and 5, pages 11 and 21)
- ❑ RM's proposed cost allocation methodologies for charging agencies/departments for the aggregate funding of Liability and Workers' Compensation claims have some problematic consequences that should be addressed prior to implementation to ensure that the County is in full compliance with State Controller guidelines (e.g., consider removing the X-Mod component of the proposed new methodologies). (Finding 4, page 16)
- ❑ RM performs a significant amount of manual processes which afford several opportunities to enhance its efficiency through the use of paperless technologies. RM should work with CEO/IT to identify opportunities for process automation. (Finding 3, page 14)

Contracts Insurance

- ❑ The delineation of responsibility between RM and County Counsel for the review and approval of contract insurance issues is unclear to many agencies/departments and should be communicated. (Finding 6, page 25)
- ❑ Vendors who have multiple contracts with the County must prepare and submit proof of insurance documentation for each contract, potentially leading to extra costs passed on to the County. RM should complete its efforts to implement insurance certificate software that would allow agency/department staff to verify proof of insurance for vendors. (Finding 7, page 25)

Liability Claims

- RM has not developed a comprehensive approach to analyzing and reporting on Liability claims data. As a result, RM is limited to primarily processing claims rather than fulfilling its mission-specific role of facilitating the management of operational risks that lead to claims. For example, in conducting its own analysis of 12 fiscal years of RM Liability claims data, the audit team was able to develop a number of analytics, not previously available:
- The County has paid an average of \$10 million per year on Liability claims expenses (including payouts and legal costs) over the last 12 fiscal years (approximately \$120 million in aggregate). However, in a substantial upswing of costs, over the past two fiscal years, the County has paid \$41.0 million in Liability claims expenses, or an average of \$1.7 million per month.
 - On average, legal expenses represent the largest portion of Liability claims costs (52.2%).
 - There was a demonstrable downward trend (a 41.1% decrease) from FY 99/00 to FY 08/09 in the number of Liability claims incurred by the County.
 - Expectedly, given its public safety mission, the Sheriff-Coroner Department has the highest percentage of Liability claims and costs in the County (43.6% of all claims and 46.6% of all costs); the next highest is the Social Services Agency (3.6% of all claims and 17.4% of all costs).
 - The types of Liability claims that have generated the highest total costs over the past 12 fiscal years include: Civil Rights violations (\$14.2 million), excessive use of force by deputy in the field (\$9.6 million), liability from omissions and errors (\$9.4 million), adverse employment action (\$7.9 million), chemicals/paints/fumes including landfill gas (\$6.4 million), use of force by staff while in custody (\$6.0 million), wrongful termination/suspension (\$5.3 million), and wrongful death (\$4.7 million).
 - While only 0.8% of all claims incurred over the 12-year period resulted in payouts to-date of over \$200K, these claims accounted for 66.8% (or \$68.8 million) of total claims payouts.
 - Over the past five fiscal years, there has been a 26.5% increase in Liability lawsuits filed against the County and a 103.2% increase in legal costs.

Although RM collects this summary level data, it does not collect data on the total hours billed by contract attorneys, nor does it track the total costs of subcontractors used by contract attorneys.

RM should identify risk metrics for reporting and develop a Liability data analysis capability. (Findings 8 and 9, pages 28 and 44)

- ❑ The current Liability Legal Defense Panel contract has been in place for an excessive period of time (10 years). In the future, RM should refresh the selection of Legal Defense Panel firms every five to seven years. (Finding 10, page 45)
- ❑ From a cost standpoint, it would be more expensive to use County Counsel attorneys and legal support staff for Liability claims litigation defense than contract staff. In addition, there are a number of other operational considerations that support the current model. The audit team recommends that RM continues with the current model for Liability claims litigation legal defense. (Finding 11, page 45)

Workers' Compensation

- ❑ A significant number of manual procedures result in operational inefficiencies in the Workers' Compensation program; this negatively impacts staff's ability to be consistently responsive to agency/department needs. RM should develop a database to replace its existing system of using hard copy index cards to record payroll information and begin scanning and storing documents electronically. (Finding 12, page 55)
- ❑ RM's contract with its Workers' Compensation Third Party Administrator (TPA) includes service level expectations that are not closely and frequently tracked; there are no associated financial penalties in the contract to hold the TPA accountable for meeting service level expectations. RM should develop specific performance targets, negotiate associated financial penalties into the contract, and more frequently report on the vendor's performance. (Finding 13, page 60)
- ❑ The Workers' Compensation database is not being fully utilized to facilitate the management of safety risks in County agency/department operations. In conducting its own analysis of Workers' Compensation claims data, the audit team found the following:
 - The average cost per incurred Workers' Compensation claim over the past 32 years has increased 321.8% (an annualized rate increase of 10.1%). Over the

same period, total Workers' Compensation costs have increased 46.2% (an annualized rate increase of 1.4%) and the number of Workers' Compensation claims has increased 12% (an annualized rate increase of 0.4%).

- Nearly 80% of all Workers' Compensation claim costs are for claim payouts of less than \$5K; in the last 32 years, there have been six claims that had payouts greater than \$1 million.
- Over the past 10 fiscal years, the County has paid \$174 million in total Workers' Compensation claims costs. The agencies/departments with the highest percentage of total Workers' Compensation claim costs are the Sheriff-Coroner Department (37%), the Social Services Agency (16%), Probation Department (12%), and the Health Care Agency (7%).

RM should develop additional reports and analyses that will enable agencies/departments to manage their Workers' Compensation risks; it should also develop training to help agencies/departments understand the types of data available and the tools and techniques they can use to mine and analyze the data. (Finding 14, page 61)

- ❑ The County has employees who are on unresolved Workers' Compensation-related Leave without Pay status for as many as 10 years. Prompted by the audit, RM has worked to resolve these cases, but it should establish a regular process for addressing future cases. (Finding 15, page 62)

Safety and Loss Prevention

- ❑ RM's existing level of oversight of Countywide safety compliance is not fully consistent with the County Safety and Loss Prevention Manual, which states that RM is responsible for enforcement of safety compliance. Since RM's current consultative, rather than enforcement, approach to safety is generally supported by agencies/departments, RM should revise the County safety policy to reflect present practices. (Finding 16, page 69)
- ❑ There is little reporting on safety-related aspects of RM's Liability program, and the practice of root cause analysis for both the Liability and Workers' Compensation programs has not been established. RM should develop additional metrics reports for Liability claims and begin routinely conducting root cause analyses for both programs. (Finding 17, page 71)

- ❑ Despite the importance of safety and loss prevention, there is little communication of safety information from RM to line staff throughout the County. RM should reinstitute regular safety-related communications to employees and consider creating a Countywide safety campaign. (Finding 18, page 72)

Americans with Disabilities Act (ADA) Title II Compliance

- ❑ RM is unclear about its role related to ADA Title II, and, as a result, there is no central oversight of Countywide compliance with this law. RM also does not fulfill its recordkeeping responsibilities established in its ADA Title II Complaint Procedure. RM should clarify its ADA Title II role to the Board and agencies/departments and begin fulfilling its recordkeeping responsibilities. (Finding 19, page 74)

Return to Work (RTW) Program

- ❑ RM minimally engaged agencies/departments with RTW expertise and experience prior to the launch of the RTW program, resulting in implementation inefficiencies and agency/department frustration and confusion. County Counsel was also not included in the development of program details, and therefore, there are legal considerations that are missing from program documents. RM should convene a subcommittee, with participation from County Counsel, to develop/review key program elements and have County Counsel join the RTW Committee. (Findings 20 and 21, pages 80 and 82)
- ❑ The RTW/Transitional Duty policy developed by RM is vague about the differences between occupational and non-occupational injury/illness situations and between what is mandatory versus simply a “guideline.” In addition, some of the guidance provided by RM (e.g., having supervisors obtain employee work restriction information, having supervisors develop transitional duty work assignments) should be revisited in order to avoid problematic situations (e.g., inconsistent practices across the agencies/departments, potential violations of employee privacy). (Findings 22, 23, and 24, pages 84-87)
- ❑ The current metrics identified for the program do not sufficiently measure its performance. Currently, RM’s metrics only measure program efficiency. RM should begin measuring program effectiveness, as well as qualitative performance (e.g., employees’ reasons for not participating in the program). (Finding 25, page 88)

Enterprise Risk Management

During the course of this assignment, the audit team also identified an important best practice approach referred to as Enterprise Risk Management (ERM). ERM began in the private sector as a construct to identify, evaluate, and address *all* organizational risks, not simply those that can be addressed by purchasing insurance. As such, ERM is the proactive, strategic examination of key organization-wide risks such as budget shortfalls, continuity of operations, data security, employment practices, emergency management, public records issues, and union negotiations—all of which can impact the accomplishment of organizational goals. ERM recognizes that organizational risks are often interrelated, requiring that key emerging risks be identified, analyzed as an integrated portfolio, and brought to the attention of governing bodies for strategic decision making. Best practice organizations work to eliminate the practice of dealing with issues in silos and instead take a more coordinated, broadly-informed tack. The formal structure of ERM facilitates strategic risk oversight, increasing management's ability to develop and implement mitigation initiatives.

In light of the fact that the County currently uses several individual mechanisms to identify and respond to its emerging risks, the audit team recommends that the County consider instituting a limited ERM approach to augment its strategy discussions. (Finding 26, page 92)

Acknowledgements

The audit team would like to thank RM for its cooperation throughout this process. We would also like to express our appreciation to agency/department management for their candor and valuable feedback, and County Counsel for its input on RM issues and for its legal review of this document.

Performance Audit of CEO/Risk Management

Introduction

Public agencies are exposed to risks of financial loss from a variety of events such as theft, damage to physical assets, injuries to employees, natural disasters, employment lawsuits, and lawsuits stemming from the provision of public safety services. At the County of Orange (County), the management of these risks is the responsibility of the County Executive Office/Office of Risk Management (RM).

In order to gauge the effectiveness and efficiency of RM, the Board of Supervisors (Board) approved a comprehensive performance audit of the operation by the Office of the Performance Audit Director (Office).

Scope of Work

The Board directed that the audit include an examination of the following areas:

- Contracts Insurance
- Administration and Financial Management
- Liability Claims Management
- Workers' Compensation
- Safety and Loss Prevention
- Americans with Disabilities Act Title II
- Return to Work/Transitional Duty

In the audit team's review of these topical areas, some of the specific questions to be answered include:

- How effectively is each RM program managed? What are the accomplishments and areas for improvement in each program?
- Overall, does RM maintain a comprehensive set of policies and procedures to guide the various programs under its purview?

- What important metrics, performance and workload, are relevant to RM programs and consistent with industry standards? Are these metrics tracked, reported to and utilized by management?
- How does RM utilize contractors to fulfill its program responsibilities? How are these contractors monitored to ensure satisfactory or better performance?
- What are the financial management practices/procedures surrounding the Property and Casualty (Liability) Internal Service Fund (ISF 294) and the Workers' Compensation Internal Service Fund (ISF 293)? How have the various rates charged to agencies/departments changed over time for the different types of insurance coverage services?
- Does RM have an adequate program in place to guard against fraud in both Liability and Workers' Compensation claims?
- What outside legal resources does RM utilize, and what are the associated costs of these services, as well as the quality of services provided? Is it more efficient/effective to use contract attorneys or hire in-house legal staff for risk management work?
- How do other local governments fulfill their RM responsibilities? Do they use an equivalent amount and level of staff? How do Orange County's risk management costs benchmark against peers?
- What type of technology does RM utilize? To what success, and at what cost?
- What types of strategic-level documents (e.g., Countywide Risk Management Strategic Plan) exist?

Audit Methodology

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that the audit team plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on audit objectives. The audit team believes that the evidence obtained in this audit provides a reasonable basis for its findings and conclusions based on audit objectives.

In its assessment of RM, the audit team reviewed and performed the following activities:

- Historical examination of documents, resolutions, and mandates related to RM
- Review of RM policies and procedures
- Interviews with all RM staff and management representatives from the seven largest agencies/departments in terms of Workers' Compensation and Liability claims costs
- Benchmarking research of the risk management operations of other California cities and counties
- Examination of RM informational databases and reports
- Analysis of Workers' Compensation and Liability claims data
- Review of a sample of Liability case files
- Examination of RM contracts with the following vendors: Legal Defense Panel firms, Workers' Compensation third-party claims administrator (TPA), and the County's insurance broker
- Review of current and proposed Workers' Compensation and Liability cost allocation methodologies for charging agencies/departments, including an interview with RM's actuary
- Observations of Workers' Compensation staff, Administrative Support staff, and Return to Work Committee meetings
- Review of actuarial studies for both the Workers' Compensation and Liability programs
- Review of other audits and assessments of the RM operation
- Review of Annual Stewardship reports from the County's insurance broker
- Review of the TPA's recent program review of the County's Workers' Compensation program

The audit team has categorized its findings and recommendations according to priority, with Priority 1 indicating significant financial, legal, or operational risks are involved that require immediate attention; Priority 2 indicating financial, legal, or operational risks that are moderate and RM should begin addressing within six months; and Priority 3 indicating operational or administrative processes that RM should begin addressing within one year. (See Appendix A)

Background Information

Risk management is the identification, evaluation, and prioritization of risks, followed by a coordinated effort to minimize, monitor, and control the impact of those risks. Organizations employ a number of techniques to avoid, control and finance losses associated with risks, which include those shown in the following table:

Loss Avoidance	<p><u>Prevention</u> Reducing the probability that a loss will occur by taking preventative measures (e.g., establishing Safety and Loss Prevention programs, establishing programs/processes to ensure compliance with laws and regulations)</p>
	<p><u>Contractual Transfer</u> Transferring the economic impact of losses to contractors (e.g., requiring indemnification clauses in contracts, requiring that contractors purchase commercial insurance and/or bond)</p>
Loss Control	<p><u>Claims Management</u> Reducing the severity of the loss once it occurs (e.g., litigation, fraud investigation, accommodating injured/ill employees with work restrictions)</p>
Loss Financing	<p><u>Commercial Insurance</u> Purchasing commercial insurance to hedge against the risk of loss (e.g., property insurance, excess liability insurance for losses greater than \$5 million)</p>
	<p><u>Self-Insurance</u> Setting aside funds to compensate for potential future losses</p>

RM Authority and Mission

The typical role of a public sector risk management operation almost universally focuses on managing risks associated with accidental losses stemming from property and casualty hazards. These hazards are traditionally related to areas involving liability to the public, injury and illnesses to employees, or damage to physical assets.

In 1974, the Board of Supervisors, in Resolution No. 74-254 (Appendix B), established a Risk Management Policy for the County of Orange. Its objectives included:

1. The protection of the County of Orange against the financial consequences of accidental losses which are catastrophic in nature.
2. The minimization of the total long-term cost to the County of all activities related to the prevention and control of accidental losses.

3. To encourage, to the extent possible, the creation of an exposure free work and service environment, in which County personnel, as well as members of the public, can enjoy safety and security in the course of their daily pursuits.

This policy also gave the County's Risk Manager the following authority and responsibility:

- Identification and measurement of all risks of accidental loss.
- Selection of appropriate Risk Management Techniques for resolving exposure problems; i.e., (1) Risk Assumption, (2) Risk Reduction, (3) Risk Retention, Risk Transfer, or Purchase of Insurance, as necessary.
- Development and maintenance of an information system for timely and accurate recording of losses, claims, insurance premiums and other risk related costs and information.
- Development and implementation of a "back charge" program, enabling appropriate distribution of program costs and expenses to user departments and districts on an equitable basis.
- Develop and implement a claims handling system capable of processing (1) Self-Insurance Worker's Compensation claims, (2) Liability claims, (3) Property Damage claims, or (4) such other types of claims as are supported by cost savings studies.

Accordingly, RM's mission is to preserve and protect the human resources and capital assets of the County of Orange from injury or loss.

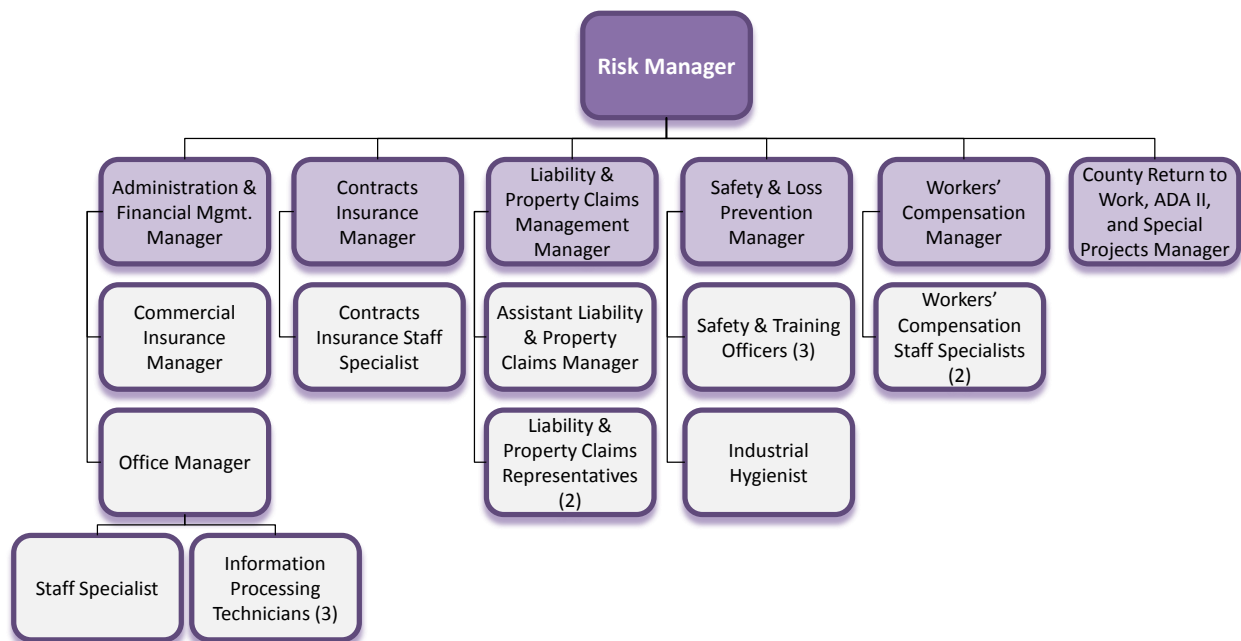
RM states that it follows a five step management process to ensure an effective Countywide risk management program:

1. Risk Identification – the identification of what happened and the root cause of why it happened.
2. Risk Analysis – the development of statistics/metrics to identify and analyze the types of incidents occurring, the frequency of those incidents, and the severity of consequences resulting from those incidents.
3. Evaluation of risk management techniques to be utilized – the determination of the most effective and efficient means of addressing risk issues in order to mitigate current liabilities and to prevent the future occurrence of liabilities.

4. Implementation of chosen risk management technique(s) – ensure the implementation of the techniques chosen to address current and future losses.
5. Monitoring the results of implementation – follow-up with agencies/departments to ensure that agreed upon actions were implemented and to measure the efficiency and effectiveness of those actions.

Organizational Structure

RM reports to the County Financial Officer (CFO) and provides the services under its purview with 23 positions, utilizing the organizational structure depicted below:



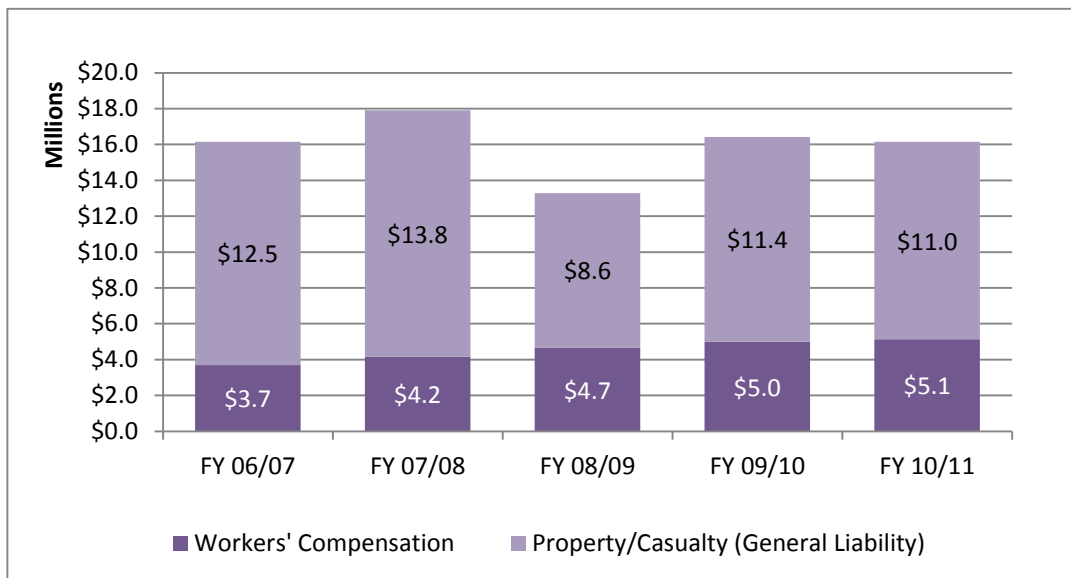
In addition to County staff, RM also contracts out the following activities:

- Workers' Compensation claims administration, claims audits, and cost containment services
- Defense litigation of Liability (e.g., Property Damage, Personal Injury) claims and actions filed against the County and other Board-governed entities
- Insurance brokerage services
- Actuarial services

Expenditures & Revenues

In terms of expenditures, RM budgets for the administration of its various programs (e.g., Workers’ Compensation, Liability, Safety and Loss Prevention, Return to Work), as well as for self-insuring its Liability and Workers’ Compensation claims, through two Internal Service Funds (ISF 293 and 294). The chart below shows only the administrative costs of RM, as the claims expenses are discussed, in detail, in the relevant sections later in this report. The revenue sources for the program are (a) charges to agencies/departments, and (b) interest earnings on accumulated assets.

RM Actual Expenditures, excluding Claims Costs



Source: Risk Management staff & Annual Budget Workbooks

Across both ISFs controlled by RM, total spending (excluding self-insurance costs) has fluctuated significantly over time, as demonstrated in the chart above. The Workers’ Compensation program total spending (excluding self-insurance costs) has steadily increased over the last five fiscal years, going from \$3.7 million to \$5.1 million, an increase of 39%. The largest components of the Workers’ Compensation total expenditures (other than self-insurance claim payments, which are not included in these totals) are salaries and employee benefits (\$1.1 million, or 22% of total spending in FY 10/11) and the third-party administrator (TPA) costs (\$2.7 million, or 53% of total spending in FY 10/11). The Property/Casualty (Liability) program total spending has been more volatile, driven largely by one-time, pass-through expenses that pertain to catastrophic events (e.g., Freeway Complex Fire); these monies are received from other levels of government (e.g., the State), but then recorded as expenses as they are passed

through to other agencies. It is important to note that insurance premiums, the largest component of the Property/Casualty expenditure amount, have been significantly and steadily decreasing since the appointment of the new Risk Manager, going from \$10.4M in FY 07/08 down to \$8.3M in FY 10/11. Conversely, Salary and Employee Benefits in ISF 294 have been steadily increasing, from \$1.0 million in FY 06/07 to \$1.4 million in FY 10/11. Similarly, Services and Supplies expenses have increased from \$482K to \$761K over the same time period.

Administration and Financial Management

All the major operational components of RM (i.e., Workers' Compensation, Liability) require a significant amount of administrative processing, creating the need for a robust administrative and financial support function. The Administration and Finance Manager oversees this support function, as well as the financial analysis and reporting responsibilities of the office. In addition, this position oversees the Commercial Insurance Manager, who is responsible for the day-to-day management and purchases of commercial insurance policies.¹ The Administration and Finance Manager is also supported by an Office Manager, who both participates in the financial analysis responsibilities of the office (e.g., preparing the departmental budget) and oversees the day-to-day operations of the administrative support function. All finance-related tasks, including working with outside actuaries to determine long-term liabilities and the cost allocation plans for charging Workers' Compensation and Liability costs to agencies/departments, are handled by the Administration and Finance Manager and the Office Manager.

In terms of administrative support, RM meets its needs with a pool of staff, which is composed of one Staff Specialist and three Information Processing Technicians (IPTs); these staff members support the office collectively, and while individuals have primary assignments (e.g., one IPT is the lead for supporting the Safety and Loss Prevention program), they are cross-trained to cover for one another. As support staff, these individuals are responsible for a variety of tasks, including typing correspondence and reports, processing invoices, maintaining the claims diary for Liability claims, organizing and maintaining the various hard copy file systems, inputting information into the Liability database, processing mail, and answering phones.

Program Strengths

In reviewing the Administration and Financial Management function of RM, the audit team noted several important positive attributes:

- A comprehensive set of policies and procedures (P&Ps) is in place to guide staff in their daily tasks. These P&Ps are very detailed and address everything from opening the office in the morning to calculating agency/department allocation rates

¹ Examples of Countywide commercial insurance policies include excess liability coverage, excess Workers' Compensation coverage, and property insurance.

for Workers' Compensation liability costs. The audit team reviewed a number of these procedures and found that most have been updated within the last two years.

- Through the use of a pooled approach, RM is able to maximize its coverage of administrative responsibilities across a number of programs (e.g., Safety, Workers' Compensation, and Liability).
- During the most recent RFP for commercial insurance brokerage services, RM changed the compensation arrangement so that the broker is paid on a flat fee basis, which is in line with the County Risk Management Policy and provides a more stable cost structure.
- RM has consolidated unnecessary individual commercial insurance policies into master policies, saving the County and individual departments on insurance costs. For example, the Public Administrator/Public Guardian was purchasing separate liability coverage for itself, despite the fact that it was covered under the County Liability program; the Risk Manager allowed that policy to expire, saving the department approximately \$20K per year.

Opportunities for Improvement

Alongside the strengths of the Administration and Financial Management division of RM, the audit team identified some opportunities to further strengthen the operation.

County Risk Management Policy

Finding 1: The County Risk Management Policy has not been updated since 1974 and excludes some important clarifying components. (Priority 2)

One of the foundational documents for the County's RM operation is the County of Orange Risk Management Policy, which was passed by resolution of the Board of Supervisors (see Appendix B). This document has not been updated since it was originally established in February 1974. Although many of the components of this policy will remain the same in principle, there are some elements that need to be enhanced or included from a practical standpoint. For example, the policy states that the Risk Manager shall have the authority and responsibility for "development and implementation of a 'back charge' program enabling appropriate distribution of program costs and expenses to user departments and districts on an equitable basis."

This section of the policy is incomplete, as it currently makes no mention of the State Controller Handbook of Cost Plan Procedures for California Counties, a document with which the County is obligated to comply for such a “back charge” program. In addition, any costs allocated to federally or State funded programs must comport with the rules of this handbook. Another example is the current lack of clarity regarding RM’s responsibility to enforce safety compliance throughout the County (i.e., whether its role is advisory or enforcement). This issue is discussed in more detail in the Safety and Loss Prevention section of this audit report.

An additional issue that should be addressed in the updated policy is the appropriate use of aggregated RM assets (funds in the two ISFs). RM confirmed with the audit team that legal costs spent to defend the County in some non-Liability lawsuits have been inappropriately paid out of ISF 294. Assets aggregated in ISF 294 are meant to pay for Automobile and Liability costs only. One example is an ongoing lawsuit pertaining to the calculation of overtime for Deputy Sheriffs. If the County sustains financial losses from the lawsuit, RM staff indicated that OCSD will appropriately pay the lump sum owed to litigants out of its annual budget. However, the legal costs for this case have been paid out of ISF 294. RM staff indicated that going forward, the litigation costs of such cases should not be paid for out of ISF 294. The audit team believes this topic should be directly addressed in the revised Risk Management Policy in order to avoid confusion in the future.

Recommendation 1: RM should prepare, for Board approval, an update of the existing Countywide Risk Management Policy, considering the recommendations contained in this audit report, consulting with agencies/departments and Board staff, and conducting benchmarking research.

Unfunded Liability for Workers’ Compensation and Liability Claims

Finding 2: There is no formal, Board-approved policy that guides the Risk Manager and the County Chief Financial Officer (CFO) in funding the long-term liabilities associated with Liability and Workers’ Compensation claims. (Priority 2)

County governments in California utilize a variety of methods for funding the long-term liabilities associated with the numerous Workers’ Compensation and Liability claims against them. Some counties, such as San Diego County, choose to estimate these liabilities with the assistance of an actuary and then contribute money toward a

reserve of assets that will be used to cover these costs over time. Others, such as Los Angeles County, do not pre-fund these liabilities but simply pay for these costs (e.g., settlements, medical costs, and legal fees) as they come during the fiscal year. Still, other local governments participate in a joint powers authority (JPA) that pools these types of risks and liabilities across a number of participating governments (e.g., the City of Rancho Santa Margarita).

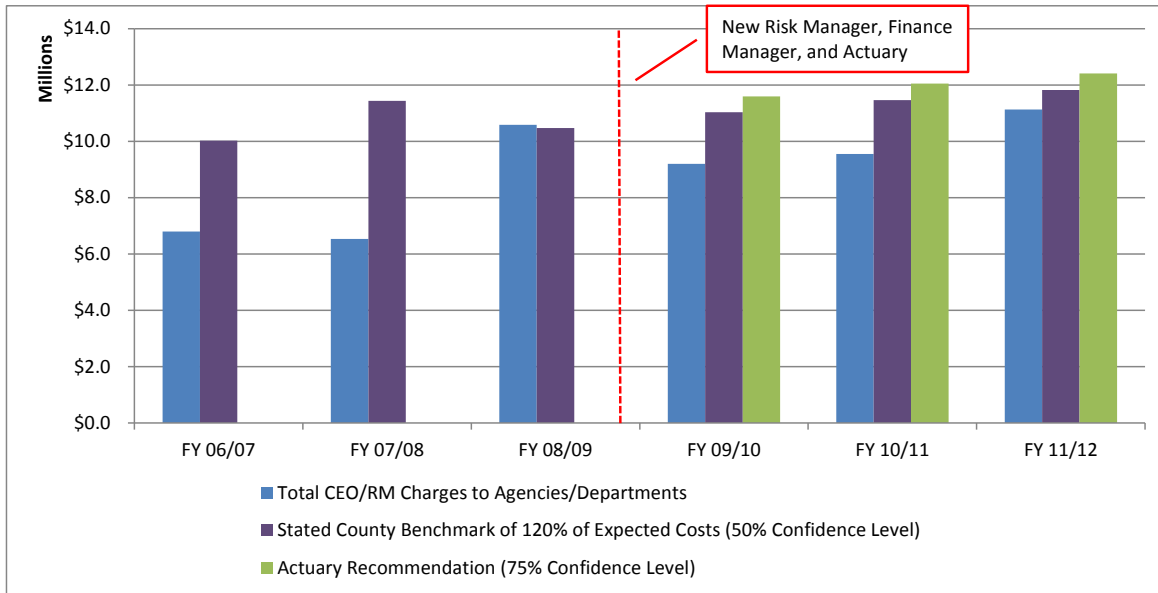
Orange County utilizes the first funding model described: working with an actuary to determine the projected liabilities in the areas of Liability and Workers' Compensation. The actuary provides the County with a variety of statistics, estimated liabilities, and a suggested contribution for paying down this dynamic liability over the long-term. The County's actuary estimates liabilities according to varying confidence levels (e.g., at the 50% confidence level of funding, the actuary estimates that there is a 50% chance that the County will have accumulated sufficient funds/reserves to cover the long-term liability of the claims already filed; this 50% confidence level is typically referred to as "Expected Liability"). The actuary recommends that some funding be included for the possibility that actual loss costs will be greater than the best estimate (Expected Liability) due to the random nature of much of the process that determines ultimate claims costs. Therefore, the County's actuary recommends that the County fund both the Workers' Compensation program and the Liability program above the 50% confidence level (Expected Liability) at the 75% to 85% confidence levels. However, the determination as to what confidence level of funding to pursue, and consequently the specific amounts to charge out to agencies/departments, is made by the CFO. Historically the County has funded these liabilities below the confidence level recommended by the actuary.

Currently, there is no formal, Board-approved, guideline as to what level of funding is preferable. Instead, the Risk Manager and CFO indicated that they typically fund at a 50% confidence level. From this 50% confidence level, they follow a general rule of thumb: fund the Workers' Compensation program at 80% of the 50% confidence level and fund the Liability program at 120% of the 50% confidence level. To provide an illustration, if the County's actuary indicated that by collecting \$10 million from agencies/departments in FY 11/12, the County would have a 50% likelihood of having sufficient funds to cover all associated costs with Liability claims, then the County would typically collect \$12 million from agencies/departments.

Despite the rule of thumb cited by RM, the audit team confirmed through a review of the past five years of funding data that this rule is, in fact, not typically followed. The

data show that the CFO and Risk Manager have diverged from this informal guideline to varying degrees and in both directions (over and under). This pattern is demonstrated in the two charts below.

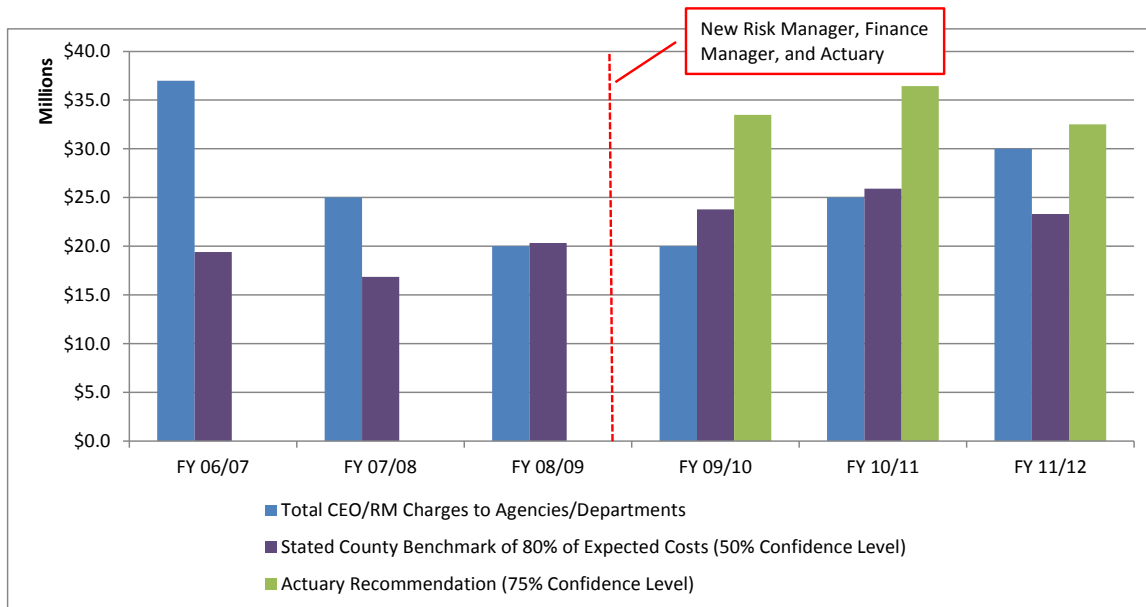
Liability Self-Insurance Funding



Source: CEO/Risk Management

Note: Actuary Recommendation is only available for the last three fiscal years

Workers' Compensation Self-Insurance Funding



Source: CEO/Risk Management

Note: Actuary Recommendation is only available for the last three fiscal years

While it is a best practice for a government to have some flexibility in funding its Workers' Compensation and Liability programs in order to account for other financial factors (e.g., budget shortfalls, potential layoffs), the size of the associated liabilities suggests that a formal policy, endorsed by the Board of Supervisors, for funding these programs should be instituted. In addition, the County's current funded positions, especially in the Workers' Compensation program, suggest that the Board should be made aware of and participate in the policy discussion of how to finance these liabilities. For example, according to the County's actuary, at June 30, 2011, the County had an outstanding liability between \$122 million and \$145 million in the Workers' Compensation program, depending on the confidence level utilized². However, the County had only \$81.6 million of assets in reserve as of June 30, 2011. On the Liability side, the County is better positioned but still underfunded: at June 30, 2011, the County was projected to have an outstanding liability between \$33 million and \$43 million, but assets of only \$30 million.

Recommendation 2: RM should develop, for Board consideration and approval, a formal policy that specifies to the CFO the preferred confidence level for the long-term funding of Workers' Compensation and Liability costs; the policy should include a procedure for the CFO to request Board approval for a deviation from the recommended funding approach, should other Countywide financial considerations support such an action.

Use of Technology

Finding 3: RM makes little use of paperless technologies; consequently, administrative staff members spend significant time performing manual tasks such as sorting and filing paperwork. (Priority 2)

As noted earlier in this section, three Information Processing Technicians (IPTs) support the various RM programs (Workers' Compensation, Liability, Safety and Loss Prevention). In interviewing the IPTs and observing their work, the audit team identified a significant number of manual tasks that accompany the numerous business processes of the operation. For example, in Liability, one of the key tasks of an IPT at the beginning of each work day is to review the claims "diary" (i.e., a schedule of files that claims adjusters wish to review on a given day), pull the hard-copy files from

² This range uses a minimum 50% confidence level, and a maximum 85% confidence level.

locked storage cabinets, and deliver these files to the desk of the adjuster. Similarly, throughout the day, IPTs visit the offices of the adjusters to pick up any files that have been reviewed. As files are picked up, if there are any follow-up tasks for support staff to complete (e.g., drafting a letter for signature), the adjuster will make an indication on a task note. Once all necessary tasks are completed, the IPTs return the hard-copy files to the storage cabinets.

Similarly, the IPTs are frequently called on to type handwritten notes and reports for signature by the Safety & Training Officers (STOs). In addition, support staff indicated that there is a perpetual backlog of filing work for the Workers' Compensation program, due to the volume of hard copy updating that occurs in the program. The opportunities for improvement in the manual processes of the Workers' Compensation program are addressed in more detail in the Workers' Compensation section of this report.

Although RM does not do any detailed tracking of administrative workload that would afford an in-depth analysis, there is certainly an opportunity to free-up administrative staff time (and possibly eliminate one of the IPT positions) if RM is able to: (1) implement more automated, paperless information systems for both Liability and Workers' Compensation processes, and (2) require basic administrative tasks (such as preparing letters, picking up, dropping off, and filing claims files) be performed by claims adjusters and STOs. Certainly the latter suggestion should be balanced by the workload of individual, non-support personnel. However, the audit team observed a firm adherence among non-support personnel to the separation of duties, whereby nearly all support tasks are done by support personnel. This approach is inefficient; many administrative tasks in organizations throughout the County can be and are done by non-support personnel. A more balanced, collaborative approach to these basic tasks, especially if non-support staff have the time available, not only leads to less demand for support resources, but also creates a more collegial and efficient office environment.

Recommendation 3: RM should work with CEO/IT to identify opportunities for process automation and greater use of paperless technologies (including those identified in the Workers' Compensation section of this report) to reduce the number of manual tasks associated with hard copy files. In addition, RM leadership should work with non-support personnel to encourage a collaborative approach to handling administrative tasks throughout the office.

Workers' Compensation and Liability Cost Allocation Methodologies

Finding 4: RM is planning to change its methodologies for allocating total Workers' Compensation and Liability (Property/Casualty) costs across County agencies/departments. The proposed methodologies have a number of problematic consequences, including: (a) significant cost increases for a number of agencies/departments in a time of budget contraction, (b) increased complexity and difficulty demonstrating compliance with the State Controller requirements for cost allocation, and (c) removal of a position specific cost index for Workers' Compensation charges. (Priority 1)

As discussed earlier in this report, RM is financed through two internal service funds (ISFs): ISF 293 for Workers' Compensation and ISF 294 for Property/Casualty (General and Auto) Liability. Each year RM works with actuaries to determine how much money should be collected, in aggregate, from agencies/departments to fund the long-term liabilities in both of these programs. In addition, RM prepares a budget for each ISF, which includes all costs for administering the RM operation. These administrative costs are added to the liability funding amounts for each ISF and then allocated to agencies/departments according to a detailed methodology. For the last 18 months, RM has been working with its actuary to develop and prepare for the implementation of new methodologies. RM stated that its rationale for proposing the change included:

1. Aligning with best practices and improving compliance with State guidelines
2. Making the methodology more responsive to risk performance
3. Creating incentives for departments to reduce costs
4. Being more fair and equitable to all County departments
5. Better aligning loss exposure and loss experience to prospective rates
6. Producing more stable rates by reducing variability/volatility and budget uncertainty
7. Promoting operational risk management across all County agencies/departments

At a high level, the current methodologies are driven by two components with differing weights: 70% of the allocation is driven by the agency's/department's *loss history* (i.e., historically, out of all Countywide paid losses, how much a particular agency/department represents) and 30% is driven by the current *risk exposure* of the agency/department ("exposure" is approximated using both the percentage of

Countywide positions and payroll that a particular agency/department represents). Although the calculations of the methodologies have more detailed considerations and nuances than just described, these two factors are the core of the current methodologies for allocating Workers' Compensation and Liability costs across agencies/departments. RM does distribute other costs (such as property insurance costs) according to different methodologies (e.g., square footage of building space), and individual insurance policies that apply only to individual agencies/departments are billed directly (e.g., John Wayne Airport); however, these elements of RM's cost allocations are not being considered for modification by RM.

The new methodologies proposed by RM are driven by the same two elements: loss history and exposure. However, there are some critical differences in how the new methodologies will be executed. Each of these modifications can be done discretely (i.e., without doing the others), and as such, should be considered as individual actions. The most impactful changes are listed below:

1. For the purposes of loss history, all losses are capped at \$50K, whereas currently, the entire loss amount is considered in the calculation (i.e., no cap). This change has the effect of distributing costs away from agencies/departments that might typically incur higher severity (i.e., high dollar) claims, and instead focuses the allocation more on the frequency of claims. This practice is permissible under the State Controller Cost Allocation Plan Handbook and is considered to be an industry best practice in Workers' Compensation for two reasons: (1) it is generally accepted that an employer has a greater impact on and control of the frequency of claims, as opposed to the severity of claims, (2) such a practice shields small departments from the impact of a single large claim, as only the capping maximum (in this case \$50K) is counted in the loss history. It should be noted that the level of the cap (\$50K) is at the low end of the range suggested by the County's actuary, who indicated that its other government clients utilize caps up to \$250K. RM leadership indicated that the selection of the \$50K cap was largely arbitrary.
2. Also, for loss history, RM will use the total incurred (estimated) cost for a particular claim, whereas currently only the actual (paid to date) losses are considered in the calculation. This change has the benefit of accounting for the likely total, long-term cost of the claim. However, this positive effect is counteracted, to some extent, by the capping discussed in Item #1; also, the incurred costs are only estimates, and as such agencies/departments may be

allocated costs according to losses that may never be realized. RM staff communicated with State Controller staff and verified that using the total incurred amount is permissible.

3. The period of time used for calculating loss history will be shortened from seven years to five years for Workers' Compensation and from 10 years to seven years for Liability. This change has the benefit of placing more emphasis on recent events, thereby making the methodology more responsive to risk performance, a stated goal of RM is pursuing a change in methodologies. However, this change also creates more volatility for agencies/departments that have the impact of a "bad year" smoothed over a shorter period of time, which runs contrary to a stated goal of RM.
4. Capped losses will be divided by the agency/department payroll; then compared against the same ratio for the entire County to determine an "experience modification factor" (X-Mod). The X-Mod approach included in the proposed methodologies is mathematically equivalent to the methodologies currently utilized, with one critical caveat: the current ratio of an individual agency/department payroll compared to the current Countywide payroll must be the same as the historical³ ratio of the individual agency/department payroll compared to the historical Countywide payroll. If these ratios are not equivalent, the proposed methodology diverges from the current, with loss history amplified or muted, depending on whether an agency's/department's current payroll as a percentage of Countywide payroll is higher or lower than this same ratio on a historical basis. This modification is what has led to confusion as to how the methodologies stay in compliance with the State Controller Cost Allocation Handbook. This concern has been recently raised by the County Auditor-Controller (A-C) who does not believe the proposed methodologies are in compliance with the State Controller Handbook. As such, the A-C believes that implementation of the proposed methodologies would increase the risk that an audit of State or federally funded programs, by those levels of government, might result in certain RM charges being disallowed. RM's actuary has also reviewed the State Controller Handbook, but believes the X-Mod methodology is in compliance. A detailed discussion of the compliance question is included in Appendix C of this report. As far as benchmarking, the audit team confirmed with RM's actuary that X-Mods are not widely used across its other public sector

³ Last five/seven years

clients; rather, the actuary noted that the more commonly used methodology is the 70%/30% split currently in place.

5. For Workers' Compensation, a position-specific index used to adjust current exposure (developed by the Workers' Compensation Insurance Rating Bureau) will no longer be used. Instead, exposure will be adjusted by an individual agency/department loss experience. While such a change focuses the methodology more on risk performance of an agency/department, as desired by RM, risks inherent in certain positions (e.g., electrician, police officer) are no longer included in the calculation.

In terms of bottom-line effect, the proposed methodologies have a notable impact on a number of agencies/departments. This fact is confirmed by RM's actuary, which notes in its analysis of the proposal for Workers' Compensation, "59% of the agencies will experience significant impact (over 25% increase/decrease)," and in its analysis of the proposal for Liability, "18% of agencies will experience significant impact (over 25% increase/decrease)." Clearly, for those agencies that would receive a reduction, this change is a benefit to their financial position; however, for those agencies/departments that would see a significant increase, especially during the current financial environment, there may well be significant operational impacts associated with this change. For Workers' Compensation there are 28 (or 46%) of the 61 agencies/departments estimated to see increases greater than 30%. For Liability there are five (or 8%) of the 61 agencies/departments estimated to see an increase greater than 30%. The County CFO indicated that if the proposal is implemented, he intends to make budgetary transfers during the first year to redistribute funds among impacted General Fund agencies/departments to mitigate any significant increases. However, there is currently no plan to make such accommodations for non-General Fund agencies/departments. In addition, while such an accommodation will address some negative fiscal impacts, it runs counter to RM's stated goal of making the system more responsive to risk performance.

Lastly, there is the issue of the complexity of the proposed methodologies compared to the current methodologies. Specifically, the utilization of the proposed experience modification factor has led to a notable amount of confusion among agencies/departments. As noted earlier, the use of an experience modification factor leads to an allocation mathematically equivalent to the current method, provided the historical ratio of an agency/department payroll to the Countywide payroll is the same over time. When there is a difference between this historical ratio and the current ratio, the calculation becomes more complex. This complexity was illustrated by a

miscalculation that was identified by the audit team during fieldwork relating to the proposed charges for the OC Community Resources Department (OCCR). Because this department was formed during the last five years and certain operations (e.g., Animal Care Services) were moved from other departments (e.g., the Health Care Agency) to OCCR, RM manually reassigned specific claims to OCCR's loss history. However, RM staff neglected to move the historical payroll amounts associated with OC Animal Care from HCA over to OCCR for the purposes of the experience modification calculation, which would have undercharged HCA and overcharged OCCR had this change not been identified. Had this error not been caught by the audit team, federal or State auditors would have had documentation of overcharges to OCCR, which receives nearly all of its funding from those two levels of government.

In sum, there are several elements of the proposed methodology change that achieve the benefits sought by RM (e.g., capping, use of total incurred costs). However, there are others (e.g., use of an X-Mod methodology) that are not industry-best practices, have minimal demonstrated benefit, and have potential compliance issues.

Recommendation 4: RM and CEO should consider removing the X-Mod component of the proposed new methodologies, and, instead, utilize the more common 70%/30% split between loss history and exposure. However, if RM continues to pursue the X-Mod methodologies, it should consider obtaining a formal opinion from the State Controller regarding the compliance of the proposed X-Mod calculation with the State Controller Cost Allocation Handbook. In addition, consider utilizing a tiered capping methodology whereby loss amounts are included in tiers (e.g., the first \$50K of loss is counted dollar-for-dollar, losses from \$50K to \$100K are counted at fifty-cents-on-the-dollar, etc.); such a modification would better account for agencies/departments that typically have higher severity claims.

Commercial Insurance

Aside from the County's two major self-insurance programs for Workers' Compensation and Liability, RM purchases a number of commercial insurance policies to protect the County from different types of risk exposures. In total, there are 21 commercial insurance policies held by the County (See Appendix D), ranging from crime insurance, to watercraft insurance for OCSD harbor patrol boats, to property insurance for John Wayne Airport facilities, to excess liability coverage for Liability claims over \$5 million and Worker's Compensation claims over \$20 million. According to data provided by RM, the total annual cost of the premiums for all 21 policies is over \$8.2 million, with the largest being: Countywide Property Insurance (\$4.2 million), John Wayne Airport Property Insurance (\$1.6 million), and excess liability coverage for the County's self-funded Liability program (\$1.4 million).

The audit team identified one opportunity for improvement in this area.

Finding 5: There are currently no reporting requirements for the purchase of insurance policies through the County's insurance broker, regardless of the annual premium size. (Priority 2)

In order to afford the County's Risk Manager with the flexibility to negotiate with insurance providers via the County's insurance broker, the Board of Supervisors approved a resolution (#96-623) in 1996 that gave the Risk Manager permission to purchase insurance through a specific broker.⁴ It is important to note that the intent of the Risk Manager and the County Purchasing Agent in pursuing the passage of this resolution was to permit the Risk Manager to purchase insurance as he deems necessary for the County, without needing to return to the Board for approval. In practice, this means that insurance policies whose annual premiums may exceed \$100K are purchased without Board approval/awareness. The Risk Manager indicated to the audit team that due to the nature of insurance policy negotiations, obtaining approval from the Board for these purchases would be impractical, due to the significant amount of lead time necessary to place items on the Board agenda. In order to enhance oversight of these purchases and Board awareness of the level of financial commitment associated with these insurance policies (i.e., the size of the annual premiums), the audit team worked with RM to identify an opportunity for enhanced reporting, as described in the recommendation below.

⁴ In 2009, the Risk Manager updated the resolution (#09-113) to move away from a commission-based compensation structure for the broker and to select a new broker (which had been identified through an RFP process).

Recommendation 5: On a biannual basis, RM should submit a report to the Board of Supervisors on the consent agenda that details any new commercial insurance policy purchases or existing policy renewals that exceed \$50K. This report should also include a brief description of the purchasing procedure utilized (e.g., number of bids received by the County's insurance broker).

Contracts Insurance

The County contracts with private and public sector vendors to provide a variety of goods and services. These include, but are not limited to, commodities (e.g., office supplies), fixed assets (e.g., equipment), professional services (e.g., consultant studies), human services (e.g., medical clinics), architecture/engineering services, public works construction, and IT software services. For service-related contracts, it is County policy that all individuals or companies doing business with the County assume responsibility for any costs arising from personal injury or property damage that occurs during the provision of those services, or for failure to adequately perform the assigned work for projects. The County protects itself from these potential losses by requiring contractors to have the appropriate type and amount of insurance and bonds, and to indemnify or hold harmless the County for any claims related to the services provided by the vendor.

RM develops and enforces policies and procedures that require all agencies/departments to review and verify that vendor insurance and bond requirements are met prior to work being started. If a vendor wishes to request an exemption/modification/waiver to these requirements, the agency/department proposing to utilize the vendor must submit a formal request to either RM or County Counsel, and for some items, to the Board of Supervisors. Examples of the types of circumstances in which waivers are requested include: Worker's Compensation insurance when the vendor is a sole proprietor or will not be working on County property; the contract value and amount of risk are low; or a state/federal government vendor will not agree to fully indemnify the County.

RM has two staff assigned to this responsibility, one Administrative Manager and one Staff Specialist. Workload data was available for the past two fiscal years, which is shown in the following table:

Contracts Insurance Workload Statistics (FY 09/10-10/11)

Activity	FY 09/10	FY 10/11	% Change
Consults and waiver requests	1,540	1,375	-10.7%
Bonds sufficiency review	101	124	22.7%
Insurance compliance reviews*	196	128	-34.7%
Certificates of self-insurance	133	107	-19.5%
Training sessions conducted	N/A	6	N/A

*Insurance compliance reviews are no longer performed for John Wayne Airport, effective 2/2011

Performance Strengths

The audit team identified the following areas where RM staff responsible for Contracts Insurance performs well:

- Development of a comprehensive P&P insurance manual (i.e., *Insurance Document Review*) that clearly outlines the County's insurance requirements and processes.
- Agency/Department confirmation of a significant improvement in the turnaround time for reviewing requests for contract insurance waivers/exceptions (i.e., 1-2 days), and in answering insurance related questions in a timely manner.
- Agency/Department confirmation that RM staff provides valuable contracts insurance training.

Opportunities for Improvement

The audit team has identified the following areas where process improvements are available:

Understanding of Agency/Department Operations

RM insurance staff has limited opportunities to observe agency/department operations, primarily due to workload volume. Information about agency/department insurance needs are typically acquired by reading the scope of work for the project and contacting department staff by telephone/email to address any questions RM staff may have.

Although this issue does not rise to the level of a formal finding, it would be beneficial for RM staff to set up a process whereby a certain number of agency/department worksites (particularly those where waivers have been requested) are visited each year to obtain an overview of the projects or services being proposed, the project location, and any associated operational issues. This will increase RM staff's overall understanding of departmental needs and enhance the assessment of any risk issues involved in the vendor's proposed services.

RM vs. County Counsel Review of Contract Insurance Issues

Finding 6: The delineation of responsibility between RM and County Counsel for the review and approval of contract insurance issues is unclear to many County agencies/departments. (Priority 2)

During interviews with County agencies/departments, many of them were uncertain as to which insurance related issues (e.g., waivers for insurance, warranties or indemnification) should be discussed with RM versus County Counsel staff, or which group has precedent if there is a disagreement.

These issues were discussed with RM and County Counsel staff. In general, it appears that there is a clear understanding of responsibilities and a good working relationship between the two groups. The issue appears to be inadequate communication of these specific roles to agencies/departments.

Recommendation 6: In consultation with County Counsel, RM should send a memo to all agencies/departments delineating the authority and responsibility for different types of contracts insurance review.

Proof of Insurance

Finding 7: Vendors who have multiple contracts with the County must prepare and submit proof of insurance documentation for each contract, potentially leading to extra costs passed on to the County. (Priority 2)

There are efficiencies to be gained in the County's requirement for proof of insurance from vendors who have multiple contracts with the County. Currently, the County requires a contractor to provide the same proof of insurance (i.e., endorsements, certificates) for each contract it has with the County. Gathering these duplicate endorsements and certificates are expenses to the vendor which in some cases are passed directly on to the County. To help address this situation, RM is currently in the process of selecting a vendor to provide insurance tracking software to make available more detailed information and to ensure all County contracts have the required insurance and/or bonds.

Recommendation 7: RM should complete its efforts to implement insurance certificate software that would allow agency/department staff to verify proof of insurance for vendors with multiple contracts with the County.

Liability Claims

Liability claims filed against the County include General Liability claims (e.g., bodily injury, use of force, civil rights violations, employee-caused losses, property damage) and automobile accident claims.

All claims must initially be filed with the Clerk of the Board of Supervisors. Once received, County Counsel staff reviews the claim for legal sufficiency and routes all Liability claims to RM; all non-Liability cases (e.g., typically a small number of contract-based cases) are retained by County Counsel.

Once a claim is received by RM, it is assigned to one of four staff members⁵ who are responsible for documenting, reviewing and investigating the merits of the claim, and determining the disposition of the case, which includes either a denial of the claim or a settlement, if appropriate. The County is required by law to provide an answer to all Liability claims within 45 days of receipt. If the claimant is not satisfied with the outcome, they have up to six months to file a lawsuit.⁶ If litigation is pursued, RM maintains a Board-approved slate of contract attorneys that provides litigation defense for the County (i.e., Legal Defense Panel⁷). RM staff oversees the work performed by these contract attorneys, approves proposed courses of action, and reviews and approves attorney invoices and payments.

In terms of covering Liability claims expenses, the County self-insures up to \$5 million (i.e., the retention amount) per occurrence. The County purchases excess liability insurance to cover any losses over this amount up to a maximum of \$100 million per occurrence. As discussed in the Administration and Financial Management section of this report, Liability claim expenses are paid out of the County's Internal Service Fund (ISF) 294. This ISF receives its revenue from all County agencies/departments paying into the fund according to an established cost allocation methodology.

The Board of Supervisors has assumed responsibility for making decisions regarding all Liability claim payouts \$50K and above, and for Workers' Compensation claims that are

⁵ Claims Manager, Assistant Claims Manager, two Claims Adjusters

⁶ This applies to actions other than Civil Rights actions and inverse condemnation actions, which may be filed in court without first having a Government Code claim filed with the Clerk of the Board.

⁷ See Appendix E for a complete list of current Legal Defense Panel firms.

settled as Compromise and Release⁸ cases \$75K and above in new money. RM provides the staff support for closed-session Board meetings on these claims.⁹

In addition to Liability claims, this section of RM also handles all Liability subrogation cases, i.e., those cases in which the County is seeking compensation from a third party due to damage caused to County property.

Performance Strengths

In Liability claims management, the audit team noted the following positives:

- Collectively, staff is experienced in Liability claims management.
- Staff aggressively seeks to protect public funds.
- RM has recently implemented a detailed and comprehensive policy and procedures manual for processing Liability claims.
- An audit of RM conducted by the County's Internal Audit Department found that RM has controls and processes in place "...to ensure that [Liability and Workers' Compensation] payments are valid, supported, allowable and are processed completely, accurately and timely."

Opportunities for Improvement

Liability Claims Data Analysis

Having useful information on current and past Liability claims (e.g., total cost of claims, frequency by payout size and agency/department, average claim size by type) is a prerequisite to managing operational risks. Such information enables RM to support agencies/departments in identifying problem areas and making proactive changes.

Finding 8: Risk Management has not developed a comprehensive approach to analyzing and reporting on Liability claims data. (Priority 1)

⁸ A settlement in which an injured worker receives a lump sum payment that includes an estimate of future medical costs; the claim effectively ends at the time the judge issues the Order Approving Compromise and Release.

⁹ The California Government Code (Division 3.6, Section 935.4) limits the Board's ability to delegate claim settlements/payments to an employee at or above the \$50K limit.

As previously identified, RM strives to use a five-step process to manage County risk: 1) Risk Identification, 2) Risk Analysis, 3) Evaluation of risk management techniques to be utilized, 4) Implementation of chosen risk management techniques, and 5) Monitoring the results of implementation. In the area of Liability claims management, however, there are substantial opportunities for improvement in both Risk Identification (i.e., the identification of what happened and why it happened) and Risk Analysis (i.e., the development of statistics/metrics to identify and analyze the types of incidents occurring, the frequency of those incidents, and the severity of consequences resulting from those incidents).

Currently, the only reporting of the County's Liability claims data is in RM's annual report¹⁰, which includes the following statistics:

- The County's Loss Rate, Claim Severity, and Claim Frequency compared to other California Counties
- Number of Cases Tried and Won, Lost, and Awaiting Decisions
- Number of Voluntary Dismissals Prior to Trial and Dismissals Due to Motions

This high-level information, however, is of limited operational value to agencies/departments that are trying to manage Liability risks. There are a number of additional important statistics/metrics (e.g., Total Liability Claims costs) that should be included. Because many of these metrics and statistics have not been developed by RM, agencies/departments are limited in their ability to proactively manage the inherent risks that are the root cause of Liability claims (e.g., cross-tabbing type of claim by location and cost). In addition, because top management and policy makers are provided with limited risk trends, they are unable to coordinate a Countywide effort to reduce future losses and systematic risks. This is a critical deficiency, especially in light of the current fiscal climate and the fact that this capability is a foundational/mission-specific requirement for RM. During audit fieldwork, RM and agencies/departments confirmed this opportunity for improvement.

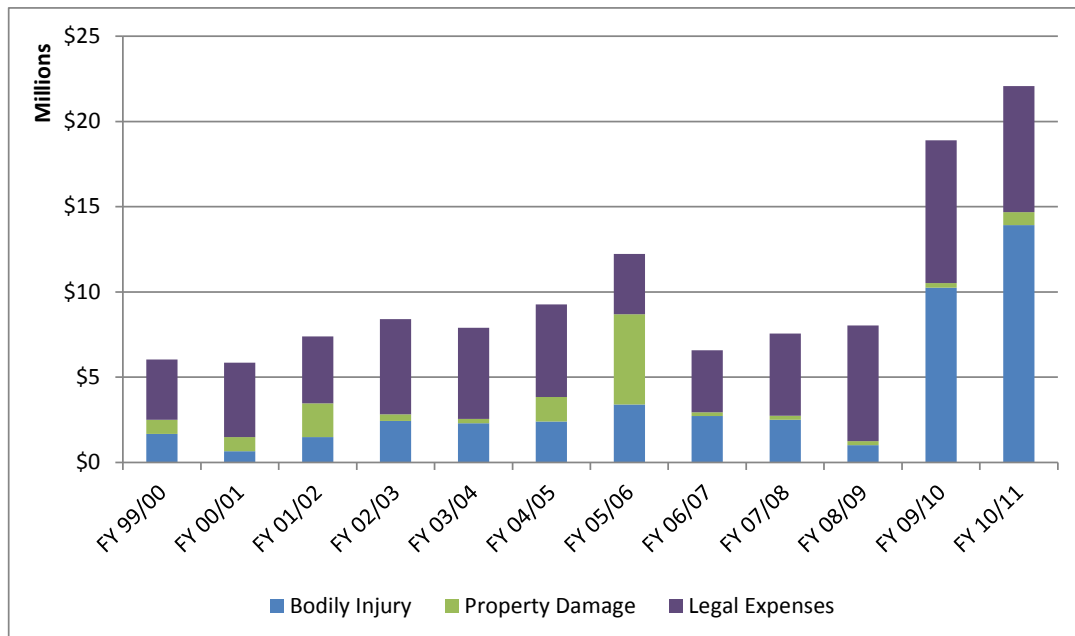
Consequently, in order to provide an in-depth examination of the County's Liability claims, the audit team worked with RM staff iteratively to obtain a comprehensive set of raw Liability claims data. Once this information was finalized, the audit team distilled it into the following collection of analytics, which lays the foundation for RM to enhance its Risk Analysis capabilities.

¹⁰ CEO Risk Management Executive Summary

Countywide Liability Claims Costs and Numbers

The set of charts/tables in this section of the report provides information related to Countywide Liability claims over the past 12 fiscal years. The chart and table below show total Liability claims costs paid by the County during each fiscal year.

Countywide Liability Claims Costs, FY 99/00-10/11



Fiscal Year	Bodily Injury	Property Damage	Legal Costs	Total Costs
FY 99/00	\$1,679,493	\$816,021	\$3,537,219	\$6,032,733
FY 00/01	\$666,757	\$825,007	\$4,358,845	\$5,850,610
FY 01/02	\$1,482,303	\$1,988,285	\$3,924,175	\$7,394,763
FY 02/03	\$2,439,993	\$387,207	\$5,575,832	\$8,403,032
FY 03/04	\$2,306,931	\$246,080	\$5,354,501	\$7,907,512
FY 04/05	\$2,402,202	\$1,440,690	\$5,424,413	\$9,267,306
FY 05/06	\$3,394,326	\$5,299,431	\$3,529,046	\$12,222,802
FY 06/07	\$2,720,470	\$227,147	\$3,637,110	\$6,584,727
FY 07/08	\$2,501,944	\$238,659	\$4,828,537	\$7,569,140
FY 08/09	\$1,019,667	\$224,047	\$6,795,394	\$8,039,108
FY 09/10	\$10,255,500	\$271,561	\$8,364,499	\$18,891,561
FY 10/11	\$13,917,261	\$764,021	\$7,388,831	\$22,070,112
Total	\$ 44,786,848	\$ 12,728,156	\$ 62,718,401	\$ 120,233,406
% Total	37.2%	10.6%	52.2%	

Source: CEO/Risk Management Liability Claims Database

Notes: 1) Legal Costs includes other costs such as investigations expenses, expert fees, medical expenses, and deposition costs. 2) FY 01/02 and FY 05/06 numbers include the costs of two claims (\$1.2 million and \$5.0 million, respectively) related to landfill gas that were passed through RM ISF 294 but were ultimately paid out of an OC Waste & Recycling contingency fund.

Informational highlights from the chart and table on the previous page include:

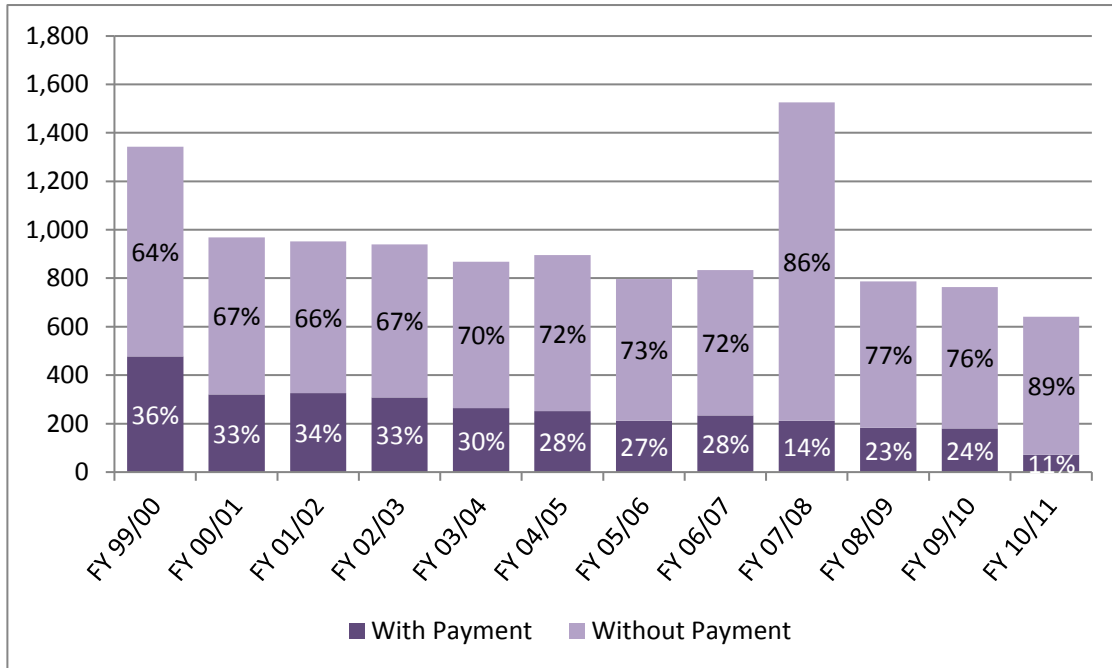
- The County has paid \$120 million in Liability claim expenses (including payouts and legal costs) over the past 12 fiscal years, an average of \$10 million per year. However, in a substantial upswing of costs, over the last two fiscal years, the County has paid \$41.0 million in Liability claims expenses, or an average of \$1.7 million per month, due to large payouts related to eight claims, seven of which were incurred in years prior to FY 09/10 and FY 10/11.¹¹
- Liability claims costs have increased substantially over time (265.8%, an average of 22.3% per year), with the largest increase occurring between FY 08/09 and FY 09/10 (134.9% increase) due to the Fogarty-Hardwick civil rights violation case at the Social Services Agency (incurred in FY 99/00), which as of June 30, 2011, has cost the County \$10.6 million. This case is the single largest Liability claim payout in County history and the only payout that exceeded the \$5 million self-insured limit.¹²
- On average, Legal Costs have represented the largest portion of Liability (52.2%) expenses over the past 12 fiscal years.

The remaining charts/tables in the Liability Claims section of the report present data based on the fiscal year that claims were incurred (i.e., the fiscal year that the loss occurred) over the same time period, whereas the previous chart/table highlighted costs paid in a given year, regardless of when the loss occurred. It is important to examine Liability claims data based on the year the claim was incurred in order to understand how the County as a whole and individual agencies/departments are performing with regard to reducing losses and mitigating operational risks.

¹¹ In FY 09/10, \$9.2 million in costs are attributed to large payouts (ranging from \$901K to \$3.8 million) related to four claims; in FY 10/11, \$12.2 million in costs are attributed to large payouts (ranging from \$511K to \$9.9 million) related to four claims, including the Fogarty-Hardwick case.

¹² It should be noted that the County's excess claim insurance carrier went bankrupt and the County was required to pay all costs over its self-insured limit of \$5 million. The County is currently in negotiation with this insurer (Reliance) to recover its loss.

Number of Liability Claims Incurred, FY 99/00-10/11



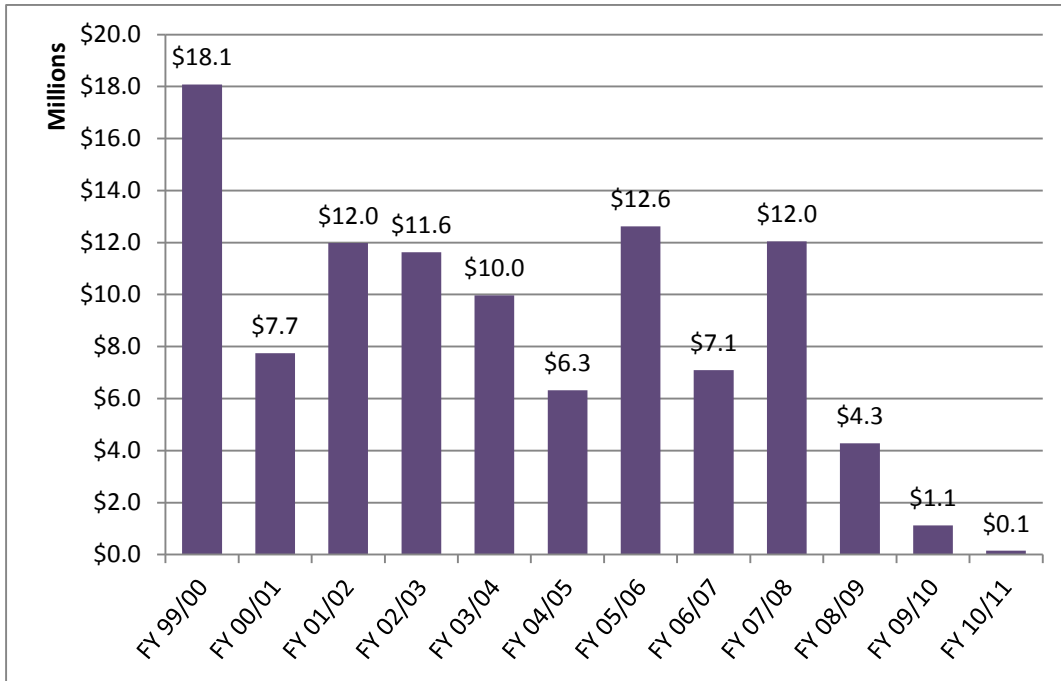
Source: CEO/Risk Management Liability Claims Database

Note: FY 07/08 numbers include 699 individual claims filed by retirees when the County split retirees from the health insurance rate pool; these claims were subsequently consolidated.

The chart above demonstrates two important trends: 1) a general downward trend in the number of Liability claims incurred by the County between FY 99/00 and FY 10/11 (a 41.1% decrease from FY 99/00 to FY 08/09), and 2) a downward trend in the percentage of claims that result in payments (36% in FY 99/00 to 23% in FY 08/09).¹³ However, as illustrated in the chart on the following page, the costs of these claims have fluctuated significantly over this time period.

¹³ FY 08/09 is used as the most recent year of comparison because there is some lag in identifying the number/costs of claims incurred in the most recent years (FY 09/10 and FY 10/11) since property damage/personal injury claimants have up to six months to file a claim, and claimants seeking indemnification have up to one year to file a claim. In addition, there are some types of claims that are not subject to this filing statute (e.g., civil rights violations filed in federal court).

Cost of Liability Claims Incurred, FY 99/00-10/11



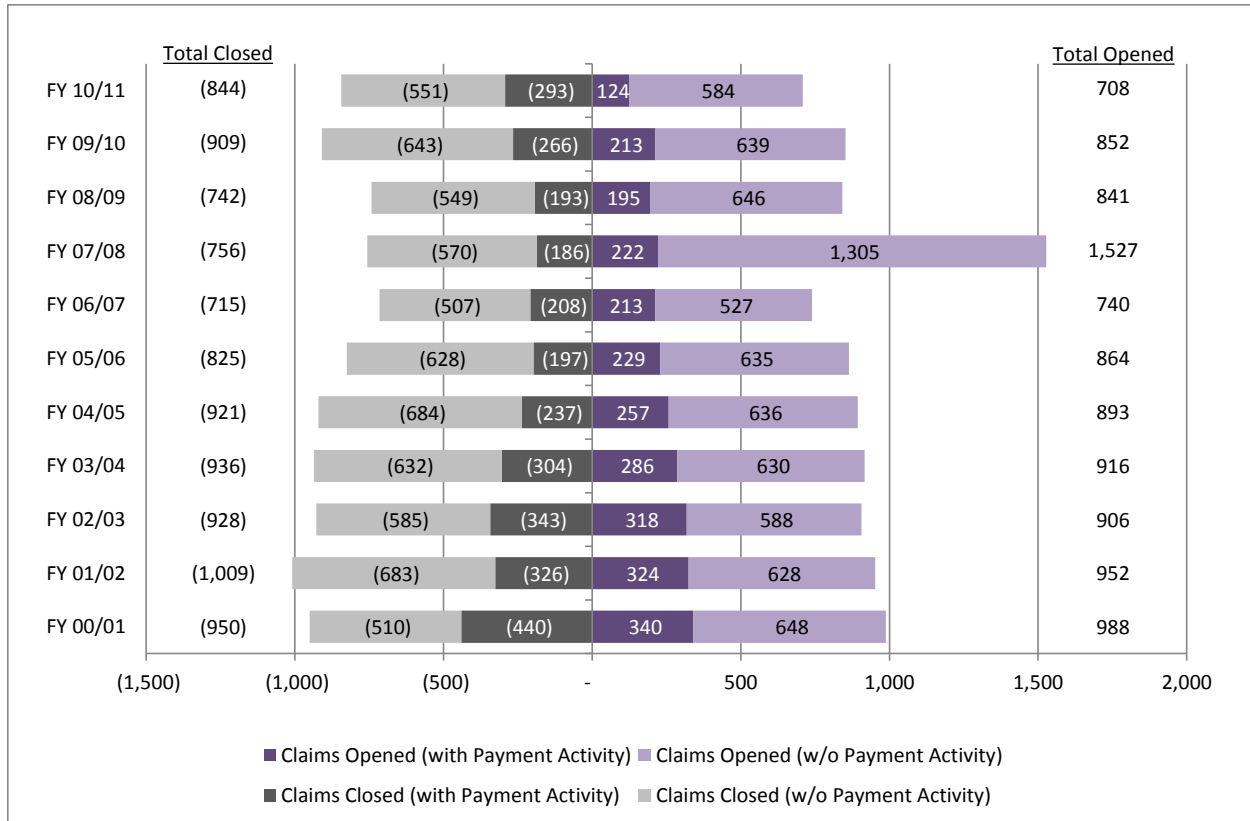
Source: CEO/Risk Management Liability Claims Database

Note: The cost of claims are attributed to the fiscal year the claim was incurred rather than the year expenses were paid out.

In the chart above, several high payout claims account for the upswings in costs in FY 99/00 (the \$10.7 million Fogarty-Hardwick claim), FY 02/03 (one \$2.0 million claim), FY 05/06 (one \$4.0 million claim), and FY 07/08 (one \$3.3 million claim). Excluding these claims, the fluctuations over the 12 year time period is less drastic.

In addition to the number and cost of claims incurred in each fiscal year, it is also important from a workload standpoint to know the number of active claims being worked on each fiscal year. The audit team examined the number of claims opened and closed in each fiscal year to understand changes in workload over the last 12 fiscal years. The chart on the following page provides this information (note: FY 99/00 data was incomplete for the number of claims closed and was excluded).

Countywide Number of Active Claims w/ Payment Activity, FY 00/01-10/11



Source: CEO/Risk Management Liability Claims Database

Notes: 1) FY 99/00 was excluded due to the lack of a complete data set for claims closed in that year. 2) FY 07/08 numbers include 699 individual claims filed by retirees when the County split retirees from the health insurance rate pool

Based on the chart above, with the exception of FY 07/08¹⁴, the total number of claims opened and closed (with and without payments) has been steadily declining over the time period considered.

Liability Claims by Agency/Department

The table on the following page breaks down Liability claims numbers and costs by agency/department for claims incurred (i.e., with loss dates that occurred) over the past 12 fiscal years.

¹⁴ FY 07/08 numbers include 699 individual claims filed by retirees when the County split retirees from the health insurance rate pool.

Numbers and Costs of Liability Claims Incurred by Agency/Department, FY 99/00-10/11

Agency Description	Number of Claims	% of Total Claims	Number of Claims w/ Payments	Paid Costs	% of Total Paid Costs
SHERIFF-CORONER	4,927	43.6%	1,477	\$ 48,025,839	46.6%
SOCIAL SERVICES AGENCY	410	3.6%	123	\$ 17,875,550	17.4%
OC WASTE AND RECYCLING	134	1.2%	50	\$ 6,807,844	6.6%
HEALTH CARE AGENCY	632	5.6%	202	\$ 4,192,271	4.1%
OC PUBLIC WORKS	1,281	11.3%	351	\$ 3,537,331	3.4%
DISTRICT ATTORNEY	183	1.6%	48	\$ 3,434,737	3.3%
PROBATION	314	2.8%	104	\$ 2,806,700	2.7%
OC COMMUNITY RESOURCES	58	0.5%	18	\$ 2,728,998	2.6%
OC ROAD	336	3.0%	71	\$ 2,035,598	2.0%
OC FLOOD	82	0.7%	24	\$ 1,937,792	1.9%
OC PARKS CSA26	371	3.3%	132	\$ 1,534,672	1.5%
PUBLIC DEFENDER	41	0.4%	14	\$ 1,306,652	1.3%
OC HOUSING	259	2.3%	119	\$ 1,285,120	1.2%
ASSESSOR	33	0.3%	10	\$ 838,376	0.8%
CHILD SUPPORT SERVICES	75	0.7%	26	\$ 812,125	0.8%
MISCELLANEOUS	664	5.9%	89	\$ 786,150	0.8%
AIRPORT	196	1.7%	47	\$ 742,779	0.7%
All Other Agencies	1,315	11.6%	136	\$ 2,338,428	2.3%
Grand Total	11,311	100.0%	3,041	\$ 103,026,960	100.0%

Source: CEO/Risk Management Liability Claims Database

Note: Claims with Payments include legal expenses.

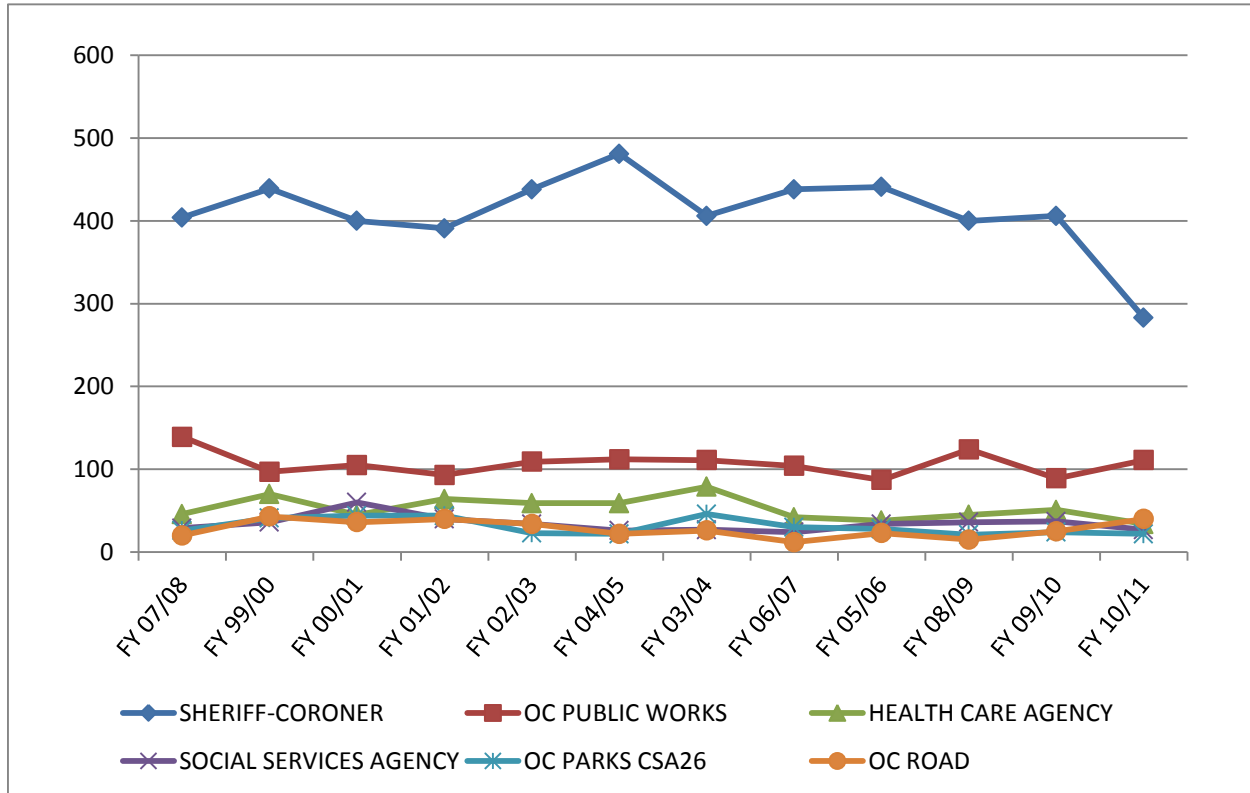
Key points to be noted from this data include the following:

- As expected, given its public safety role, the Sheriff-Coroner Department (OCSD) accounts for the majority of Liability claim numbers and costs. Over the past 12 fiscal years, OCSD accounted for 43.6% of all County Liability claims filed and 46.6% of all Liability claims expenses. The next highest agency/department was the Social Services Agency (SSA) who had 3.6% of all claims and 17.4% of all costs. (Note: SSA's ranking is primarily due to one SSA claim paid out in FY 10/11 for \$9.6 million)¹⁵
- Of the 11,311 total claims filed against the County over the past 12 fiscal years, 3,041 claims (or 26.8%) resulted in payments.
- Over the past 12 fiscal years, there has been some variability in the number of Liability claims filed against individual County agencies/departments. The chart

¹⁵ 2000 to 2011 Fogarty-Hardwick case

below shows this variability for the top five agencies/departments (by number of claims incurred in each fiscal year).¹⁶

Number of Claims Incurred by Top Five Agencies/Departments in Each Fiscal Year, FY 99/00-10/11



Source: CEO/Risk Management Liability Claims Database

Types of Liability Claims

The table on the following page illustrates the costs associated with the most common types of Liability claims over the past 12 fiscal years.

¹⁶ FY 08/09 is used as the most recent year of comparison because there is some lag in identifying the number/costs of claims incurred in the most recent years (FY 09/10 and FY 10/11) since property damage/personal injury claimants have up to six months to file a claim, and claimants seeking indemnification have up to one year to file a claim. In addition, there are some types of claims that are not subject to this filing statute (e.g., civil rights violations filed in federal court).

Total Liability Claim Costs and Numbers of Claims by Type, FY 99/00-10/11

Liability Type / Cause Description	Number of Claims	% of Total Claims	Claims w/ Payment	Paid Costs	% Total Costs
General Liability					
Civil Rights violation	270	2.4%	79	\$ 14,236,691	13.8%
Excessive force by deputy in field	170	1.5%	55	\$ 9,552,846	9.3%
Liability from our service (errors & omissions)	698	6.2%	232	\$ 9,351,722	9.1%
Adverse Employment Action	146	1.3%	50	\$ 7,922,994	7.7%
Chemicals-smoke-fumes-paint	26	0.2%	9	\$ 6,413,778	6.2%
Use of force by staff while in custody	222	2.0%	79	\$ 6,000,841	5.8%
Wrongful termination/suspension	77	0.7%	24	\$ 5,263,602	5.1%
Wrongful death	89	0.8%	33	\$ 4,711,847	4.6%
Inmate assaulted by inmate	50	0.4%	13	\$ 4,613,166	4.5%
Failure to release from jail on time	18	0.2%	5	\$ 2,590,877	2.5%
Dangerous condition	321	2.8%	74	\$ 2,251,687	2.2%
Alleged false arrest/false imprisonment	162	1.4%	40	\$ 1,575,318	1.5%
Sexual Harassment	22	0.2%	9	\$ 1,508,077	1.5%
Operations damaged property	163	1.4%	54	\$ 1,439,361	1.4%
Failure to provide medical care in jail	94	0.8%	22	\$ 1,429,368	1.4%
Excessive force with use of weapons	20	0.2%	7	\$ 1,219,897	1.2%
Negligent entrustment	21	0.2%	10	\$ 1,050,337	1.0%
All Other General Liability Types	6,827	60.4%	1,418	\$ 10,349,389	10.0%
General Liability Total	9,396	83.1%	2,213	\$ 91,481,797	88.8%
Automobile Liability					
Sideswipe collision	128	1.1%	56	\$ 3,437,355	3.3%
Rear end-our unit hit other veh	513	4.5%	239	\$ 1,774,302	1.7%
Employee-owned vehicles	13	0.1%	5	\$ 1,018,820	1.0%
Our unit turning	134	1.2%	63	\$ 1,008,670	1.0%
Disregard of signal/stop sign	86	0.8%	39	\$ 996,055	1.0%
Pedestrian	23	0.2%	9	\$ 854,615	0.8%
Unlisted claims	73	0.6%	27	\$ 661,426	0.6%
All Other Automobile Liability Types	782	6.9%	354	\$ 1,721,778	1.7%
Automobile Liability Total	1,752	15.5%	792	\$ 11,473,019	11.1%
All Airport-Related Liability Types	163	1.4%	36	\$ 72,144	0.1%
Grand Total	11,311	100.0%	3,041	\$ 103,026,960	100.0%

Source: CEO/Risk Management Liability Claims Database

Note: 1) Of the 6,827 "All Other General Liability Types" claims, 1,120 claims were for "Inmate Claimant Property Loss," 699 were for "Retirement related," 649 were for "Not our jurisdiction," 499 were for "Miscellaneous", 401 were for "All leased, rented vehicle damage," and 359 were for "Door, etc., damage to claimant property." Of the 782 "All Other Automobile Liability Types" claims, 304 were for "Backing up or rolling back" and 188 claims were for "Hit parked or standing vehicle." 2) Claims with Payments include legal expenses.

Important points to highlight from the table above include the following:

- General Liability claims represent 83.1% of all Liability claims filed and 88.8% of all expenses paid. The remainder are automobile-related claims (15.5% of claims, 11.1% of costs) and airport-related claims (1.4% of claims, 0.1% of costs).

- Excluding the one \$10.6 million civil rights violation payout for the Fogarty-Hardwick case in SSA and the one nearly \$5.0 million landfill gas claim, the top liability claim payouts are related to uses of force in OCSD, errors/omissions during the provision of County services, and adverse employment actions.
- The most frequent types of Liability claims filed include:

<u>Type of Claim</u>	<u># of Claims</u>	<u>% of Total Claims</u>
○ Inmate claimant property loss	1,120	9.9%
○ Retirement related ¹⁷	699	6.2%
○ Liability from errors and omissions	698	6.2%
○ Not our jurisdiction ¹⁸	649	5.7%
○ Rear end – our unit hit other vehicle	513	4.5%

The audit team also examined statistics regarding individual Liability claims with the largest payouts (over \$200,000) that were incurred between FY 99/00 and FY 10/11. This data yielded the following information:

- Over the past 12 fiscal years, while only 0.8% (or 91) of all claims incurred between FY 99/00 and FY 10/11 had paid-to-date amounts over \$200,000, these claims accounted for 66.8% (\$68.8 million) of the total costs of claims.
- The most prevalent types of large payout claims involved excessive force by a deputy in the field (13.2%) and adverse employment actions (12.1%).
- 49 (or 53.8%) of these 91 large payout cases originated in OCSD (representing 45.8% of total costs) and 7 (or 7.7%) in SSA (representing 23.7% of total costs); the District Attorney was the next highest at 6 (or 6.6%) of the 91 claims (representing 9.2% of total costs).

The chart and table on the following page identify those cases which have the highest average cost per claim for paid claims that were incurred (i.e., had a date of loss) and closed within the past 12 fiscal years.¹⁹

¹⁷ In FY 07/08, the County received individual claims filed by retirees when the County split retirees from the health insurance rate pool.

¹⁸ Claims that have been filed against the County but are not in the County's jurisdiction (e.g., claims related to property that is not owned by the County of Orange). There may be legal defense costs to the County if these claims are litigated.

¹⁹ The data used to calculate the average cost of claims by type was restricted to paid claims that were opened *and* closed within the 12 year time period in order to capture the full cost of a claim. As a result, the number of claims presented in the table on the following page (2,806) is less than the number of paid claims previously shown (3,041).

Average Liability Claims Costs >\$50K by Type, FY 99/00-10/11



Type of Claim	Total Cost	Number of Claims	Average Cost
Chemicals-smoke-fumes-paint	\$ 6,378,726	14	\$ 455,623
Inmate assaulted by inmate	\$ 4,202,035	12	\$ 350,170
Employee-owned vehicles	\$ 1,010,476	4	\$ 252,619
Wrongful termination/suspension	\$ 3,600,052	18	\$ 200,003
Sexual Harassment	\$ 1,361,164	7	\$ 194,452
Excessive force with use of weapons	\$ 1,155,144	6	\$ 192,524
Excessive force by deputy in field	\$ 8,016,885	46	\$ 174,280
Wrongful death	\$ 5,287,844	34	\$ 155,525
Negligent entrustment	\$ 1,007,979	9	\$ 111,998
Adverse Employment Action	\$ 4,653,344	44	\$ 105,758
Improperly maintained road signs	\$ 156,453	2	\$ 78,226
Use of force by staff while in custody	\$ 4,819,078	71	\$ 67,874
Surface dmg-mech-equip	\$ 3,436,543	55	\$ 62,483
Fire or explosion	\$ 181,102	3	\$ 60,367
Racial Discrimination/Harassment	\$ 442,269	8	\$ 55,284
Failure to release from jail on time	\$ 324,750	6	\$ 54,125
Failure to provide medical care in jail	\$ 1,436,741	27	\$ 53,213
Malpractice	\$ 418,354	8	\$ 52,294
Clm injured on job site/property	\$ 556,011	11	\$ 50,546
Subtotal of Average Claim Types >\$50K	\$ 48,444,950	385	\$ 125,831
Total Claims Incurred, Filed, Closed	\$ 75,619,639	2,806	\$ 26,949

Source: CEO/Risk Management Liability Claims Database

Note: The \$455K average claim cost for “Chemicals-smoke-fumes-paint” includes settlement costs related to two claims for landfill gas issues (a \$5.0 million claim and a \$1.2 million claim); these costs were passed through ISF 294 but were ultimately paid out of an OC Waste & Recycling contingency fund.

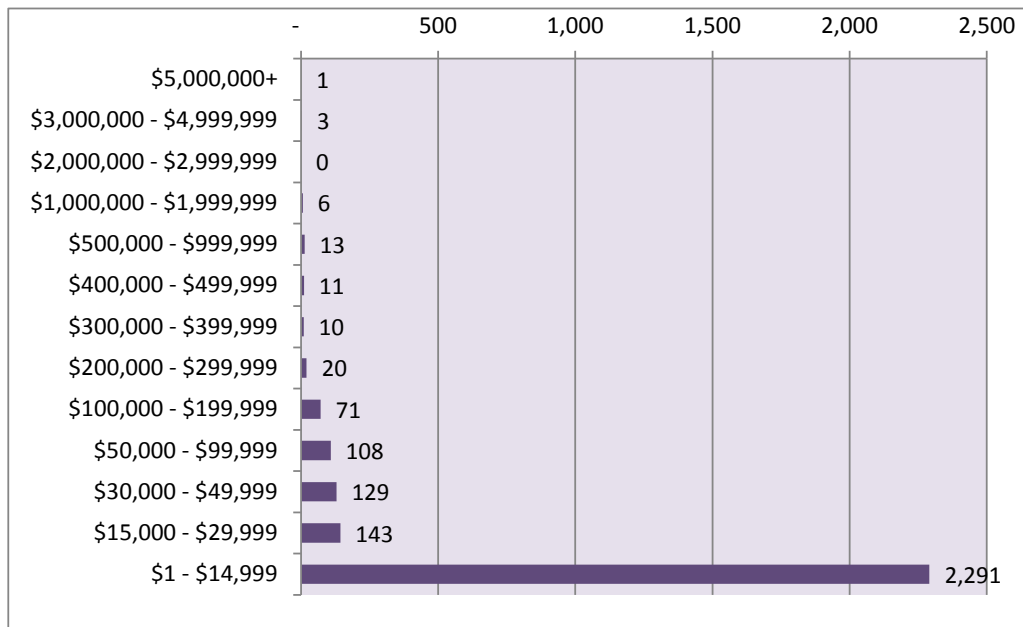
Informational highlights from the chart and table on the previous page include:

- The highest average cost type of Liability claim—“Chemicals-smoke-fumes-paint”—is driven by one nearly \$5 million claim filed by the City of La Habra related to a landfill gas case.
- Excluding “Chemicals-smoke-fumes-paint”, on average, the most costly types of claims are: “Inmate assaults on other inmates” (\$350K per claim), “Employee-owned vehicles” (\$253K per claim)²⁰, “Wrongful termination/suspension” (\$200K per claim), and “Sexual Harassment” (\$194K).

Individual Liability Claim Payouts

The final chart and table (below and on the following page) identify the frequency of Liability claims in different payout ranges for paid claims that were incurred and closed over the last 12 fiscal years.²¹

Frequency of Liability Claims by Payout Size, FY 99/00-10/11



²⁰ In the past 12 years, there have only been four claims incurred and closed for “Employee-owned vehicles.”

²¹ The data used to calculate the average cost of claims by type was restricted to paid claims that were opened *and* closed within the 12 year time period in order to capture the full cost of a claim. As a result, the number of claims presented in the table on the following page (2,806) is less than the number of paid claims previously shown (3,041).

Payout Size	Number of Claims		Total Cost	% of Total Cost
	(Frequency)	% of Total Number		
\$5,000,000+	1	0.0%	\$ 5,063,181	6.7%
\$3,000,000 - \$4,999,999	3	0.1%	\$ 10,685,819	14.1%
\$2,000,000 - \$2,999,999	-	0.0%	\$ -	0.0%
\$1,000,000 - \$1,999,999	6	0.2%	\$ 7,908,392	10.5%
\$500,000 - \$999,999	13	0.5%	\$ 8,307,286	11.0%
\$400,000 - \$499,999	11	0.4%	\$ 4,687,452	6.2%
\$300,000 - \$399,999	10	0.4%	\$ 3,561,733	4.7%
\$200,000 - \$299,999	20	0.7%	\$ 5,004,087	6.6%
\$100,000 - \$199,999	71	2.5%	\$ 9,571,176	12.7%
\$50,000 - \$99,999	108	3.8%	\$ 7,697,156	10.2%
\$30,000 - \$49,999	129	4.6%	\$ 4,978,910	6.6%
\$15,000 - \$29,999	143	5.1%	\$ 2,990,478	4.0%
\$1 - \$14,999	2,291	81.6%	\$ 5,163,969	6.8%
TOTAL	2,806		\$ 75,619,639	

Source: CEO/Risk Management Liability Claims Database

The chart on the previous page and table above illustrate that of the 2,806 paid claims that were incurred, filed, and closed during the 12 fiscal years reviewed, 2,563 (91.3%) were for less than \$50,000. Collectively, these claims represent approximately 17.4% of all payout costs. As previously identified, all payouts under \$50,000 are settled administratively by RM without Board involvement, per County policy.

As previously noted, the preceding collection of charts provides a baseline for further management discussion and analysis of Liability risks. When asked why such detailed data analyses had not previously been performed, RM stated that one of the factors contributing to its inability to provide such information is its use of an outdated (1999) Microsoft Access database, which is unable to adequately facilitate important Liability claims analysis or data queries. RM made an attempt in 2007 to purchase and implement a new system but the effort was unsuccessful and the vendor was terminated six months into the project. No effort to pursue the acquisition of another system has been made since that time. These challenges notwithstanding, the charts/tables prepared by the audit team demonstrate that the current Liability claims database contains information sufficient to significantly enhance RM's level of risk analysis.

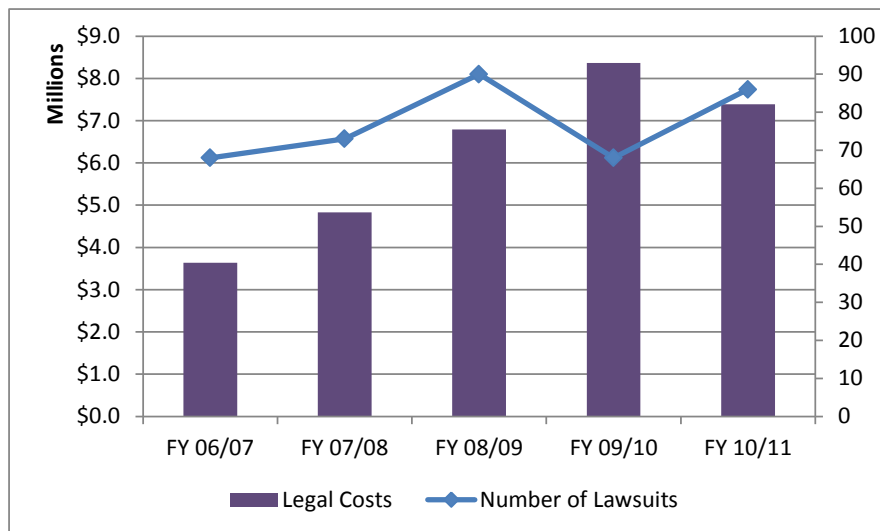
Recommendation 8: RM should take the following actions to improve its ability to manage the risks that create Liability claims:

- a) **With input from policy makers and agencies/departments, identify useful risk metrics for which data should be collected, analyzed and reported.**
- b) **Pursue the development of a new Liability claims information system that will facilitate the collection, analysis, and reporting of risk data for operational managers and policy makers. In the interim, utilize the templates developed by the audit team in this report to prepare and present useful analytics from the existing system.**
- c) **Develop a Liability risk analysis capability for the County.**

Liability Claims Litigation Defense Using Contract Attorneys

The chart below provides a five year history of the number of Liability lawsuits received by RM and the legal expenses paid out by the County during that time period. The chart shows a clear and significant upward trend in the legal costs associated with Liability claims (103% over the past five years). In contrast, the number of Liability lawsuits filed has increased far less rapidly (26% increase over five years).

Number of Liability Lawsuits Filed and Legal Costs, FY 06/07-10/11



Source: CEO/Risk Management

	5-Year Total	5-Year % Increase
# of Lawsuits	385	26.5%
Legal Costs	\$31,011,133	103.2%

Contract Attorney Legal Defense Panel

As previously mentioned, RM maintains a slate of contract attorneys (i.e., Legal Defense Panel) approved by the Board to handle the County's defense of litigated Liability claims.²² There are currently 12 firms on this list. These firms also subcontract for various specialized professional services such as medical examinations, psychological examinations, and depositions, as needed. The table below provides a 26-year history of the hourly rates approved by the County for firms on the Legal Defense Panel.

Liability Legal Defense Panel Hourly Rate History, 1985-Present

	1985-1993	2000-2011	2011-Present	Average Annualized % Increase
General Tort Litigation				
Partners	\$110	\$140	\$180	2.4%
Senior Associates	\$110	\$140	\$160	1.7%
Associates	\$80	\$115	\$135	2.6%
Paralegals	\$50	\$70	\$90	3.0%
Law Clerks	N/A	\$70	\$85	1.9%
Legal Assistants	N/A	\$70	\$80	1.3%
Employment/Flood Litigation/Land Subsidence				
Partners	N/A	\$150	\$200	3.0%
Senior Associates	N/A	\$140	\$175	2.3%
Associates	N/A	\$125	\$150	1.8%
Paralegals	N/A	\$75	\$95	2.4%
Law Clerks	N/A	\$75	\$90	1.8%
Legal Assistants	N/A	\$75	\$85	1.2%
Environmental Litigation				
Senior Partners	\$175	\$225	N/A	N/A
Partners	\$150	\$200	\$240	2.3%
Associates	\$125	\$125	\$170	1.4%
Paralegals	\$70	\$75	\$95	1.4%
Law Clerks	N/A	\$75	\$90	1.8%
Legal Assistants	N/A	\$75	\$85	1.2%

Source: CEO/Risk Management

²² See Appendix E for a list of current firms on the Legal Defense Panel.

On occasion, the Board approves the use of a firm not on this list to handle a specific case. In these instances, the Board approves the firm by separate action at a public meeting.

As is apparent, from an hourly perspective, the cost increases have been moderate to low. Accordingly, given the significant increase in total legal costs paid out over the past five years, one or both of the following is occurring: (1) an increase in the hours billed by contract attorneys, and/or (2) an increase in costs other than those associated with attorney hours, such as for subcontractors (e.g., costs of investigators, medical experts).

Finding 9: RM does not collect data on total hours billed by contract attorneys nor does it track the total costs of subcontractors used by the County's Legal Defense firms (e.g., investigators, medical experts) in an electronic database. (Priority 2)

In order to examine the legal costs for Liability claims, the audit team requested the total number of contract attorney hours billed for each of the last five fiscal years. However, RM staff informed the audit team that this information is not tracked in aggregate form and is only available in hard copy case files. As a result, the audit team reviewed a sample of Legal Defense Panel attorney invoices and case files from January 2010 to September 2011.

During its review, the audit team found that in many cases, the hourly rates charged to the County by subcontractors²³ far exceeds those allowed for the contract attorneys on the County's Legal Defense Panel. For example, the highest rate paid to a firm partner on the Legal Defense Panel is \$240/hour, while the range for some of the more expensive subcontractors was between \$300 - \$600/hour. RM Liability claims staff indicated, and the audit team confirmed, that RM reviews and approves requests from Legal Defense Panel attorneys before expert witnesses or other subcontracts are hired. RM indicated that, over time, they have become familiar with all subcontractor staff and are comfortable making decisions regarding their usage. Notwithstanding this review, RM also does not track the aggregate costs of subcontractors; rather, RM estimates these costs to be approximately 5-10% of total legal expenses.

²³ Subcontractors provide a myriad of services including, but not limited to medical examinations, psychological examinations, physical rehabilitation, deposition and copying services, auto body services, safety and construction engineer reviews, financial services for structured settlements with claimants.

Recommendation 9: Maintain monthly statistics on the number of attorney hours billed by firm, level, and claim, as well as the use and cost of subcontractors. As an added level of oversight, the Risk Manager should conduct periodic reviews of random case files to ensure his/her satisfaction with the use of and fees charged by subcontractors.

Finding 10: The current Liability Legal Defense Panel contract has been in place for an excessive period of time (10 years). (Priority 3)

The current Liability Legal Defense Panel was established by contract in 2001 utilizing a Request for Proposal solicitation process. The term of the contract is open-ended per the following generic contract language: "The term of this agreement shall begin on the date of execution by Risk Management and shall continue until completion of the matters for which attorneys have been retained..." In discussions with RM, staff acknowledged the need to refresh the panel and is currently in the process of releasing a RFP for the selection of a new Legal Defense Panel.

Recommendation 10: In the future, RM should refresh selection of a Liability Legal Defense Panel every five to seven years. Include in the contract a specific length of time for the term of the panel.

Analysis of Contract Attorneys vs. In-House Counsel for Liability Claims Litigation

As part of the scope of this study, the audit team examined whether or not it would be more effective/efficient to use in-house County Counsel attorneys and support staff rather than contract attorneys for the litigation defense of Liability claims.

Finding 11: From a cost standpoint it would be more expensive to use County Counsel attorneys and legal support staff for Liability claims litigation defense than contract staff. In addition, there are a number of other operational considerations that support the current model. (Priority 3)

The table on the following page compares the hourly rates of contract attorneys versus County Counsel staff that are/would be assigned to work on Liability claims litigation.

Contract vs. County Counsel Staff Hourly Rates

Job Title Contract Staff / County Staff	Contract Staff Hourly Rate	County Staff Hourly Rate*	% Differential
Partner / Assistant County Counsel	\$180	\$214	19%
Senior Associate / Admin Manager III - Specialist	\$160	\$202	26%
Associate / Senior Deputy Attorney	\$135	\$190	41%
Paralegal / Paralegal	\$90	N/A	N/A
Legal Assistant / Sr. Legal Secretary	\$80	N/A	N/A

Source: Legal Defense Panel contract and County Counsel billing rates

Note: The contract staff hourly rates used are for General Tort Litigation services; other specialty subcontractor rates are even higher. County Counsel staff charge rates include salary and employee benefits, County overhead charges, and clerical support expenses.

The table above indicates that it is 19-41% more expensive to use County Counsel attorneys to perform Liability claims litigation work on an hourly basis. In addition to hourly rates, there are several other important issues to consider in this analysis. These include:

- **Specialty Skill Sets**

Contract attorneys on the County's Legal Defense Panel perform litigation work in a number of areas: tort (personal and property damage), employment, flood, land subsidence and environmental claims. County Counsel currently deals with some of these general areas, but not from a tort perspective, and would therefore have to recruit attorneys with this specific expertise within the County's existing classification and compensation structure.

- **Availability of Attorneys**

With a slate of contract attorneys, availability has not been an issue. If County attorneys were used, there would potentially be gaps in service when an attorney left County employment until a replacement could be hired. To mitigate this issue, a limited Legal Defense Panel capability could be maintained for short term needs.

- **Consistency of Workload**

Over the past five years, RM contract attorneys (12 firms) have received, on average, 77 Liability lawsuits per year. If County Counsel were to hire additional attorneys to perform the work currently provided by contract attorneys, there is a question of whether there would be enough work in each area of litigation to sustain a full time County position; scalability is much more difficult if the work is brought in-house.

- Use of Subcontractors

As previously identified, Legal Defense Panel attorneys hire subcontractors (with RM review and approval) to perform a variety of services in preparation for and during the course of trials. There are a number of advantages to allowing contract attorneys to hire these subcontractors, including increased speed of hiring, performance issues handled by a firm on the Legal Defense Panel rather than the County, and saved administrative effort/time in County staff not having to develop RFPs and individual contracts.

- RM Control Over Liability Claims

If County Counsel attorneys were used to litigate Liability claims, there would be some impact to RM's control over Liability claims management. County Counsel attorneys working on the claim would be taking direction from two County entities: RM and County Counsel. Differences of opinion would have to be discussed and settled, whereas today these attorneys report solely to RM.

- Increase in County Supervising Attorneys

Depending on the number of in-house attorneys hired, this could result in a need to add County Counsel supervisory staff.

- RM and County Counsel Preference

Both RM and County Counsel management have expressed their preference to continue to have Liability claims litigation defense provided by private firms on the Legal Defense Panel.

Recommendation 11: Continue with the current model for Liability claims legal defense.

Workers' Compensation

Background Information

The California Workers' Compensation Insurance and Safety Act of 1917 requires all employers in California to compensate their employees for work-related injuries/illnesses, by providing the following four types of benefits:

1. Medical Care: Injured employees are eligible for medical care necessary to treat a work-related injury.
2. Temporary Disability: Injured employees are also entitled to wage loss benefit payments during medically-authorized absences from work, known as Temporary Disability (TD). The amount of TD is regulated by law and is currently a maximum of \$986 per week²⁴, calculated at two-thirds of weekly earnings, for up to two years (104 weeks)²⁵. County-negotiated Memoranda of Understanding provide additional compensation benefits to employees in the form of Workers' Compensation Supplement Pay that, when added to TD, equals 80 percent for non-sworn personnel²⁶. As statutorily required²⁷, sworn personnel receive Supplement Pay to equal 100 percent of their salaries for up to one year.
3. Permanent Disability: Injured employees may also be entitled to a Permanent Disability (PD) benefit, which is to compensate for an employee's diminished future earnings capacity. The State of California's Schedule for Rating Permanent Disabilities rates each disability on the ability of the claimant to compete for employment, along with other factors, such as the claimant's age, occupation, and extent of injury. PD payments²⁸ are based on percentages listed in the rating schedule.
4. Death Benefit: Death benefits related to Workers' Compensation claims include burial expenses and support for the deceased employees' dependents. In addition, any payments for either temporary or total disability due/unpaid at the time of death are paid to the dependents.

²⁴ Total Temporary Disability payments are \$986 per week; partial Temporary Disability payments are lower.

²⁵ From the date of the first payment made for most injuries. There are some long-term, chronic injuries (e.g., lung disease) that can continue beyond 104 weeks.

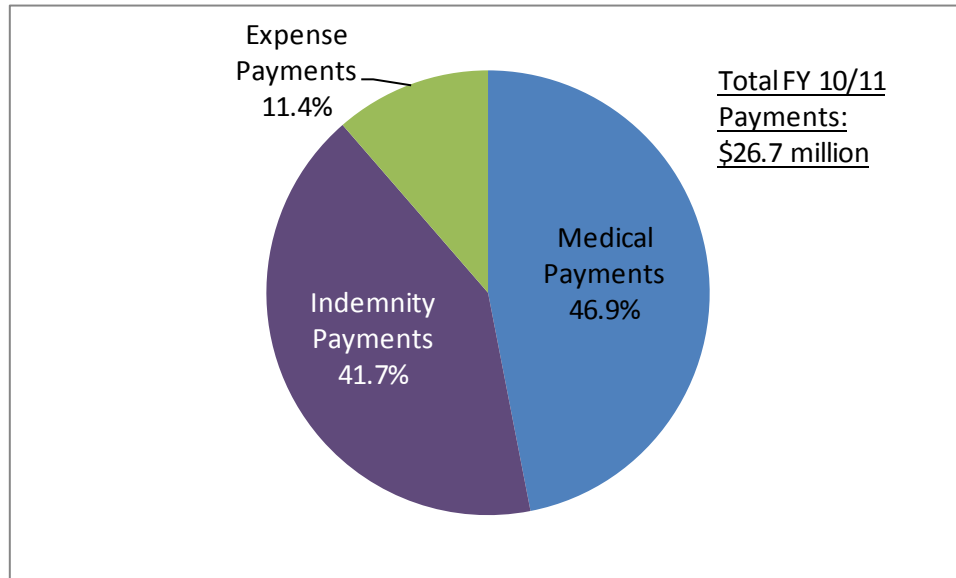
²⁶ Temporary Disability payments are not taxable; Supplement Pay is taxable for non-sworn personnel.

²⁷ Mandated by California Labor Code 4850.

²⁸ Currently, for permanent partial disabilities that can be accommodated, injured employees receive 15% below the "neutral" rate of \$230/week; those that cannot be accommodated receive 15% above the neutral rate.

Temporary Disability, Permanent Disability, and Death Benefits are considered “indemnity” costs (i.e., compensation for non-medical losses or damages). The following chart shows Workers’ Compensation costs by type of payment.

Workers’ Compensation Costs by Type of Payment, FY 10/11



Source: York Annual Stewardship Report, FY 10/11, page 25

Note1: County-negotiated Supplement Pay is not included

Note 2: Expense Payments includes such costs as legal fees, depositions, and investigations

Employers must comply with Workers’ Compensation law by obtaining insurance or insuring themselves. The County of Orange is self-insured, which means that it assumes the risk for all organizational losses that may occur. The County pays Workers’ Compensation claim expenses up to \$20 million²⁹ (i.e., retention amount) per claim and purchases excess insurance to cover any losses over this amount. As discussed in the Administration and Financial Management section of this report, Worker’s Compensation claim expenses are paid out of the County’s Internal Service Fund (ISF) 293.

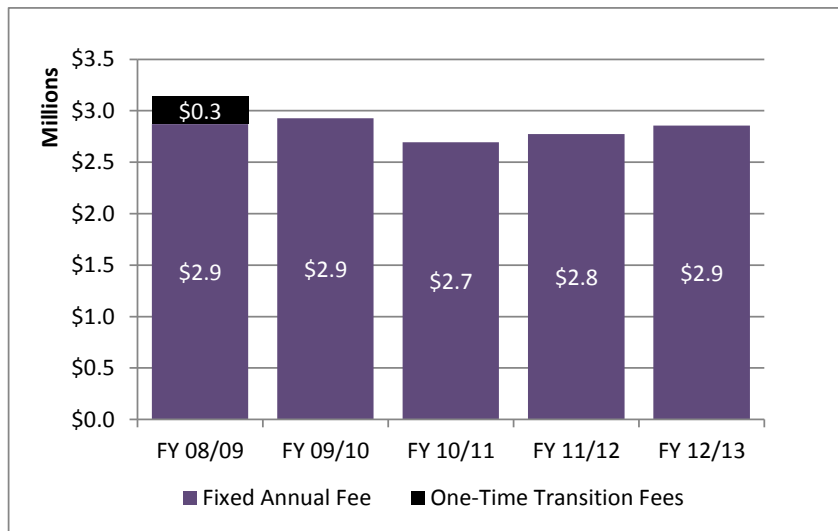
The County of Orange contracts with a third party administrator (TPA) to process its Workers’ Compensation claims on a fixed fee basis. York Risk Services Group, Inc. (York) has been the County’s TPA for the past two years³⁰. In addition to claims administration, as part of its contract, York (via its subsidiary WellComp) performs

²⁹ As of August 1, 2011; before this time, the retention amount was \$15 million.

³⁰ On May 6, 2008, the Board of Supervisors awarded the TPA contract to Southern California Risk Management Associates (SCRMA); in February 2010, SCRMA merged with its parent company, York Insurance Services Group Inc., California, which is a wholly owned subsidiary of York Risk Services Group, Inc.

managed care cost containment services such as Bill Review³¹ and Utilization Review³². Claim-related services which are not provided by York include legal defense, depositions, investigations, subrogation fees and surveillance. If a claim requires legal counsel, York selects and RM approves the use of contract attorneys within a set hourly rate. The chart below shows the annual costs to the County for Workers’ Compensation TPA services.

Workers’ Compensation TPA Costs, FY 08/09-FY12/13



Source: SCRMA/York Price Agreement

Within RM, there are three staff dedicated to Workers’ Compensation program administration: one Program Manager (Administrative Manager II) and two Staff Specialists.³³ The Program Manager’s responsibilities include Workers’ Compensation reporting, contract oversight of the TPA, referring potential fraud cases to the District Attorney, and overseeing the two Staff Specialists. The Staff Specialists are responsible for coordination between York and agency/department staff for claims processing and return to work efforts, preparing forms for claims processing, ensuring the payment of MOU-required salary Supplement Pay, and maintaining claim files.

³¹ A review is performed on all medical bills submitted for payment to ensure they are related to the compensable condition, comply with the fee schedule established by the State and are not duplicates of bills previously submitted.

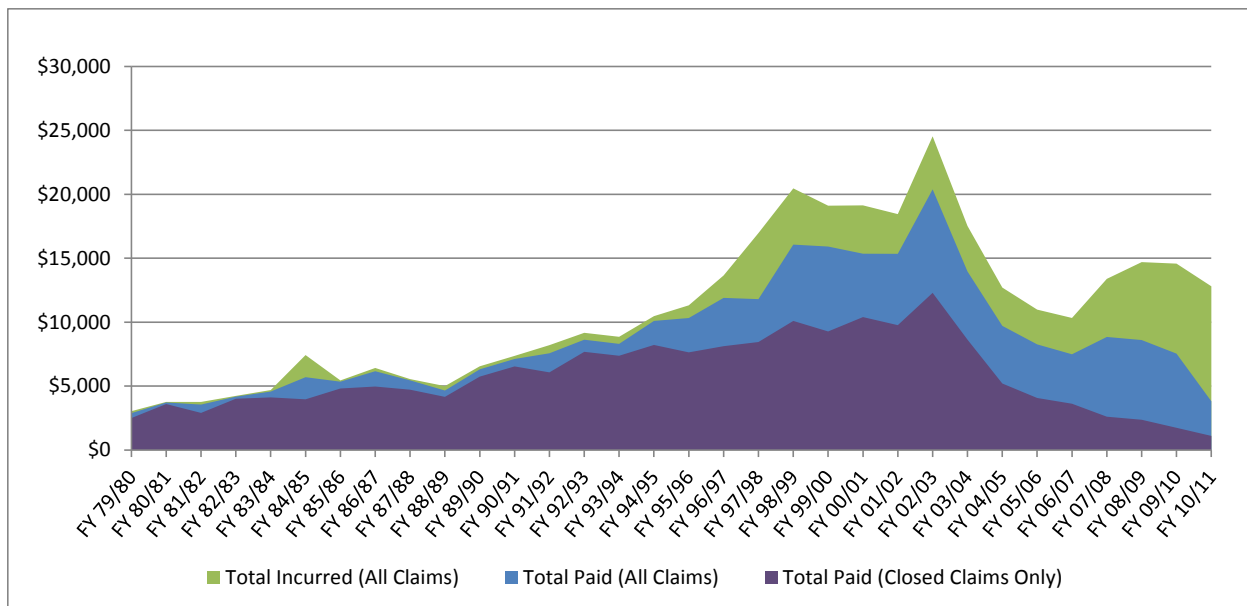
³² Utilization Review is the process used by employers, insurers or claims administrators to review treatment to determine if it is medically necessary.

³³ The number of staff in RM’s Workers’ Compensation program is lower than those counties/cities that handle claims processing in-house (e.g., both the County of San Bernardino and the City of San Jose have 20+ staff).

Workers' Compensation Statistics

RM's TPA, York, maintains a detailed database of all Workers' Compensation claims. Per its contract with York, RM has access to a number of different reports and can run its own ad-hoc reports using the data. In addition, RM uses this data for its Workers' Compensation metrics reports (these reports will be discussed in the Safety & Loss Prevention section) and its annual reports³⁴. Similar to the County's Liability claims data, there are opportunities to provide agencies/departments, policy makers, and the public with more information about the County's Workers' Compensation claims and costs. The audit team has developed the following charts/tables to provide a Countywide perspective on the number of Workers' Compensation claims filed and their associated costs. It is important to note that the following statistics do not include the total costs for County-negotiated Supplement Pay.

Average Cost per Workers' Compensation Claim, FY 79/80 to FY 10/11



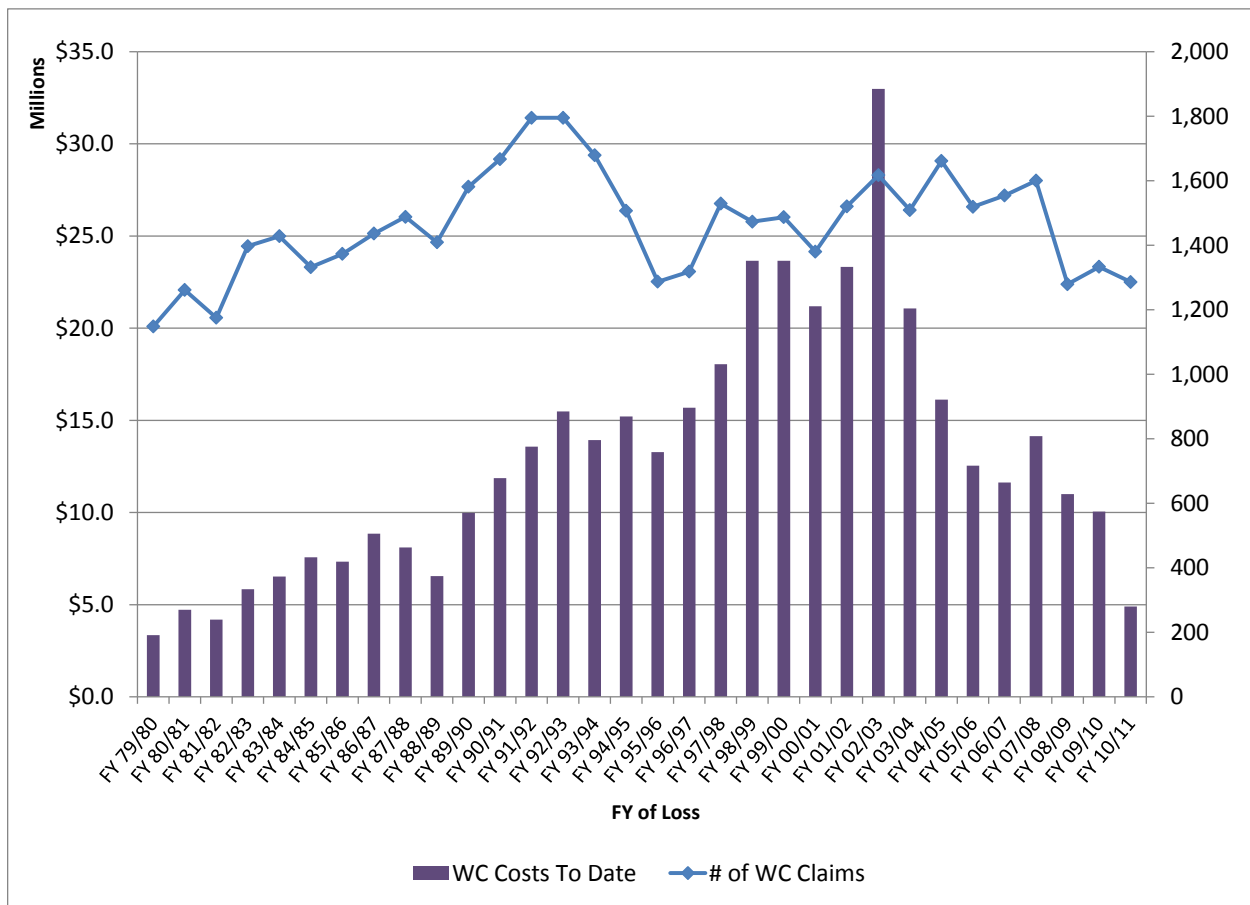
Source: York Database

The chart above illustrates the average cost per claim for each year since FY 79/80 (the first year that data is available). As shown in the chart, since FY 79/80, the average cost per claim climbed upward steadily, reaching a peak in the early 2000s, decreasing, and then increasing again in the last few years. The significant decrease subsequent to FY 02/03 is due largely to major reforms in Workers' Compensation enacted by the State legislature.

³⁴ 2011 was RM's first annual report ("CEO/Office of Risk Management 2011 Executive Summary").

The chart below shows total historical Workers' Compensation costs and numbers by fiscal year. As expected, based on the previous chart, total costs peaked in the early 2000s, with a high of \$33 million in 2003 (note: almost \$4.5 million of the \$33 million is related to two claims in OCSD). The total number of incurred Workers' Compensation claims, however, fluctuates year to year, between approximately 1,200 and 1,800 claims per year.

Total Workers' Compensations Claims and Costs Incurred, FY 79/80-FY 10/11



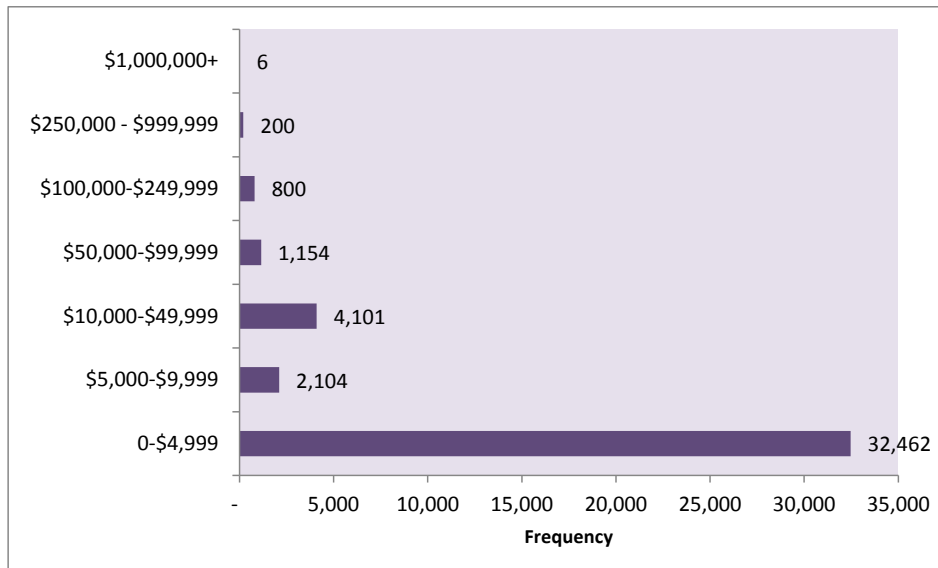
Source: York Database

Note 1: Numbers during the 1980s and 1990s also included first aid and record-only claims

Note 2: The spike in costs in FY 02/03 is driven by two OCSD claims totaling approximately \$5 million

The next chart (on the following page) illustrates the frequency of different levels of claim payouts (i.e., claim size). As shown, the vast majority (nearly 80%) of claims are less than \$5,000.

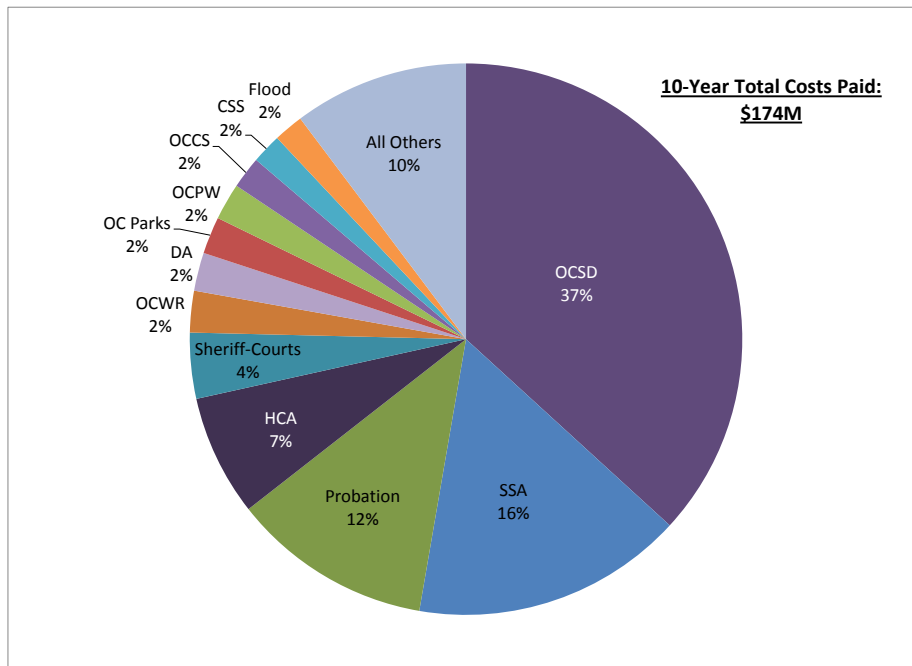
Total Workers' Compensation Frequency by Total Claim Payouts, FY 79/80-FY 10/11



Source: York Database

By agency/department, over a 10-year period (FY 00/01 to FY 09/10), OCSD has the highest total Workers' Compensation costs, followed by SSA, Probation, and the Health Care Agency (HCA), as shown below.

Total Workers' Compensation Costs Paid by Agency, FY 00/01-09/10



Source: York Database

Also, by position classification, the table below shows that, by far, for FY 08/09 and FY 09/10, the position classification with the highest Workers' Compensation claim costs is Deputy Sheriff II. In general, the highest cost position classifications are in OCSD and SSA.

Workers' Compensations Costs by Position Classification

TYPE OF CLASSIFICATION	FY 08/09	FY 09/10	Total	% of Total
Deputy Sheriff II (OCSD)	\$ 2,111,035	\$ 2,026,716	\$ 4,137,751	19.7%
Dep Juv Correctional Ofcr II (Probation)	\$ 880,089	\$ 796,564	\$ 1,676,653	8.0%
Deputy Sheriff I (OCSD)	\$ 779,088	\$ 240,847	\$ 1,019,935	4.8%
Senior Social Worker (SSA)	\$ 563,207	\$ 377,627	\$ 940,834	4.5%
Eligibility Technician (SSA)	\$ 271,984	\$ 595,234	\$ 867,218	4.1%
Office Technician (Countywide)	\$ 371,587	\$ 220,910	\$ 592,497	2.8%
Social Worker II (SSA)	\$ 384,099	\$ 130,260	\$ 514,359	2.4%
Investigator (OCSD and District Attorney)	\$ 206,515	\$ 287,028	\$ 493,543	2.3%
Sergeant (OCSD)	\$ 74,059	\$ 411,173	\$ 485,232	2.3%
All Other Classifications	\$ 16,639,950	\$ 15,131,718	\$ 31,771,669	49.0%
Grand Total	\$ 10,998,287	\$ 10,045,359	\$ 21,043,646	100.0%

Source: York Database

Program Strengths

The audit team has identified the following strengths in RM's Workers' Compensation program:

- RM has developed a comprehensive and detailed set of policies and procedures that serves as a resource for current staff and also enhances the ability to train new staff.
- RM staff has thorough knowledge of the rules, regulations, and processes that govern the highly technical and complicated area of Workers' Compensation. The audit team's assessment in this regard was corroborated during many interviews with agency/department staff.
- The current staffing model makes use of some (3) in-house staff members, but most of the processing and handling of claims is done by a TPA for a flat fee. The outsourcing of this function has enabled RM to better manage Workers' Compensation administration costs over time, and, in fact, during the 2010 contract renewal with the TPA, the County was able to renegotiate some pricing and staffing levels, which resulted in a nearly \$300K annual reduction in costs.

- As part of the TPA's claims management responsibilities, it conducts utilization review and medical bill review for Workers' Compensation claims. Both of these elements help the County achieve significant savings, through both eligibility control and treatment cost control. To provide a sense of scale, the combined program savings for both utilization and medical bill review for FY 09/10 was reported by the TPA to be nearly \$18 million.
- As a means of enhancing accountability, and consistent with best practices, RM utilizes outside auditors to conduct audits of the TPA's (York's) performance. Specifically, Aon conducts a claims management audit of York. In its last audit, Aon found that York's overall performance was good, but there were several opportunities for improvement. RM staff worked with York to create an action plan for addressing some of these issues and a follow-up report (completed in 2011) showed that York had made several improvements. In addition, Bennington and Associates audits York's managed care services (i.e., utilization reviews, medical bill reviews, and nurse case management).

Opportunities for Improvement

Procedures and Documentation

Finding 12: A significant number of manual procedures, driven by dependence on hard copy documentation, leads to inefficiencies in the Workers' Compensation operation. The amount of manual workload also hinders RM staff's ability to be consistently responsive to agency/department needs. (Priority 2)

Unlike Liability claims, processing in RM's Workers' Compensation program is performed by the TPA; RM Workers' Compensation staff (two Staff Specialists) are responsible for providing the TPA with the necessary data and documentation to process claims. In addition, RM Workers' Compensation staff ensures that the Auditor-Controller and agency/department payroll personnel have the information needed to process payroll and communicates with agencies/departments about Workers' Compensation claims. To that end, RM staff is tasked with three primary activities:

1. **Receiving and validating injury/illness forms (Form 5020) and Workers' Compensation claim forms (Form DWC-1):** RM Workers' Compensation staff receives 5020 forms (i.e., employer's report of employee workplace injury/illness)

from agencies/departments; verifies the employee information included; adds any additional necessary information; and forwards the forms to the TPA. RM staff also receives claim forms (DWC-1 forms) from employees, their representatives, or agencies/departments; verifies the forms for completeness; and forwards the forms to the TPA.

2. **Notifying agencies departments of employee Workers' Compensation status:** RM staff receives updates on Workers' Compensation cases from the TPA, completes a status report (form F2931-5) for these status changes (e.g., claim acceptance or denial), and sends the status forms to agency/department human resources staff.
3. **Generating authorization forms for payroll and verifying payroll records:** During each bi-weekly payroll week, RM staff receives payment vouchers from the TPA for each employee that should be paid Workers' Compensation benefits and generates an authorization for payment form (Notification of Workers' Compensation Benefit Form F2931-1) for each of those employees. The authorization forms are then sent to the Auditor-Controller and agency/department payroll units. In turn, the Auditor-Controller generates a Workers' Compensation Report (HR30T 10-01) that indicates payments of Workers' Compensation benefits to employees. RM staff verifies that the report is accurate.

In addition to these three primary tasks, RM staff is responsible for acting as a liaison between agencies/departments and the TPA. RM has asked agencies/departments not to contact the TPA directly with questions about a claim³⁵, indicating that having RM staff act as a liaison allows the TPA's claims administrators to focus on claims processing rather than fielding questions from 24 agencies/departments. Instead, agencies/departments must contact RM staff with questions about individual claims. If RM staff cannot answer the question, they will contact the TPA and pass the answer to the agency/department.

The implementation of the Countywide Return to Work (RTW)/Transitional Duty program has also resulted in additional workload for RM staff. Agencies/departments will contact staff with questions about employees in the RTW/Transitional Duty program, since the TPA handles the RTW process for employees with accepted

³⁵ The TPA does contact agencies/departments directly with its questions and requests.

Workers' Compensation (occupational) claims, including obtaining work restrictions from employees' physicians.

Manual Procedures

Interviews with agencies/departments revealed that some are experiencing inconsistent responsiveness from RM staff. Based on the audit team's observations and research of Workers' Compensation procedures, it is evident that the highly manual, and thus time-consuming, tasks performed by RM staff hinder their ability to be consistently responsive to agencies'/departments' questions and requests. On a daily basis, RM staff must process 5020 forms³⁶ and Workers' Compensation claim forms³⁷. On any given day, staff receives an average of five claim forms and six to eight 5020 forms.

RM procedures for preparing both the 5020 forms and the Workers' Compensation claim forms are largely manual. For example, although agencies/departments can complete 5020 forms online, the forms are not processed by RM staff electronically. Instead, RM staff receives the completed forms via email, then prints hard copies of the forms and manually codes them before scanning the 5020 forms and emailing them to the TPA. RM's procedure for preparing claim forms is similar but forms are not received electronically; rather, forms are sent via interoffice mail or are faxed.

In addition to the daily processing of 5020 forms and Workers' Compensation claim forms, during bi-weekly payroll, RM staff generates payment authorization vouchers for the Auditor-Controller and notifies agency/departments payroll departments of this authorization, both of which involve substantial manual procedures. The vouchers are received by RM from the TPA via email but are then printed and verified manually using RM's "Index System" (which is described below); RM staff then must manually enter information from the vouchers into an electronic template to generate a Notification of Workers' Compensation Benefits form for each employee, which is then printed, copied, approved, and forwarded in hard copy to the Auditor-Controller and agencies/departments.

Further exacerbating the process, RM staff must complete these manual payroll tasks within a tight timeframe. The time pressure is due to the fact that staff receives the vouchers from the TPA on Wednesday of each payroll week and must prepare payment

³⁶ It is an internal RM policy that all 5020 forms received by staff are processed the same day.

³⁷ It is an internal RM policy that all claim forms received by staff are processed the same day the form is received or the day following receipt of the form.

authorization forms for each voucher the same day so that the Auditor-Controller will receive them in time for payroll processing on Thursday. Also, RM staff makes courtesy phone calls on either Wednesday or Thursday of that week to high-claims-volume agencies/departments³⁸ to verbally notify them about which employees will be receiving Worker's Compensation benefits payments that pay period. RM staff indicated that the reason for the courtesy phone notification is that the payroll authorization forms are sent to agencies/departments via inter-office mail, which can take a couple days, and it is helpful for these agencies/departments to be notified in advance of receiving the hard copy authorization forms.

Perhaps the most inefficient manual process involves RM's "Index System". To ensure that County employees are being paid their Workers' Compensation benefits accurately and timely, RM staff utilizes handwritten, hard copy index cards (see Appendix F for an example) to record information for all Workers' Compensation claims in the County. When a new claim is filed, RM staff creates a new index card for that claim by handwriting information such as the employee's name, the name of agency/department, employee type (safety or non-safety), job title, and weekly wage at the time of injury. During payroll weeks, when the TPA sends payment vouchers to RM, staff will pull the appropriate index cards from a rolodex and update the cards with the beginning and end date for Workers' Compensation eligibility and number of weeks/days that each employee will be paid Workers' Compensation benefits that pay period (this also requires staff to manually count the number of days and weeks). Staff then generates a payment authorization form (Notification of Workers' Compensation Benefit Form F2931-1) for each employee using the information from the index card to complete the electronic template. Finally, when the Auditor-Controller sends the Workers' Compensation Report for that pay period, RM staff verifies that the report is accurate by again pulling the appropriate index cards from the rolodex and comparing the report with the information on each index card. If the information is correct for that pay period, staff will draw a red dot on each index card next to the dates and rates paid. These index cards continue to be filed in the rolodex until the claim is closed, at which time the index card is moved to the file room. If staff runs out of space to write on an index card, a new card is created for that case and stapled to the original card.

As described above, RM staff rely on a number of highly manual procedures to fulfill their responsibilities. Integrating technology into RM's Workers' Compensation processes will significantly enhance the productivity of staff. For example, by increasing the level of automation for the 5020 forms and Workers' Compensation claim

³⁸ Probation, OCSO, HCA, OCWR, OCPW, SSA, and OCCR

forms, RM staff can avoid the step of printing out the forms, only to scan them and send them to the TPA. Instead, forms can be verified/coded online and sent to the TPA electronically. Additionally, the Index System of hard copy index cards—with the large number of cards that must be pulled, updated, verified, and filed away for each payroll week—is inefficient and time-consuming. By transitioning the current manual, hard copy Index System into an electronic record system, processes will be streamlined and automated (i.e., there will no longer be a need to flip through hundreds of index cards to pull those that must be updated; staff will no longer need to manually count the number of weeks/days).

RM staff's priority is to make sure employees are paid accurate Workers' Compensation benefits, but because procedures are highly manual, there is less time available for staff to respond to other matters, such as agency/department emails/calls about a particular claim. This is a notable concern given the fact that agencies/departments cannot contact the TPA, per RM's request.

It is important to note that RM had previously explored the possibility of automating Workers' Compensation payroll procedures via the CAPS+ project, but due to lack of funding, this automation did not materialize. Despite this setback, there are steps that RM can take to automate its procedures without utilizing CAPS+. For example, RM can create a database that maintains the information that RM staff currently handwrites onto index cards. Rather than updating an index card, staff can update an electronic record.

Electronic Documentation

In addition to the high degree of manual processing performed by RM Workers' Compensation Staff, RM also maintains only hard copies of Workers' Compensation forms. Most of the hard copy documents maintained in RM's files are also kept by the TPA in electronic format; however, some are not. For example, the information on the index cards in RM's Index System is not maintained in any other format. This practice is risky because cards can get misfiled, and if they are, a significant amount of time would be required to go through hundreds of files to find the correct document. There is also the risk that the cards could be destroyed or lost/stolen. Electronic documentation is much less risky, since it is typically backed up in multiple locations. Finally, maintaining hard copies requires administrative staff time to retrieve and return cards, almost on a daily basis, which can be avoided if Workers' Compensation staff is able to retrieve the files themselves electronically.

Recommendation 12: Work with CEO/IT to develop a database to replace the current index card system and begin the scanning and electronic storage of forms/documents.

Workers' Compensation Claims Management

Finding 13: The current contract with RM's Workers' Compensation TPA (York) contains service level expectations, but these expectations are not closely and frequently tracked. In addition, there are no associated financial penalties in the contract to hold the TPA accountable for meeting service level expectations. (Priority 2)

RM's contract with York contains a number of specific performance expectations and requirements that cover areas such as Claims Administration, Financial Controls, Caseload and Staffing, and Benefit Payments. For example, York is required to contact the injured employee, the employee's supervisor, and the medical facility where the employee was treated (if treatment was necessary) within one business day of being notified of the injury. This "three-point contact" is a critical element in verifying the validity of a claim. However, compliance with this and other requirements is typically not tracked or reported on a frequent basis (e.g., quarterly). Although RM began (in 2010) to use an outside auditor (Aon) to assess the claims management performance of York, these assessments are completed on an annual basis and only include a sample of claims for review.

As noted earlier in this section, York's performance (as assessed by Aon and RM staff) has been largely positive, but there are some areas for improvement. For example, in the area of litigation management, Aon asked the following question, "Does the administrator and defense counsel keep qualified Client personnel involved in developing material evidence and coordinating witness testimony to obtain the most favorable result possible?" Of the 17 cases that were reviewed, Aon answered "No" to this question in five instances. The Risk Manager confirmed with the audit team that the claims management audits are extensively reviewed with York and action plans for addressing deficiencies are prepared by York. Yet, there is currently no language in the contract with York to penalize them for failing to meet any of the specific expectations of RM, short of terminating the contract, which would create a number of operational and legal risks for the County. The only financial disincentive for York's poor performance included in the contract is if York's actions/inactions lead to financial penalties to the County (e.g., as a result of missing certain regulatory timelines), York is

responsible for paying these penalties. In other third party administrator arrangements in the County, the inclusion of specific “service-levels” or “performance targets” are frequently used to hold vendors accountable (e.g., Employee Benefits Administration). Accordingly, the inclusion of such performance targets, with associated financial penalties for underperformance, will create an additional incentive for York to continue providing a high level of service. Some of these targets may be process-based (e.g., York shall complete X task within X days of receiving a claim), while others may be more holistic (e.g., a semi-annual performance evaluation completed by the Risk Manager and the Workers’ Compensation Program Manager).

Recommendation 13: RM should develop a series of specific performance targets to include in the Workers’ Compensation TPA contract. RM should also consult with other County agencies/departments that utilize service levels/performance targets (e.g., Employee Benefits, CEO/IT). In addition, some structure for assessing financial penalties should be developed to hold the TPA accountable for any lapses in performance. Lastly, performance against these targets should be reported more frequently (e.g., quarterly) to RM, where appropriate.

Finding 14: The detailed database of Workers’ Compensation information maintained by the TPA is not being fully utilized by RM to proactively facilitate the management of safety risks in agency/department operations. (Priority 2)

Unlike the Liability Claims Management system, which is limited in the information that is tracked and in the data that is readily mineable, the system maintained by York (the Workers’ Compensation TPA) is a modern database that can search according to nearly all types of information maintained across Workers’ Compensation claim files. Yet, there are only a few larger agencies/departments that have requested that York provide some detailed reports on a regular basis (e.g., monthly) in order to use for their own management purposes; these reports are typically limited in scope. In general, agencies/departments do not make use of much of the information that is maintained in this database to manage Workers’ Compensation risks. A particularly troubling example identified by the audit team was the disconnect between Workers’ Compensation staff of the Sheriff-Coroner Department (OCSD) and RM Workers’ Compensation staff regarding the level of available information. In fact, OCSD, having not been provided with the detailed data maintained by York, allocated personnel and

resources to develop and staff a duplicate Workers' Compensation database to track much, if not all, of the information that is already tracked by York. The audit team confirmed that RM's Workers' Compensation staff was unaware that OCSD had developed and implemented such a system; similarly, OCSD was unaware that much of this information was already available via the York database. This disconnect suggests that many of the other County agencies/departments are unaware that there is a valuable collection of data and information that can be analyzed by operational managers to better address Workers' Compensation risks. As noted earlier in this section, RM's Workers' Compensation Program Manager does partner with RM's Safety Manager to prepare metric reports and write-ups to help agencies/departments identify opportunities for risk mitigation; however, these reports are static and are not customized to an agency's/department's operational needs.

Recommendation 14: RM should develop training opportunities to educate agency/department staff on (a) the level of Workers' Compensation data that is available and (b) tools and techniques for analyzing this information. In addition, RM should collaborate with agencies/departments to develop additional reports and information that would be helpful to them in identifying and managing Workers' Compensation risks in their operations.

Finding 15: The County has employees who are on unresolved Leave without Pay (LOP) status for as many as 10+ years. (Priority 2)

During its fieldwork, the audit team requested that RM research County records to determine whether there are employees who have been on long-term leave due to an injury/illness and have never returned to work. For the Workers' Compensation program, RM was able to identify 41 employees who had been on a Workers' Compensation leave status, who have since been placed on indefinite leave without pay (LOP) status. RM researched these cases and determined that these employees are on LOP status for a variety of reasons, including:

- Employees who had Workers' Compensation claims that were resolved years ago but never returned to work
- Employees whose Workers' Compensation claims have been conditionally denied and remain on LOP status while compensability is determined

- Employees who had occupational work restrictions that could be accommodated but non-occupational work restrictions that could not be accommodated
- Employees who were offered modified or alternative work (transitional duty) in writing but never reported to work
- Employees who could not be accommodated with modified or alternative work which fits their permanent restrictions
- Employees who were denied disability retirements by the Orange County Employees Retirement System (OCERS), but the agencies/departments have not been able to accommodate their permanent restrictions.

Some of the employees on LOP have been essentially forgotten by the County due to the lack of a formal system for following up on employees on leave.

The challenge of returning injured/ill employees to work is not isolated to the County of Orange. The County of Los Angeles developed a “Return to Work Guide and Reference Manual³⁹” for departments to manage approved employee leaves in response to direction from its Board of Supervisors to identify the number of employees on long-term absence and whether their leaves were being actively managed. The manual includes protocols for all forms of returning employees to work, such as returning to an employee’s “Usual and Customary” position, Work Hardening Transitional Assignments for temporary work restriction (equivalent to the County of Orange’s RTW/Transitional Duty Program), Conditional Assignments for temporary assignments that are utilized when a department is conducting a search for a compatible position based on an employee’s permanent work restrictions, and Disability Retirement. The goal of the manual is to minimize the number of instances that employees remain on leave without any resolution.

Since the audit team’s request, RM has begun to focus on these cases and identified several that can be easily resolved from a Workers’ Compensation perspective. RM is meeting with HRD and County Counsel to discuss each of the remaining cases.

³⁹ Chief Executive Office, Risk Management Branch, County of Los Angeles, January 2011.

Recommendation 15: RM should a) establish a regular meeting (e.g., on a quarterly basis) with the Human Resources Department (and County Counsel, if necessary) to examine the list of employees who are on Leave without Pay (LOP) status to minimize instances where employees remain on leave for long periods of time without resolution, and b) in conjunction with HRD, develop a reference manual to help manage employee leaves of absence.

Workers' Compensation Fraud

Workers' Compensation fraud can occur in a variety of forms, including such examples as an employee falsely claiming that an injury occurred or a medical provider billing for treatments they did not provide. A 2001 study conducted by the Texas Department of Insurance identified Workers' Compensation fraud detection and reduction best practices in other states. The report identifies the following common factors found in aggressive Workers' Compensation anti-fraud state programs:

- Having a clearly designated agency or office with lead responsibility for fraud prevention
- Dedicating legal resources to fraud prosecution
- Adopting a high profile public awareness campaign to deter fraud
- Significant data automation and research capabilities, including coordination among agencies
- Adequate funding

At the County of Orange, both RM staff and the Workers' Compensation TPA are responsible for identifying any inconsistencies or information that would suggest potential fraudulent activity; however, the TPA is the primary party responsible for this activity as they conduct most of the claim review, including contacting employees, supervisors, and physicians. RM staff also indicated that they will occasionally get tips from fellow employees or from supervisors that can serve as a basis for further investigation. Once potential fraud is identified, the TPA will use an investigator to gather more information and validate whether fraud has occurred. As a matter of course, all Workers' Compensation claims that are "stress related" are investigated. During FY 10/11, the County spent nearly \$200K on investigations. These investigations covered 135 different claims, which represents approximately 6% of the 2,329 total Workers' Compensation claims currently open.

During audit interviews, RM identified proactive fraud reviews and investigations as opportunities for improvement. Given that the current set of procedures in this area are satisfactory, this issue does not rise to the level of a formal finding. However, the audit team encourages RM to consider pursuing some of the best practices from other public jurisdictions in the area of Workers' Compensation fraud prevention and investigation.

Safety and Loss Prevention

The California Code of Regulations, Title 8, Chapter 4, Section 3203 requires all employers with 10 or more employees to have a written Injury and Illness Prevention Program (IIPP). The goal of an IIPP is to reduce the number and severity of workplace injuries. At the County of Orange there is a decentralized approach to safety, with RM serving as the central coordinator. Accordingly, per the County Safety and Loss Prevention Manual, RM is responsible for overseeing the Countywide IIPP and ensuring compliance with the program, and each agency/department is responsible for developing and implementing its own agency/department-specific IIPP to supplement the Countywide IIPP.

RM performs its responsibility via its Safety Office which is composed of one County Safety Manager, three Safety & Training Officers (STOs), and one Industrial Hygienist. Because of the County's decentralized approach to safety, it has a smaller staff compared to counties with centralized safety operations (e.g., Riverside County has approximately 20 safety personnel within its safety office and San Bernardino County has approximately 14). RM's Safety Office offers services to employees such as ergonomic evaluations and safety training classes (e.g., Back Safety, Defensive Driving), conducts safety inspections of County facilities, and functions as safety consultants to agencies/departments, with the goal of ensuring that the County meets all federal and State safety requirements (i.e., OSHA and Cal/OSHA requirements)⁴⁰.

In addition, the County's Safety and Loss Prevention Manual requires that agencies/departments appoint at least one Departmental Safety Representative (DSR). DSRs are responsible for conducting periodic safety inspections, ensuring that agency/department IIPPs are complete and up to date, and implementing workplace safety programs. Some agencies/departments, such as OC Public Works, have DSRs for each major location/facility. Agencies/Departments with specialized or greater safety concerns (i.e., OC Public Works, Health Care Agency, Sheriff-Coroner Department, and OC Waste and Recycling) take safety one step further by having a full-time safety position (an agency/department STO). All agencies/departments are required to conduct safety inspections per their agency/department IIPP, in addition to those conducted by RM's three STOs as part of RM's Countywide responsibilities⁴¹.

⁴⁰ Federal Occupational Safety and Health Administration (OSHA) and California Occupational Safety and Health Administration (Cal/OSHA)

⁴¹ 190 inspections were conducted in 2010; this count is relatively stable year to year.

RM's Industrial Hygienist investigates and evaluates potential health hazards in the workplace. This includes evaluation of indoor air quality and the presence of potentially hazardous agents such as asbestos. In addition, the Industrial Hygienist makes recommendations to agencies/departments, upon request, on controlling potentially dangerous situations and on proper health and safety procedures.

Program Strengths

The audit team identified several strengths of RM's Countywide IIPP:

- 1) RM's consultative approach to safety inspections promotes cooperation between RM and agencies/departments. To this end, RM schedules its annual safety inspections rather than conducting unplanned inspections. Although unplanned inspections may result in more findings (i.e., more identified violations), the current approach allows RM's STOs to have a more open and productive relationship with agency/department DSRs/STOs.
- 2) The inspections provided by RM's STOs are viewed positively by both agencies/departments and RM. Agencies/departments note the benefit of having an independent STO to conduct inspections, since there may be some internal tension—real or perceived—with having inspections solely conducted by an agency/department DSR/STO. This issue notwithstanding, it is also valuable to have an agency/department STO for some agencies/departments because these STOs have more specialized agency/department knowledge since they are dedicated to addressing safety issues within that agency/department on a full-time basis.
- 3) The STOs in RM are generally regarded as experts in the field of workplace safety, and they maintain good relationships with their assigned agencies/departments.
- 4) RM's Safety Office has a detailed and comprehensive set of policies and procedures, which is in the process of being updated.
- 5) RM has increased its tracking and reporting of safety data in recent years. Prior to this improvement, basic data such as the number of ergonomic evaluations was not easily reportable since this data was not captured electronically. Since the arrival of the current RM Safety Manager in 2009, there has been a concerted effort to build more data tracking and reporting into the program. In addition, RM has developed a report related to Workers' Compensation claims in order to better understand how agencies/departments can prevent occurrences that lead to claims. This report is

provided to the seven agencies/departments with the highest number of Workers' Compensation claims. Each report includes:

- The Incident Rate (based on the overall number of claims), Frequency Rate (based on the number of claims that resulted in lost time) and Severity Rate (based on the total number of lost days)
- A detailed look at claims that resulted in lost time (Lost Time Injury claims), which includes a description of different types of claims and the resulting number of Lost Work Days. For example, one stress claim in the Health Care Agency in FY 10/11 resulted in 334 Lost Work Days
- A comparison and discussion of the data included; for example, a discussion on repetitive motion injuries
- Recommendations for improvement (e.g., establishing a "warm-up" program for personnel who are involved in physical activity as part of their duties)

RM is also currently developing a vehicle accident report for agencies/departments. The report will include the number of accidents by agency/department broken down by type (i.e., "preventable" and "non-preventable"), as well as the leading causes of preventable accidents.

- 6) Both agencies/departments and the audit team identified positive practices of the Industrial Hygienist, including:
- A practical focus on communicating with and educating employees about health and environmental hazards, which reduces employee anxiety about perceived health hazards.
 - The relocation of the Industrial Hygienist position from the Health Care Agency to RM, which keeps the Industrial Hygienist informed about agency/department health and environmental hazard concerns, since RM STOs are frequently out in the field.
 - A practical approach utilized in investigating and resolving health hazard concerns (e.g., exploring lack of ventilation or the presence of pests, rather than immediately ordering costly tests for hazardous substances).

Opportunities for Improvement

Notwithstanding the aforementioned positives, based on its fieldwork, the audit team has identified improvement opportunities that RM should implement to augment its safety program and fulfill its responsibilities.

Safety Compliance and Oversight

Finding 16: RM's current level of oversight and enforcement of safety compliance is not fully consistent with the County Safety and Loss Prevention Manual. (Priority 2)

The following is an excerpt from the County Safety and Loss Prevention Manual, which outlines RM's safety responsibilities:

- A. Direct the Injury and Illness Prevention Program throughout the County
- B. Oversee the Injury and Illness Prevention Program throughout County operations to ensure compliance
- C. Monitor and report compliance and effectiveness of safety programs
- D. Inform the County Executive Officer when corrective action is required
- E. Direct the County Safety Officer in the implementation of the Injury and Illness Prevention Program

Relative to responsibilities B and C listed above, RM primarily monitors agency/department compliance with OSHA and Cal/OSHA requirements by conducting annual safety inspections. Other than these once-per-year inspections, RM does not monitor or enforce compliance with Cal/OSHA requirements, which increases risks to the County. For example, agencies/departments with 10 or more employees must have a written IIPP. In addition to the IIPP, agencies/departments must also have a Fire Prevention Plan, Emergency Evacuation Plan, and a Hazard Communication Plan. Currently, RM does not review agency/department IIPPs or other safety plans to ensure they are comprehensive and in compliance with OSHA and Cal/OSHA requirements. Historically, the Safety Office did conduct such reviews, but in recent years, this practice ceased, since agency/department IIPPs are now well-established. Instead, as part of their safety inspections, RM's STOs focus on evaluating agencies'/departments' implementation of their departmental IIPPs, rather than the content of the IIPPs. Although the IIPPs are relatively static (i.e., the content is not

likely to change), RM may still want to periodically (e.g., every five years) review the content of agency/department IPPs to ensure that information is not outdated.

Also, from an oversight standpoint, RM does not have a good understanding of the status of safety training Countywide (i.e., the number of employees who have completed safety training and the number of employees that still need to complete safety training). RM offers 11 different safety training classes, which cover topics that address many of the most common safety issues (e.g., back safety, ergonomics, and slips/trips/falls)⁴². Although RM tracks attendance at its safety classes, it does not track more detailed information such as the level of the employees attending the classes (e.g., staff specialist, manager, and supervisor). Understanding whether supervisors and managers have completed safety training is important because of their proximity to the front-line, which places them in the best position for recognizing and correcting unsafe practices/behavior. Moreover, there are no required classes at the Countywide level and RM does not have a complete picture of what agencies/departments require of their employees as far as safety training.

While maintaining a good relationship with agencies/departments is important, RM's limited oversight and enforcement of safety compliance does not adhere to County policy. RM should either more completely fulfill its compliance responsibilities or revise County policy so that the focus of RM's Safety Office is as a consultant rather than an enforcement group. If RM chooses to do the latter, it should be emphasized with Department Heads that primary responsibility for safety rests with them, that Department Heads are ultimately accountable for safety violations, and that the Safety Office functions only as safety consultants. Even if RM maintains its current level of oversight activities, it should reevaluate its decision not to periodically review agency/department IPPs and other safety plans, and it should consider compiling more detailed training attendance data. These activities will provide the Board of Supervisors and State/federal regulators with added reassurance that there is an adequate level of safety oversight—even if there is no enforcement—from a central group.

Recommendation 16: RM should either fulfill its compliance enforcement responsibilities or revise the County Safety and Loss Prevention Manual.

⁴² Some agencies/departments provide their own safety training classes, as well.

Reporting and Statistics

Finding 17: There is little reporting on the safety-related aspects of the RM's Liability Claims program, and the practice of root cause analysis for both the Liability and Workers' Compensation programs has not been established. (Priority 2)

Effective performance management through the use of metrics promotes accountability over resources and ensures that activities are contributing to an organization's goals. As discussed previously, in recent years RM has increased its effort to provide agencies/departments with important safety-related data to help them understand Workers' Compensation costs. However, there has been less focus to date on the Liability Claims program related to safety. Although RM is in the process of developing a vehicle accident report that will identify preventable and non-preventable accidents to assist agencies/departments, this data is currently the only safety-related metrics and statistics developed by RM related to the Liability Claims program. In conjunction with the Liability Claims program staff, the Safety Office should identify additional opportunities to provide agencies/departments with safety-related metrics that will help the County decrease its liabilities. For example, a report that identifies slips/trips/falls by the public when using County facilities will help agencies/departments better understand how to prevent future incidents. RM may also want to look into working with the Vehicle Fleet function in OC Public Works to develop a formal, comprehensive fleet safety program, since vehicle-related losses make up over 24% of all County Liability claims from FY 99/00 to FY 10/11 and almost 10% of the costs. Fleet safety programs are fairly common among city governments and recommended by the California Department of Industrial Relations' Commission on Health and Safety and Workers' Compensation.

Also, for both the Workers' Compensation and the Liability Claims programs, RM can provide greater value and support to agencies/departments by developing expertise in conducting Root Cause Analyses. As noted earlier in this report, a Root Cause Analysis (RCA) is a management tool that identifies changes that can be made to existing processes, equipment or approaches—or the development of new ones—that will reduce the risk of recurrence. It examines incidents/claims to determine what happened, why it happened, what can be done to prevent it from happening again, and how to measure the efficacy of changes in processes/procedures/policies in preventing future incidents. Without RCA, recommendations for preventing future incidents are often limited to retraining or reminders about safety, which have limited effectiveness.

RCA examines an incident for a more well-defined and precise cause. For example, rather than attributing an incident to “operator error,” analysts might look at whether a procedure is confusing to an operator and if so, what specifically about the procedure is confusing. Developing expertise in RCA will allow RM to make more precise, value-added recommendations to agencies/departments, and, as a next step, RM can help educate agencies/departments in how to conduct their own RCAs. Some agencies/departments, such as OCSD, are beginning to look more closely at their Workers’ Compensation claims to identify ways to prevent injuries and illnesses from occurring at the workplace, and it would be beneficial for RM and OCSD to collaborate on effective RCA techniques.

Recommendation 17: RM should a) develop additional metrics to report safety-related Liability claims data, b) consider working with OC Public Works Fleet Division to develop a formal Countywide fleet safety program, and c) establish the practice of Root Cause Analysis, in conjunction with the Liability Claims and Workers’ Compensation programs.

Communication

Finding 18: There is little communication of safety information from RM to line staff throughout the County. (Priority 3)

Establishing a Countywide culture that emphasizes workplace safety is important for preventing employee work-related injuries and illnesses. While agencies/departments can choose to do their own safety-related communications, RM, as the central safety program, should lead the effort to develop such a culture. In the past, RM distributed regular safety newsletters, but in recent months, this method of communication has stalled. RM’s County Safety Manager is currently revamping the newsletter. In addition, RM may want to take safety communications a step further and institute a safety campaign (e.g., Countywide Safety Month or Safety Week), during which there are more safety awareness communications and education.

Recommendation 18: RM should reinstitute regular safety-related communications to employees Countywide and consider creating a Countywide safety campaign.

Americans with Disabilities Act (ADA) Title II Compliance

The Americans with Disabilities Act (ADA), signed into law in 1990, prohibits discrimination against persons with disabilities⁴³. Title II of the ADA⁴⁴ (ADA II) prohibits all state and local governmental agencies from discrimination in providing public services and from excluding participation in or denying benefits of programs, services or activities to persons with disabilities⁴⁵.

When the ADA was signed into law, both ADA I and II responsibilities at the County were assigned to the Human Resources Department's (HRD's) Equal Employment Opportunity (EEO) Office⁴⁶. In June 1994, the Board of Supervisors adopted a policy to ensure that individuals with disabilities can fully participate in and benefit from the public services offered by the County of Orange. As a result of the policy, a County ADA II Coordinator was established and ADA II Coordinators were designated for each agency/department. Due to the high ADA I workload and the differences in focus between ADA I and II (i.e., employment vs. accessibility), responsibility for ADA II was subsequently transferred to RM; ADA I responsibilities remained in HRD.

Agency/Department ADA II Coordinators receive and respond to complaints, concerns, or recommendations regarding public access to their agencies'/departments' services, programs, facilities, or activities. The County ADA II Coordinator in RM may also receive complaints, but they are first forwarded to the respective agency/department ADA II Coordinator. The County coordinator has corporate oversight over departmental compliance with ADA II and supports agencies/departments in their efforts. As part of its oversight responsibilities, the County coordinator role is required to maintain Countywide records of all complaints and resolutions, as stated in County policy. This position also investigates complaints from the public if the complaint cannot be resolved first at the agency/department level and is copied on any ADA II

⁴³ An individual is considered to have a "disability" if s/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

⁴⁴ The law is divided into five titles: Title I covers employment discrimination; Title II prohibits discrimination in the provision of public services; Title III covers public accommodations offering goods or services to the general public; Title IV requires that telecommunications companies provide functionally equivalent services for consumers with disabilities; and Title V contains various miscellaneous provisions.

⁴⁵ A state or local government must make reasonable modifications in its policies, practices, and procedures when necessary to afford services and programs to persons with disabilities, unless it can demonstrate that the modifications would fundamentally alter the nature of the services or programs provided.

⁴⁶ At the time, the office was known as the Affirmative Action Office.

issues identified by RM safety staff during their pre-occupancy inspections⁴⁷. In addition, although amendments to the ADA are infrequent, the County coordinator supports agencies/departments when these amendments require modifications to existing County facilities, programs, and procedures. For example, in 2010, the ADA was amended to require the County to evaluate and make changes to services and facilities such as parks and playgrounds. The County coordinator assisted affected agencies/departments, such as OC Parks, with the interpretation of the amendment, as well as implementing necessary changes.

Program Strengths

Based on a limited review of ADA Title II-related complaint documentation, it appears that RM has been responsive to questions from agencies/departments regarding ADA Title II issues and to complaints it receives from the public. In addition, the list of agency/department ADA II Coordinators is readily available on both the County Internet and Intranet sites, as are complaint forms and contact information.

Opportunities for Improvement

Finding 19: RM is unclear about its role related to ADA Title II, and, as a result, there is no central Countywide oversight of compliance with this law. RM also does not fulfill its recordkeeping responsibilities established in its ADA Title II Complaint Procedure. (Priority 2)

Currently, RM's role and responsibilities in the area of ADA Title II Compliance is unclear. To illustrate, RM states on its Internet and Intranet websites that its County ADA II Coordinator has "corporate oversight relative to Agency/Department implementation of programs to support compliance with ADA II," but the Risk Manager indicated that he understood RM's role to be solely coordination, rather than oversight. In a decentralized environment such as the County of Orange, it is important to have a central group that monitors compliance with State and/or federal regulations. Although RM supports agencies/departments in responding to their requests for assistance with complaints, it could be doing more to ensure that the County is in

⁴⁷ RM staff inspects new County leased or purchased facilities for safety and will look for any obvious ADA II issues during the inspection; however, OC Public Works, as the facilities lead in the County, has primary responsibility for ADA II compliance for new facilities.

compliance with ADA II. The ruling in the appeals case of *Pierce v. County of Orange*⁴⁸ earlier this year is a reminder that the County should remain vigilant and be proactive in identifying and correcting potential violations of ADA II.

Currently, RM's County ADA II Coordinator does not conduct any inspections of County facilities, programs, or activities to ensure compliance. Some agencies/departments take it upon themselves to conduct inspections, often as an add-on to their safety inspection responsibilities, but RM does not take a proactive role in identifying and addressing compliance issues. For agencies/departments that do include ADA II compliance as part of their safety inspections or for those that have separate routine ADA II inspections, there is less concern about the lack of RM oversight, but some agencies/departments may not be conducting periodic reviews for compliance. Also, since agencies/departments do not routinely forward the results of their inspections, RM does not have an understanding of the number and types of ADA II issues identified during these inspections.

Another element of RM's ADA II oversight role is maintaining Countywide records. The County ADA Title II Complaint Procedure policy states that "Countywide records of all complaints and resolutions will be maintained by the County ADA II Coordinator who also will be available to assist the Department ADA II Coordinators when necessary." RM, however, is not adhering to this policy, as the County ADA Title II Coordinator does not maintain a complete record of complaints and resolutions received Countywide. Currently, the only records maintained by the County ADA Title II Coordinator in RM are hard copy files related to select complaints (e.g., those that require more investigation). Other complaints received via email are simply maintained in the County ADA II Coordinator's email folders. There is also no electronic log or database of Countywide complaints and resolutions, so it is difficult for RM to ascertain how many complaints have been received Countywide, by which agencies/departments, the types of complaints, and the resolution status for each. As part of its oversight role, RM should routinely reach out to agency/department ADA II Coordinators to gather data on complaints they have received and begin tracking them more closely to ensure that agencies/departments do not fail to address any valid complaints. RM should also request that agencies/departments notify RM of complaints to help ensure that the recordkeeping is complete and up-to-date. These improvements will help the County avoid costly penalties that may have otherwise

⁴⁸ As part of the ruling in the appeals case of *Pierce v. County of Orange*, in June 2011, a federal judge ordered the County to make its programs/services accessible to disabled inmates and make its facilities compliant with the federal Americans with Disabilities Act.

been incurred (e.g., if litigation is pursued by a complainant) due to the County's failure to resolve legitimate complaints. Tracking data across agencies/departments may also help RM identify issues encountered by one agency/department that other agencies/departments may want to preemptively address.

Recommendation 19: RM should a) clarify its ADA Title II role to the Board and agencies/departments, and b) fulfill its recordkeeping role by contacting agencies/departments on a quarterly basis to obtain data on all complaints and resolutions and creating an electronic log of all complaints.

Return to Work Program

“Return to work” is the process of helping employees get back to work as soon as possible after an injury or illness, whether or not the injury/illness occurred at work. The benefits of employer Return to Work (RTW) programs are widely acknowledged by industry experts and organizations that have implemented such programs. For employers, RTW programs can help reduce Workers’ Compensation costs, reduce lost work days, retain experienced employees, and improve morale. For employees, RTW programs help maintain income/benefits, provide job security, maintain a connection with the workplace, and decrease recovery time.

There are many RTW strategies that employers can implement, such as early and regular communication with employees and re-training. One of the most common RTW strategies is placing employees in transitional duty assignments to facilitate the recovery process. Types of transitional duty assignments include *part-time work* (for employees whose physicians have not released them for full-time work but can otherwise perform their current duties), *modified work* (i.e., making modifications to an employee’s current job), and *alternative work* (i.e., placing the employee in a work assignment that is different than the employee’s regular job). Transitional duty assignments are meant to be temporary. For employees with permanent restrictions⁴⁹, RTW options include new jobs (e.g., permanently placing the employee in a different vacant position) or permanent accommodations (i.e., making permanent modifications to an employee’s current job). At the County of Orange, permanent disabilities/restrictions are handled by the Human Resources Department’s (HRD) Equal Employment Opportunity (EEO) office.

While RTW programs are typically established to complement Workers’ Compensation programs, it is increasingly common for organizations to develop RTW programs that also include employees with non-occupational injuries/illnesses (i.e., injuries and illnesses not caused by employment), since some similar benefits are realized⁵⁰. Industry experts indicate that integration of both occupational and non-occupational programs improves employee morale⁵¹.

⁴⁹ A physician designation of a patient/employee as reaching “maximum medical improvement” is the point where an injured employee’s condition is not likely to improve significantly, even with further medical treatment.

⁵⁰ However, non-occupational RTW programs do not realize cost savings from reduced claim costs/payments.

⁵¹ Disability Management for Non-Occupational Injuries/Illnesses; Rich Pimentel, Milt Wright & Associates; 2007.

County of Orange RTW Program

In 2009, RM took the lead in developing a Countywide RTW program. Although formal and informal RTW programs already existed in some agencies/departments, there had not been a previous effort to create a Countywide program. RM designated a County RTW Manager to develop the policy and design the program. In December 2010, RM finalized the Countywide RTW policy, which was presented to Department Heads and went into effect in January 2011.

RM has stated that the Countywide RTW program is one of its top priorities. By creating a formal Countywide program, RM aims to provide more consistency across agencies/departments, some of which have their own informal RTW programs. RM's first step in creating a comprehensive program was the development and implementation of a transitional duty program focused on placing employees with injuries/illnesses—regardless of the origin of injury—into alternative work assignments. It is important to note that the Countywide program is named the "Return to Work/Transitional Duty Program," and thus, will be referred to as such in this report, but all current efforts are focused on alternative work assignments⁵².

Program Strengths

The RTW/Transitional Duty Program elements and policy developed by RM reflect a number of industry best practices. The following are key strengths of the program:

- **Establishment of a RTW Committee.** When RM launched the Countywide RTW/Transitional Duty policy, it asked agencies/departments to designate representatives to serve on a RTW Committee. The establishment of such a committee allows agencies/departments to share experiences and learn from other agencies/departments who have implemented the program.
- **Local level control.** Successful RTW programs are executed at the "local" or agency/department level⁵³. RM recognizes that agencies/departments have unique operations and business needs and has built flexibility into the Countywide program to allow agencies/departments to develop the details of their RTW procedures.

⁵² As mentioned earlier in this section of the audit report, there are other types of transitional duty, such as part-time work and modified work.

⁵³ The Incentive/Disincentive Disability Management Connection, Richard Pimentel, Milt Wright & Associates

- **Close-ended time frames.** The current RTW/Transitional Duty program policy requires that transitional duty assignments are limited to 90 days in duration. In specific cases, this term can be extended for up to an additional 90 days, with the approval of the Agency/Department Head, the agency/department human resources manager, and the County RTW Manager. Transitional duty assignments that do not have a limited duration can result in negative consequences for an organization; leaving employees in transitional duty assignments indefinitely can create frustration for supervisors, co-workers, and the injured/ill employees. For instance, co-workers may be frustrated by the inequity of an employee who is working in a less productive assignment but receiving full salary.
- **Recognition of the important role of the supervisor.** Supervisors are critical to the success of RTW programs due to their proximity to employees and the work environment. Typically, supervisors are the first to know when an employee has been injured or is ill and whether the injury/illness occurred in or outside the workplace. Because the benefits of RTW programs are greatest when employees can be accommodated quickly and absences are minimized, the role of the supervisor has a significant impact on the employer's ability to achieve desired program outcomes. RM has recognized the need to educate supervisors about the RTW/Transitional Duty program and has encouraged agency/department RTW representatives to conduct training for their supervisors.

Opportunities for Improvement

Alongside the aforementioned strengths of the Countywide RTW program, the audit team also identified several deficiencies, which are discussed in the findings and recommendations below.⁵⁴

Program Development and Implementation

Given that the Countywide RTW/Transitional Duty program is relatively new, the audit team evaluated RM's development and implementation of the program, identifying several missteps.

⁵⁴In addition to these findings and recommendations below, there are additional recommendations for the RTW program included in Appendix G of this report.

Finding 20: RM's minimal engagement with agencies/departments prior to the RTW program launch has resulted in implementation inefficiencies and agency/department confusion and frustration. (Priority 1)

As a first step, in December 2010, the County Executive Office distributed a memo, along with the new Countywide RTW/Transitional Duty Program policy, suggesting that "all Agency/Departments begin to implement the Return to Work Transitional Duty Program" developed by RM. The memo also asked agencies/departments to identify representatives for the RTW Committee. The RTW Committee convened in January 2011, led by the County RTW Manager, with representation from nine initial agencies/departments. According to RM, its role in the committee is to provide guidance and feedback to agencies/departments in their implementation of the program. However, RM has encountered some challenges fulfilling this role, in part because of its limited engagement with agencies/departments that have experience with developing and implementing RTW programs.

In a decentralized environment, the implementation of a new program requires thorough planning and agency/department buy-in. During audit interviews, several agencies/departments described the Countywide RTW program as being developed "in a vacuum." While RM did ask several agencies/departments (HRD, County Counsel, County Executive Office, and Social Services Agency) and labor organizations to review the program policy document prior to launch, other important components of the program such as training materials, tracking tools, and performance metrics were developed and presented to the RTW Committee without input from agencies/departments that have RTW experience/expertise. For example, SSA's input was only solicited for the initial policy review; RM did not solicit the Agency's input regarding other program components such as performance measurement, which would have been valuable since SSA has been measuring its RTW performance for some time. Instead, at a RTW Committee meeting, RM presented the metrics that it had developed, which, as mentioned previously, were flawed.

In addition, some key agencies/departments with established RTW practices were insufficiently engaged or not engaged at all. For example, neither Probation nor OC Waste and Recycling were consulted, even though both have a significant amount of experience with RTW/Transitional Duty. Similarly, the Sheriff-Coroner Department (OCSD), the largest agency/department in terms of the number of Workers' Compensation claims and costs, was not consulted about its RTW/Transitional Duty practices. The Health Care Agency's Employee Health Services (HCA/EHS) was also

not sufficiently included in the planning process, although HCA/EHS plays a critical role in approving an employee's return to work from a medical standpoint.⁵⁵ Similarly, County Counsel was not consulted after an initial review of policy language, which resulted in RM providing some RTW guidance to agencies/departments that was not reviewed for legal soundness (this will be discussed in the finding that follows).

As a result, one of the major frustrations experienced by agencies/departments, particularly those with RTW experience, is RM's use of RTW Committee meetings as the forum to develop major program components, which is highly inefficient, as several of the tools, templates and procedures developed and promulgated by RM contain fundamental discrepancies, flaws, and other problems that are time-consuming to resolve in a large committee setting. For example, at one point, RM believed that HCA/EHS tracked data that could be useful for measuring program performance and asked that HCA/EHS present its data at a committee meeting. However, after a lengthy discussion, it was determined that the HCA/EHS data could not be used for performance measurement purposes.

Also, given that the Committee meets only once a month, it has taken several months to fully address such issues. For example, the topic of program efficiency metrics was first discussed at the May 2011 committee meeting, yet by the September 2011 meeting, it was still unclear how the program will be measured for employees returning to work following non-occupational injuries/illnesses. In this case, seeking the input of SSA, which has well-established performance metrics for measuring the efficiency and effectiveness of its own RTW/Transitional Duty program⁵⁶, prior to program launch, would have been a more efficient approach.

Recommendation 20: In the short-term, RM should work with a subcommittee of agencies/departments (e.g., SSA, Probation, OCSD) apart from the full RTW Committee to develop/revise/create components of the program prior to presenting them at RTW Committee meetings, and then dissolve this subcommittee once key elements of the program have been developed; RM should continue to tap RTW Committee members to lead discussions at meetings in order to gain agency/department participation and buy-in.

⁵⁵ Employees are required to be seen by EHS before returning to work if 1) they have been absent from work for 14 or more days, 2) have work restrictions that are not related to an accepted Workers' Compensation claim, or 3) have had surgery or have been hospitalized and do not have an accepted Workers' Compensation claim.

⁵⁶ SSA's program is called the Transitional Work Assignment (TWA) program.

Finding 21: Other than a review of the Countywide RTW/Transitional Duty policy document language, County Counsel was not included in the development of program details and the RTW Committee. As a result, there are legal considerations that are missing from program documents (e.g., presentations, training materials). (Priority 1)

There are numerous State and federal regulations with RTW implications, including the California Fair Employment and Housing Act (FEHA), the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the California Family Rights Act (CFRA), the Health Insurance Portability and Accountability Act (HIPAA), and labor codes regarding Workers' Compensation. Employers must not only navigate these individual statutes but must also understand where and how they overlap. One such example is the definition of a disability under the federal ADA and under the California FEHA. The ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities, while the California FEHA⁵⁷ has a much broader definition, resulting in more individuals qualifying as having a disability. Also, contrary to the interpretation of the ADA, FEHA has been interpreted to include temporary disabilities, and therefore, a broken arm, a strained back, or significant stress could all qualify as protected disabilities in California⁵⁸. Another nuance that employers must understand is that FEHA requires that accommodations are explored when an employer is made aware of a disability—even if the employee has not asked to be accommodated. While some agencies/departments have a substantive amount of experience with employee injuries/illnesses and disability situations, there may be other agencies/departments that need more guidance, and because disability cases are often unique, County Counsel's involvement may be necessary.

As discussed earlier in this section, subsequent to County Counsel's review of the language of the RTW/Transitional Duty policy document prior to the launch of the program, it has not been consulted by RM. There are several RTW/Transitional Duty program details/components that should be reviewed by County Counsel. One such component is the guidance currently given by RM that agencies/departments provide incentives to their supervisors for returning employees to work. In June 2011, RM presented the RTW Committee with a list of incentives aimed at rewarding supervisors for helping injured/ill employees return to work, including the suggestion that supervisors should make RTW a formal performance goal. Unless these incentives are

⁵⁷ AB 2222, February 2000.

⁵⁸ Expansion of California's Disability Discrimination Laws, White Paper, Renée D. Wasserman and Connie M. Teevan, February 2001.

structured carefully and supervisors thoroughly educated, there is a risk of violating laws that protect employee privacy and those that allow employees job-protected leave. A worst case scenario would be for a supervisor to pressure an employee to return to work in order to achieve his or her RTW performance goal.

Another issue that requires County Counsel input is the lack of consistency in certain aspects of the program. As mentioned previously, the Countywide RTW/Transitional Duty policy limits the duration of work assignments to 90 days, with a potential 90 day extension. Currently, RM allows agencies/departments the flexibility of deciding whether they want to offer the 90 day extension as part of agency/department policy. This may be problematic as employees will be treated differently across the County, with an employee in one agency/department allowed an extension per policy, while a different agency/department may not permit extensions at all; such a practice could be construed as inequitable and discriminatory.

A third example where County Counsel's input should be sought relates to the California FEHA and employers' obligation to engage employees with a disability in an "interactive process", which is a dialogue between an employer and the employee with a disability to determine whether there is a reasonable accommodation that would enable the individual to perform the essential functions of his/her job. While disability laws generally do not require reasonable accommodations of temporary disabilities, the California FEHA's broader definition of a disability means that there may be instances where a seemingly temporary injury/illness may actually qualify as a permanent disability. This complexity further supports the need to have County Counsel actively engaged in the RTW program. Also, although RM currently does not require the interactive process to be documented, County Counsel's guidance should be solicited on the matter.

Recommendation 21: RM should a) have County Counsel join the RTW Committee and the smaller working group to ensure that the County does not expose itself to legal risks as it implements the Countywide RTW/Transitional Duty program, b) work with County Counsel to review legal issues related to the program that have been developed to-date, c) revise the Countywide RTW/Transitional Duty program policy to include guidance on when to involve County Counsel in RTW/Transitional Duty situations, and d) ask County Counsel to conduct training on the legal aspects of the RTW/Transitional Duty program (i.e., relevant labor and disability laws).

Note: Prior to the release of this report, the audit team discussed this issue with RM and RM has since included County Counsel in its RTW Committee.

Program Policies and Procedures

The audit team examined various elements of the Countywide RTW/Transitional Duty program policies and procedures, resulting in the following findings.

Finding 22: The Countywide RTW/Transitional Duty policy is vague about the differences between occupational and non-occupational injuries/illnesses and between what is mandatory and what is simply a “guideline.” (Priority 2)

An effective RTW policy should clearly articulate the details of the program to its employees, in order to maintain consistency across the organization. The audit team identified two opportunities to improve the clarity of the policy.

Occupational vs. Non-Occupational Injuries/Illnesses

The first improvement opportunity is to more clearly distinguish between occupational and non-occupational injuries/illnesses in the policy. Occupational RTW and non-occupational RTW have significant differences that must be understood by managers, supervisors, and agency/department RTW staff; the Countywide RTW policy should reflect such differences. One major difference is the County’s ability to encourage employee participation in the program. For occupational situations, there is leverage built into the Workers’ Compensation system to motivate employees to cooperate in the process. However, for non-occupational injuries, an employee is not obligated to accept a transitional duty assignment, per FMLA. Yet, the current Countywide RTW/Transitional Duty policy does not make this distinction, and instead makes the broad statement: “an employee is not obligated to return to a transitional duty assignment under FMLA. However, if an employee refuses the RTW assignment or refuses to sign the Transitional Duty Agreement, he/she may not be eligible for Workers’ Compensation Disability Benefits.” This statement should be narrowed to state that only employees receiving Workers’ Compensation lost time benefits whose work restrictions can be accommodated in a transitional duty assignment will have their benefits suspended if they refuse the assignment.

Another important difference that should be made explicit in the County RTW policy is the difference in procedures related to obtaining employee medical information. The current policy states that “Agency/Department RTW Staff shall require the attending physician to provide them with medical documentation relative to work restrictions in

order to verify that an employee is able to perform all temporary transitional duty tasks.” This statement ignores existing protocols for obtaining and distributing work restriction information: in occupational injury/illness situations where a Workers’ Compensation claim has been accepted, RM’s Third Party Claims Administrator (York)—as part of its claims procedures—is responsible for obtaining employee work restriction information from physicians; in non-occupational injury/illness situations, employees must be seen by HCA/EHS before returning to work⁵⁹, and HCA/EHS typically obtains work restriction information from an employee’s treating physician.

Finally, it is important to delineate in the Countywide RTW/Transitional Duty policy the key difference in RTW benefits between occupational and non-occupational injuries/illnesses so there is no confusion among agencies/departments. As mentioned previously, in addition to an increased ability to retain experienced employees and improve employee morale, one of the benefits of placing employees with occupational injuries/illnesses in RTW/Transitional Duty assignments is a significant reduction in Workers’ Compensation costs paid by the County⁶⁰. Placing employees with non-occupational injuries/illnesses, however, does not reduce direct costs, as employees who are taking time off for non-occupational injuries/illnesses are using earned Annual Leave or receiving disability leave payments that are paid by the County’s insurance company.

Mandatory vs. Recommended Policy Elements

In addition to opportunities to clarify the distinction between occupational and non-occupational injury/illness situations in the current Countywide RTW/Transitional Duty policy, there is also a lack of clarity between what the policy requires (i.e., mandates) and what is merely a guideline (i.e., recommendation); distinguishing between the two is important to ensure consistency across the County for certain key aspects of the program. An example of a policy requirement/guideline gray area is permitting extensions of RTW/Transitional Duty work assignments. As mentioned previously, the County may want to be consistent with regard to allowing agencies/departments to grant extensions, and if so, this should be stipulated in the Countywide RTW/Transitional Duty policy. Another gray area relates to the interactive process. The current policy states: “Due to the level of importance, Agencies/Departments are

⁵⁹ Before returning to work, employees who either 1) have work restrictions, 2) have been hospitalized or have had surgery, 3) have been absent for more than 14 days, or 4) have a Workers’ Compensation claim that has not been accepted must be seen by Employee Health Services prior to returning to work.

⁶⁰ Savings have been reported as high as 54% of Workers’ Compensation costs (Constructing Return to Work Programs: Building for Better Returns, PERI Symposium, December 2003).

advised to seek out the employee and offer to engage in the interactive process as it relates to return to work opportunities.” Since the interactive process is required under the California FEHA for situations that involve disabled employees, RM should work with County Counsel to determine in which situations the interactive process should be a requirement.

Recommendation 22: RM should a) revise the Countywide RTW/Transitional Duty policy by creating two distinct sections – one for employees with occupational (Workers’ Compensation) injuries/illnesses and one for employees with non-occupational injuries/illnesses, and b) work with County Counsel to determine what elements of the policy should be required/mandated and make this distinction clear in a revised policy.

Finding 23: RM’s current guidance to agencies/departments to allow supervisors to directly contact an employee’s physician to obtain work restrictions could lead to problematic situations. (Priority 1)

In its training materials developed for agency/department supervisors, RM states the following regarding the completion of work status forms that document an employee’s work restrictions: “If the physician does not address return-to-work then it may be necessary to contact the assistant or manager of the physician’s practice to request completion of the form. For Occupational injuries follow the existing Workers’ Compensation instructions and for Non Occupational injuries/illnesses you may have to contact HCA Employee Health Services in order to obtain this information.” However, if misconstrued/misapplied, this approach could result in the following risks: one risk is the potential violation of HIPAA⁶¹, if a physician inadvertently divulges protected medical information; another risk is that employees may perceive that they are being discriminated against because of a medical condition, which can lead to liability costs for the County.

Although RM has instructed supervisors (via RM-developed training materials) to only ask for work restriction information—not protected medical information—RM should

⁶¹ The Health Insurance Portability and Accountability Act (HIPAA) protects any and all health-related information gathered about employees, including, but not limited to medical diagnoses and conditions, information covered under the new genetic privacy law, medical treatments, prescriptions, health insurance information and psychiatric information.

consider revising the current process to explicitly exclude supervisors from directly contacting physicians' offices because of these risks. Instead, this responsibility should be assigned to agency/department RTW staff (typically HR staff) or HCA/EHS staff in non-occupational injury/illness situations; and RM's Third Party Claims Administrator (York) in occupational injury/illness situations.

Recommendation 23: RM should consider requiring that work restrictions be obtained from employees' physicians only via agency/department RTW staff (or designated personnel) for occupational RTW cases, or through HCA/Employee Health Services for all non-occupational RTW cases.

Finding 24: The development of Transitional Duty work assignments requires line supervisors to be able to identify all physical aspects of a job – expertise that line supervisors typically do not possess. (Priority 1)

In its training presentation to supervisors, RM directs supervisors to create job banks, which are lists of jobs that can potentially serve as RTW/Transitional Duty work assignments. Because supervisors currently may not have the expertise to assess a job's physical requirements comprehensively or in sufficient detail, having them develop job banks may result in the placement of employees into RTW/Transitional Duty work assignments that are not suitable for their work restrictions, increasing the risk of injury or re-injury. For example, when preparing a job description for inclusion in a job bank, physical aspects such as neck flexion, neck extension, neck rotation, degree of bending, balancing, stairs/ramps, lifting (amount of weight), pulling, pushing, talking/hearing, tasting/smelling, and hand/eye coordination all need to be considered and incorporated.

In order to ensure the adequate preparation of job descriptions for inclusion in job banks, RM should direct agencies/departments to identify and educate specific staff (e.g., Human Resources staff) that will be responsible for this task. In SSA, for example, Human Resources' RTW staff, who have developed the necessary skill set, conduct job analyses. Supervisors identify potential jobs for inclusion in job banks, but it is RTW staff that analyzes each job to understand detailed physical demands. For agencies/departments that do not currently have the expertise to conduct job analyses, RM should provide training to help the agencies/departments develop this skill set.

Recommendation 24: RM should a) request that agencies/departments identify specific staff that will conduct job analyses for the development of job banks, b) provide training on how to conduct a job analysis, as needed, c) require that all jobs listed in job banks first undergo a job analysis, and d) modify appropriate policies and training materials to reflect these new requirements.

Performance Measurement

Measuring the performance of a new program is necessary for many reasons; doing so enables an organization to determine whether it is reaching program goals, whether the results justify program costs, and what improvements should be made, if any. The audit team has identified opportunities to improve RM's current performance measurement plan for its RTW/Transitional Duty Program.

Finding 25: The current metrics identified by RM do not fully capture the efficiency and effectiveness of the Countywide RTW/Transitional Duty program. (Priority 2)

To measure the performance of the Countywide RTW/Transitional Duty program, RM identified two metrics that aim to measure the program's efficiency (i.e., the County's ability to place employees in transitional duty assignments):

- Percentage of Occupational Claims with RTW Transitional Duty
- Percentage of Non-Occupational Claims⁶² with RTW Transitional Duty

Efficiency Metrics

With regard to the efficiency metrics above, "Percentage of Occupational Claims with RTW Transitional Duty" should be refined so that it measures the County's efficiency in placing only eligible employees (i.e., employees with an occupational claim where a physician has released the employee to work with restrictions) into transitional duty work assignments, which is more accurate than using all active occupational claims⁶³. On the non-occupational side, because there are no claims involved, RM should measure the efficiency of placing identified employees (i.e., employees who have been

⁶² See earlier discussion related to non-occupational "claims"

⁶³ Current metric: "Percentage of Occupational Claims with RTW Transitional Duty" = (Total Number of Occupational Claims with RTW/Transitional Duty ÷ Total Number of Active Claims Excluding Permanent Disability Claims) * 100

educated on the program and have obtained work restrictions from their physicians) into transitional duty assignments. Although this does not capture all employees who have experienced non-occupational injury/illnesses, this is a satisfactory proxy for measuring the County's ability to accommodate these employees. This also addresses the concerns of agencies/departments that it is difficult to identify all non-occupational injuries/illnesses, since supervisors and Human Resources may not be aware that an employee has been injured or is ill.

Effectiveness Metrics

In addition to measuring efficiency, it is also important to measure program effectiveness. RM should examine the loss of productivity from employees who do not participate in the RTW/Transitional Duty program by measuring and reporting on the number of lost workdays expressed in terms of FTEs, as well as the Transitional Workdays Percentage (i.e., the percentage of workdays that are no longer "lost" because the employee has returned to work on transitional duty)⁶⁴. RM should also track the percentage of employees who did not sustain injuries/re-injuries during the assignment and the percentage of employees who returned to and remained in their regular jobs following the assignment.

Qualitative Performance Measurement

Qualitative performance measurement (i.e., the use of text description rather than numbers) will also enable RM to better understand how to improve the Countywide RTW/Transitional Duty program. For all the unsuccessful attempts at placing an employee in a transitional duty work assignment, RM should aim to understand the employee's reasons for non-participation, and for all employees who do not successfully complete their assignment or do not return to their regular duties following the assignment, RM should aim to understand these reasons, as well.

It is important to acknowledge that measuring the performance of the RTW/Transitional Duty program will require some diligence on the part of agencies/departments. Most of the data that is required to calculate metrics are not readily accessible from a database. For non-occupational injuries/illnesses, there are no claims involved and there is no standard database that tracks this information. While RM has asked agencies/departments to manually track this information, it should work

⁶⁴ National Business Group on Health: Employer Measures of Productivity, Absence and Quality (EMPAQ)

with HCA/EHS to determine how HCA/EHS can modify its current data tracking process to capture information for employees with non-occupational injuries/illnesses. On the occupational side, the Workers' Compensation third party claims administrator (York) currently captures data on claimants participating in "modified duty" but it does not designate which claimants are in a transitional duty assignment (vs. in their regular jobs with some accommodations). RM should explore the possibility of having York break out transitional duty work assignments in its "modified duty" data.

Finally, although the near-term focus is on employees who have been placed in transitional duty work assignments, RM should eventually have agencies/departments track other types of accommodations, such as part-time and modified work.

Recommendation 25: RM should a) refine existing program efficiency metrics, b) add program effectiveness metrics, c) begin measuring qualitative performance, d) work with HCA/EHS to determine the feasibility of capturing data to aid in the tracking of employees with non-occupational injuries/illnesses in transitional duty assignments, and e) work with York to evaluate its ability to designate Workers' Compensation claims with transitional duty work assignments.

Program Placement

Due to the number of issues cited in this section of the report, the audit team researched alternative organizational models for the placement of the County's RTW program. RTW is complex and requires an in-depth understanding of disability leave laws, as well as practical experience with human resources issues. Indeed, the RTW programs of many other organizations (public or private)—particularly those that have RTW programs that apply to non-occupational injuries/illnesses—reside in the human resources function because of the nexus between human resources and non-occupational RTW programs. For example, in its research of nine other California counties with RTW programs, the audit team found that:

- Two have RTW programs located in human resources functions that are organizationally distinct from risk management (San Bernardino, San Francisco)
- Four have RTW programs administered by risk management groups within human resources (Riverside, San Diego, Sacramento, San Mateo)
- Two have RTW programs in risk management functions organizationally distinct from human resources (Santa Barbara, Los Angeles)

- One has an occupational RTW program administered by risk management and a non-occupational RTW program administered by human resources (Alameda)

The Countywide RTW/Transitional Duty program is currently a RM responsibility; the Human Resources Department (HRD) only plays a role when an injury/illness becomes a permanent disability. A major reason that RM decided to incorporate the program within its operation is that the Workers' Compensation Program is in RM, and RTW programs are a common strategy for reducing Workers' Compensation costs. For employees with occupational injuries/illness, RTW was already a routine part of the Workers' Compensation process for employees receiving benefits, even prior to the launch of the Countywide RTW/Transitional Duty Program. RM's Worker's Compensation staff oversees the day-to-day activities related to RTW, in conjunction with the third party administrator (York). For non-occupational injuries/illnesses, however, there was no central management of RTW activities prior to the launch of the Countywide program.

As previously discussed, non-occupational injury/illness situations differ significantly from occupational situations. The process of returning an employee with a non-occupational injury/illness to work is more directly related to human resources activities than risk management (Workers' Compensation) activities. Returning an employee to work can be a complex situation that involves a host of issues including leaves of absences, permanent disability accommodations, employee benefits (e.g., use of annual leave, short-term and long-term disability insurance), disability retirement, employee discipline, training, and classification—all of which are human resources issues.

The number and gravity of concerns identified earlier in this section demand attention, regardless of the placement of the RTW program, though movement of the program to HRD may enhance the likelihood that the aforementioned issues are satisfactorily addressed, especially in the area of non-occupational injuries/illnesses. Due to the fact that RM has already spent significant time developing the RTW program, the audit team is not including a formal recommendation to move the program to HRD. However, absent significant progress in correcting the deficiencies identified in this report, program relocation should be strongly considered by the CEO's Office.

Enterprise Risk Management

The discussion of Enterprise Risk Management (ERM) is a valuable addition to the scope of work for this audit. If implemented, ERM would enable the County to build a best-practice approach to strategic risk management for the County.

Background

ERM began in the private sector as a construct to identify, evaluate, and address *all* organizational risks, not simply those that can be addressed by purchasing insurance. As such, ERM is the proactive, strategic examination of key organization-wide risks such as budget shortfalls, continuity of operations, data security, employment practices, emergency management, public records issues, and union negotiations, all of which can impact the accomplishment of organizational goals.

ERM recognizes that organizational risks are often interrelated, requiring that key emerging risks be identified, analyzed as an integrated portfolio, and brought to the attention of governing bodies for strategic decision making. Best practice organizations work to eliminate the practice of dealing with issues in silos and instead take a more coordinated, broadly-informed tack. The formal structure of ERM facilitates strategic risk oversight, increasing management's ability to develop and implement mitigation initiatives.

County of Orange Risk Structure

Finding 26: The County does not have a formal, integrated mechanism to proactively identify, analyze, and manage key organization-wide risks. (Priority 2)

The County of Orange currently has several individual mechanisms to deal with emerging risks. These include the Strategic Financial Plan, agency/department Business Plans, IT Business Continuity and Disaster Recovery efforts, legislative analysis, a Community Indicators report, and the annual budget process. In addition, many agencies/departments have prepared strategic plans dealing with issues specific to their mission (e.g., the Health Care Agency has pandemic strategic plans, the OC Waste & Recycling Department has environmental liability plans). These agency-specific plans are decentralized, which is to say there is no formal mechanism for aggregating this information in a portfolio, evaluating risks relative to one another, and presenting prioritized action plans to County policymakers. Implementing an Enterprise Risk

Management system is an idea supported by RM's insurance broker, Marsh, an industry leading risk adviser, who has proposed the idea that the County take a more "enterprise" approach to risk for the past two years, and by the Government Financial Officers Association (GFOA).

The potential benefit of developing an ERM capability is particularly significant for an organization like the County, in light of its risk topography. Specific types of issues which could be examined, discussed and addressed in an integrated fashion include:

- State initiatives/actions impacting the County (Realignment shifts, \$48 million VLF reduction, early release of inmates)
- Labor negotiations (e.g., pensions, medical plans, premium pays, salary increases)
- Liquidity issues
- National and regional economic trends (e.g., interest rates, home sales, construction/development)
- Siting and financing of large facility expansions (e.g., airports, landfills, jails)
- Changes to laws/regulations (e.g., Subtitle D landfill regulations and post closure environmental liability, land use permits, GASB accounting regulations, penal code changes)
- Availability and cost of natural resources impacting construction costs (e.g., petroleum, steel)
- Readiness for natural disasters or medical epidemics (e.g., earthquake, Avian flu)
- Succession planning (e.g., filling top level County positions)
- Technology requirements (e.g., Countywide IT model, new Data Center contract)
- Identification of potential litigation

Recommendation 26: The County should consider instituting a limited ERM approach to augment its strategy discussions. An initial step would be to establish a Risk Committee that meets periodically and is composed of the following staff: two Board members, the CEO, the Risk Manager, and one Department Head from each of the following agency/department groupings: Community Services, Infrastructure, Public Protection, and General Government.

Conclusion

RM is a critical but relatively obscure function of County government. Although the size of its budget (nearly \$50 million in FY 10/11, which includes claims payments) and the issues that it addresses (e.g., lawsuits filed against the County, Workers' Compensation claims, safety of County employees, purchase of commercial insurance) warrant scrutiny, RM is an organization that is seldom the focus of specific attention. As such, the Board's direction to examine this operation has provided an important and necessary review of its performance.

On the positive side, RM has made a number of significant improvements over the past few years, the most notable of which include:

- RM staff is very knowledgeable in the majority of its assigned functions and aggressive in their pursuit of protecting public funds.
- RM streamlined its commercial insurance program by consolidating various small liability and property insurance policies under a master program, utilizing CSAC-EIA (a joint powers authority) to place its property insurance coverage needs, reducing costs and at the same time enhancing coverage's on the County's behalf and placing the insurance brokerage services on a fee based contract as opposed to the previous commission based approach.
- RM has an effective balance of in-house and contract staff performing the County's RM activities.
- RM has enhanced its review of managed care services provided by the County's TPA, York. An outside managed care audit was conducted and has resulted in the initiation of enhanced protocols for the utilization review process on medical treatment and ancillary medical services.
- RM has developed workers' compensation and safety metrics that focuses on incidence, frequency and severity rates and modified duty statistics. Bi-annual reports have been presented to key Departments which include trend analysis and recommendations for risk mitigation efforts.
- RM provides excellent training to County agency/department staff in the Contracts Insurance and Safety areas.

In regard to opportunities for improvement, RM has several areas that will require substantial effort to improve in the near to medium term. These include:

- RM has not developed valuable metric reports in its Liability claims function, and has not fully utilized the data that is available in the Workers' Compensation system. As a result, RM primarily operates in a claims processing mode and misses a strategic element of its mission: to proactively manage the County's risk exposures.
- The new Return to Work/Transitional Duty program, launched by RM in January 2011, has some deficiencies which require remediation.
- RM's limited use of automation has negatively impacted its efficiency and effectiveness in a number of areas (e.g., Workers' Compensation, Liability).
- RM's proposed new methodologies for charging County agencies/departments the costs of Worker's Compensation and Liability claims expenses have a number of problematic components that need to be addressed before implementation.
- RM should increase Board awareness and involvement in several areas, including determining adequate funding levels for covering the long term liabilities associated with Workers' Compensation and Liability claims expenses, and purchases of commercial insurance policies.
- RM needs to clarify its designated oversight role vis-a-vis County agencies/departments regarding their compliance with federal/State safety and Americans with Disabilities Act laws.

It is important to point out that although specific amounts are not quantifiable at this time, many of the operational recommendations will likely lead to costs savings and productivity gains for RM.

In closing, the audit team would like to express its appreciation to RM, County Counsel, and County agencies/departments for their cooperation during this audit.

Appendices

Appendix A: Definitions of Audit Finding Priorities

The Office of the Performance Audit Director uses the following definitions in regard to its classification of audit findings as either Priority 1, 2, or 3:

Priority Class	Description	Action Required
1	Significant financial, legal, operational risks are involved that require immediate attention to avoid severe negative consequences.	Immediately
2	Financial, legal, operational risks are moderate and can be addressed within six months.	Within 6 months
3	Operational or administrative processes can be improved over the mid-term.	Within 6-12 months

Appendix B: Risk Management Policy (Resolution No. 74-254)

February 19, 1974
Resolution No. 74-254

COUNTY OF ORANGE

RISK MANAGEMENT POLICY

- I. Objective: The County's policy with respect to the management of ALL risks of accidental loss shall have as its objective
 - (a) The protection of the County of Orange against the financial consequences of accidental losses which are catastrophic in nature.
 - (b) The minimization of the total long-term cost to the County of all activities related to the prevention and control of accidental losses.
 - (c) To encourage to the extent possible the creation of an exposure free work and service environment in which County personnel as well as members of the public can enjoy safety and security in the course of their daily pursuits.

- II. Risk Management Organization: The Risk Manager shall have authority and responsibility for:
 - (a) Identification and measurement of all risks of accidental loss;
 - (b) Selection of appropriate Risk Management Technique for resolving exposure problems; i.e.: (1) Risk Assumption, (2) Risk Reduction, (3) Risk retention, Risk Transfer or Purchase of Insurance as necessary.
 - (c) Develop and maintain an information system for timely and accurate recording of losses, claims, Insurance premiums and other risk related costs and information.
 - (d) Development and implementation of a "back charge" program enabling appropriate distribution of program costs and expenses to user departments and districts on an equitable basis.
 - (e) Develop and implement a claims handling system capable of processing (1) Self-Insurance Workmen's Compensation claims, (2) General Liability claims, (3) Property Damage claims, (4) or such other types of claims as are supported by cost savings studies.

III. Risk Retention: With regard to risks of accidental loss it shall be the County's policy to self-assume all losses:

- Which occur with predictable frequency, and
- Which will not have a significant impact on the County's fiscal position.

As a general guideline, losses which do not exceed \$100,000 per occurrence shall not normally be insured. The tolerable loss limit for the County based on present budget is well above this figure!

Exceptions to this guideline should be allowed:

- (a) Whenever certain necessary services can be obtained only by purchase of insurance.
- (b) When the County is obligated by contract or law to purchase insurance and no other method is available.
- (c) When a higher level of risk-retention proves both prudent and fiscally sound.
- (d) When deductibles or non-insurance do not result in long-term economies.

IV. Purchase of Insurance:

- (a) All insurance for the County of Orange shall be purchased by the Risk Manager.
- (b) Insurance with limits equal to the maximum foreseeable loss shall be purchased
 - When the potential loss exposure exceeds the retention level previously stated, and
 - When such insurance is available on a fiscally sound basis.
- (c) Insurance shall be purchased from any source determined to be in the long-term best interests of the County of Orange
- (d) Whenever possible, the remuneration of agents and brokers providing services to the County shall be made on a fee basis.

2 OF ORANGE COUNTY, CALIFORNIA
3 February 19, 1974
4 On motion of Supervisor Baker, duly seconded and carried, the
5 following Resolution was adopted:
6 WHEREAS, the County Administrative Officer has reported to this
7 Board regarding the Warren, McVeigh Risk Management Audit; and
8 WHEREAS, in the opinion of this Board, the recommendation should
9 be adopted;
10 NOW, THEREFORE, BE IT RESOLVED as follows:
11 1. The proposed Risk Management Policy for the County of Orange
12 is adopted.
13 2. The Purchasing Agent is directed to request bids for a Broker
14 of Record Program.
15 3. The report on the status of the Warren, McVeigh Audit and the
16 implementation of the recommendations contained therein is received and
17 filed.
18 /
19
20 AYES: SUPERVISORS DAVID L. BAKER, RONALD W. CASPERS, R. W. BATTIN,
AND RALPH A. DIEDRICH
21 NOES: SUPERVISORS NONE
22 ABSENT: SUPERVISORS RALPH B. CLARK
23
24 STATE OF CALIFORNIA)
25 COUNTY OF ORANGE) ss.
26 I, WILLIAM E. ST JOHN, County Clerk and ex-officio Clerk of the
27 Board of Supervisors of Orange County, California, hereby certify that
28 the above and foregoing Resolution was duly and regularly adopted by the
said Board at a regular meeting thereof held on the 19th day of
February, 1974, and passed by a unanimous vote of
said Board members present.
29
30 IN WITNESS WHEREOF, I have hereunto set my hand and seal this
19th day of February, 1974.
31
32 WILLIAM E. ST JOHN
County Clerk and ex-officio Clerk
of the Board of Supervisors of
Orange County, California
33
34 Resolution 74-254
35 Adoption of Warren,
36 McVeigh Risk Management

Appendix C: Impact of X-Mod Methodology

The question of compliance with the State Controller Handbook hinges on the interpretation of the following passage:

“From 70% to 80% of each insurance premium should be allocated based on experience [i.e., loss history]”⁶⁵

As noted earlier, contrary to the current straight 70%/30% split used by the County, the X-Mod methodology leads to a modification up or down of the portion “based on experience.” The net effect is that some departments may be slightly above or slightly below the 70% requirement for experience. For those that are above (i.e., those departments whose current payroll represents a higher percentage than was the case historically), there is no issue, provided the modification is not so extreme that experience comprises more than 80%. However, for those that are below, there appears to be a compliance concern (i.e., experience represents less than 70%). Moreover, due to the fact that the X-Mod leads to differing splits (i.e., some departments with a 69%/31% split and others with a 71%/29% split), there may be a concern about whether the methodology is being “uniformly applied,” as is also required in the State Controller Handbook.

The following example demonstrates the impact of an experience modification (X-Mod) factor on the traditional 70%/30% methodology currently in place at the County of Orange for charging agencies/departments for Liability and Workers’ Compensation claims expenses.

Hypothetical Variables and Values

- (A) 5-Year Department Loss History: \$100
- (B) 5-Year Department Payroll Total: \$1,000
- (C) 5-Year Countywide Loss History: \$500
- (D) 5-Year Countywide Payroll Total: \$10,000
- (E) Current Department Payroll: \$200
- (F) Current Countywide Payroll: \$2,000

⁶⁵ California State Controller Cost Allocation Plan Handbook, pg. 126.

Calculations

Using a Standard 70%/30% Methodology, whereby 70% of the allocation is derived from a department’s relative loss history, and 30% is based on exposure to future risks (in this case, relative payroll), the following equation would be utilized:

$$\left\{ \left(\frac{A}{C} \right) x (.7) \right\} + \left\{ \left(\frac{E}{F} \right) x (.3) \right\}$$

Using hypothetical values:

$$\left(\left(\frac{100}{500} \right) x (.7) \right) + \left(\left(\frac{200}{2000} \right) x (.3) \right) = 0.17$$



$$((.2)x (.7)) + ((.1)x (.3)) = 0.17$$

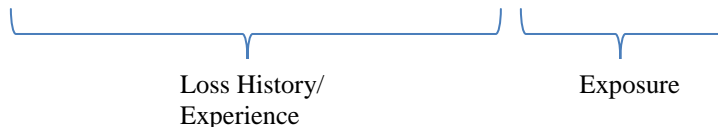
Using RM’s proposed X-Mod Methodology, the following equation would be utilized:

$$\left\{ \left[\left(\frac{A}{B} \right) x \left(\frac{D}{C} \right) x \left(\frac{E}{F} \right) \right] x (.7) \right\} + \left\{ \left(\frac{E}{F} \right) x (.3) \right\}$$

As noted in the report, when $\left(\frac{B}{D} \right) = \left(\frac{E}{F} \right)$ the two methodologies are mathematically equivalent (using the hypothetical values above $\left(\frac{1,000}{10,000} \right) = \left(\frac{200}{2,000} \right) = 0.1$).

Because $\left(\frac{D}{B} \right) x \left(\frac{E}{F} \right) = 1$, $\left(\frac{A}{C} \right)$ becomes the only calculation left on the 70% side of the equation, after redundant terms are cancelled out. Thus, the full X-Mod equation results in an amount equivalent to the Standard 70%/30% Methodology, as shown below using the hypothetical values:

$$\left\{ \left[\left(\frac{100}{1,000} \right) x \left(\frac{10,000}{500} \right) x \left(\frac{200}{2,000} \right) \right] x (.7) \right\} + \left\{ \left(\frac{200}{2,000} \right) x (.3) \right\} = 0.17$$



$$\left\{ \left[\left(\frac{100}{500} \right) \times \left(\frac{10,000}{1,000} \right) \times \left(\frac{200}{2,000} \right) \right] \times (.7) \right\} + \left\{ \left(\frac{200}{2,000} \right) \times (.3) \right\} = 0.17$$

Loss History/
Experience
Exposure



$$((.2) \times \mathbf{1}) \times (.7) + ((.1) \times (.3)) = 0.17$$

The **BOLDED RED** values are exposure-related items that impact the loss history side of the equation.

If, however, the value of (E) changes to 100 instead of 200 (i.e., the Departmental payroll went down while total Countywide payroll stayed the same), then $\left(\frac{B}{D}\right) \neq \left(\frac{E}{F}\right)$ and the net impact is that exposure related items are not cancelled out, but rather modify the impact of loss history $\left(\frac{A}{C}\right)$. In this situation the final number is driven slightly more by exposure than in the case of the Standard 70%/30% Methodology. Using the hypothetical values:

$$\left\{ \left[\left(\frac{100}{1,000} \right) \times \left(\frac{10,000}{500} \right) \times \left(\frac{100}{2,000} \right) \right] \times (.7) \right\} + \left\{ \left(\frac{100}{2,000} \right) \times (.3) \right\} = 0.085$$

Switching the position of terms to make it match the Standard 70%/30% format:

$$\left\{ \left[\left(\frac{100}{500} \right) \times \left(\frac{10,000}{1,000} \right) \times \left(\frac{100}{2,000} \right) \right] \times (.7) \right\} + \left\{ \left(\frac{100}{2,000} \right) \times (.3) \right\} = 0.085$$



Modification component that is based solely on exposure

$$((.2) \times \mathbf{10}) \times \mathbf{.05} \times (.7) + \{(.05) \times (.3)\} = 0.085$$



$$((.2) \times \mathbf{.5}) \times (.7) + \{(.05) \times (.3)\} = 0.085$$

As shown in the equation above, the loss history data $\left[\frac{100}{500}\right]$ is now multiplied by **.5** instead of by 1 (which was the case when the current and historical relative payroll ratios were the same). The net result of this difference is shown in the equations on the following page.

$$\{(.2)x (.35)\} + \{(.05) x (.3)\}$$

$$(.07) + (.015) = 0.085$$

In essence, the X-Mod in this example halves the loss history side of the equation and changes the 70%/30% split into a 35%/30% split. If this split is then adjusted to fit a 100% pie, the experience/exposure split becomes 54%/46% (i.e., $\left[\frac{35}{65}\right] / \left[\frac{30}{65}\right]$). This deviance from the 70%/30% split is what leads to a concern about compliance with the State Controller Handbook.

Appendix D: County of Orange Commercial Insurance Policies

Policy Type	Policy Period	Agency	Premium	Lead Carrier	Excess Carriers
Federal Immigration and Customs Enforcement (ICE) Auto	2/1/11-2/1/12	OCSO	\$ 88,889	National Liability & Fire Ins. Co.	National Fire & Marine Ins. Co.
Notary Public Errors & Omissions Bond	3/23/11-3/23/12	All	\$ 421	Western Surety Company	
Property	3/31/11- 3/31/12	All	\$ 4,167,117	Lexington	
John Wayne Airport Property	3/31/11- 3/31/12	JWA	\$ 1,585,249	Lexington	
Boiler & Machinery - Included under the property policy	3/31/11- 3/31/12	All	Included under property	See property policy	
John Wayne Airport Liability	3/31/11- 3/31/12	JWA	\$ 141,345	National Union Fire Ins. Co. of Pittsburgh, PA	
Orange County Sheriff's Department (OCSO) Helicopter Liability	3/31/11- 3/31/12	OCSO	\$ 76,500	National Union Fire Ins. Co. of Pittsburgh, PA	
OCSO Helicopter Liability	3/31/11- 3/31/12	OCSO	\$ 7,800	National Union Fire Ins. Co. of Pittsburgh, PA	
Regional Narcotics Suppression Program (RNSP) Liability	3/31/11- 3/31/12	OCSO	\$ 15,007	National Union Fire Ins. Co. of Pittsburgh, PA	
Local Agency Formation Commission (LAFCO) Crime	7/1/10 - 7/1/11	LAFCO	\$ 1,748	National Union Fire Ins. Co. of Pittsburgh, PA	
In-Home Supportive Services Public Authority (IHSS) Crime	7/1/10 - 7/1/11	IHSS	\$ 1,748	National Union Fire Ins. Co. of Pittsburgh, PA	
Children and Families Commission of Orange County (CFCOC) Crime	7/1/10 - 7/1/11	OCCFC	\$ 1,748	National Union Fire Ins. Co. of Pittsburgh, PA	
CFCOC Special Property Insurance Program (SPIP)	7/1/10 - 7/1/11	OCCFC	\$ 1,156	Lexington	
Volunteer Insurance - CIMA	7/1/10 - 7/1/11	ALL	\$ 52,755	QBE Insurance Corp.	Lloyds of London
Excess Workers' Compensation	8/1/10 -8/1 /11	All	\$ 153,579	National Union Fire Ins. Co. of Pittsburgh, PA	
ICE Liability	8/9-/108/9/11	OCSO	\$ 216,839	Indian Harbor	
IHSS Special Liability Insurance Program (SLIP)	9/29/10 - 9/29/11	IHSS	\$ 10,021	Allied World National Assurance Company	
LAFCO SLIP	9/29/10 - 9/29/11	LAFCO	\$ 10,015	Allied World National Assurance Company	
CFCOC SLIP	9/29/10 - 9/29/11	OCCFC	\$ 3,643	Allied World National Assurance Company	
Excess General Liability	10/1/10 - 10/1 11	All	\$ 1,431,117	Lexington	Endurance, Everest National, Arch
Watercraft Liability	10/1/10 - 10/1 /11	OCSO/OCPW	\$ 65,477	Navigators Insurance Company	Navigators
Crime	10/21/10 - 10/21/11	All	\$ 213,860	Fidelity and Deposit Company of Maryland	National Union Fire; Starr
		TOTAL	\$ 8,246,034		

Appendix E: Liability Legal Defense Panel

Allen, Mullings & Allen
Beam, Brobeck, West, Borges & Rosa
Buchalter Nemer
Koeller, Nebeker, Carlson & Halluck
Law Offices of Frederick W. Werve
Lawrence, Beach, Allen & Choi
Lewis, Brisbois, Bisgaard & Smith
Liebert Cassidy & Whitmore
Lynberg & Watkins
Madory, Zell, Pleiss & McGrath
Pivo, Halbreich, Martin, Wilson & Amo
Stafford & Associates
Sullivan, Ballogg & Williams
Woodruff, Spradlin & Smart

(as of 9/21/2011)

Appendix F: Workers' Compensation Index System Sample

INJURY		DATE	WCS	AC	DATE	WCS	CLASS	CLAIM #	DATE	WCS	STATUS
A/D	04-19-00	3/4	A/D	10-03-00	1/4	1004	0231005	04-17-98	20.01	RTW	
A/D	04-27-00	3/4	A/D	10-12-00	1/4		024511			TR	
A/D	05-12-00	3/4	A/D	10-19-00	1/4					ER	
A/D	06-22-00	1/4	A/D	10-31-00	1/4					WP	
A/D	07-03-00	3/4	A/D	11-22-00	2/4					WCS	
A/D	07-19-00	1/4	A	12-19-00	X					MS REC	
A/D	08-02-00	1/4	D	12-20-00	2/4					MS REC	MS
A	08-17-00	X	A/D	12-20-00	2/4					LITIGATED	DWC-REQ
D	08-18-00	1/4	A/D	01-04-01	2/4						DWC-REC

⇒ F2001-3 (RISK)

INJURY		DATE	WCS	AC	DATE	WCS	CLASS	CLAIM #	DATE	WCS	STATUS
A/D	01-09-01	2/4	D	04-03-01	5/4	1004	0231005	04-17-99	28.01	RTW	
A/D	01-19-01	2/4	A/D	04-05-01	5/4		024511			TR	
A/D	02-01-01	3/4	A/D	04-09-01	5/4					ER	
A	02-26-01	X	A	04-23-01	X					WP	
D	02-28-01	3/4	X	05-03-01	7/4					WCS	DEF BA
A/D	03-02-01	3/4	X	05-17-01	9/4					MS REC	
A/D	03-12-01	3/4	X	05-31-01	11/4					MS REC	MS
A/D	03-15-01	3/4	D	06-14-01	13/4					LITIGATED	DWC-REQ
A	03-26-01	X									DWC-REC

⇒ F2001-3 (RISK)

LIA: 4/19/00, 4/27/00, 5/2/00, 6/2/00,
 7/2/00, 7/9/00, 8/2/00, 8/17/00-25/00,
 10/3/00, 10/27/00, 10/31/00, 11/22/00,
 12/19/00
 WCP 12/20/00 RLV 12/21/00
 WCP 12/26/00 RLV 12/27/00
 WCP 1/4/01 RLV 1/5/01
 WCP 1/9/01 RLV 1/10/01
 WCP 1/19/01 RLV 1/20/01
 WCP 2/1/01 RLV 2/2/01
 WCP 2/26/01 RLV 3/1/01
 WCP 3/2/01 RLV 3/3/01
 WCP 3/12/01 RLV 3/13/01
 WCP 3/15/01 RLV 3/16/01
 WCP 3/22/01 RLV 4/4/01
 WCP 4/5/01 RLV 4/6/01
 WCP 4/10/01 RLV 4/10/01
 WCP 4/23/01
 or v. v. v. v. v.

Appendix G: Additional Return to Work Program Recommendations

- Make major revisions to the current Countywide RTW/Transitional Duty policy:
 - Include applicability of the program in the policy language. Does the policy apply to both full-time and part-time employees? Does it apply to temporary employees?
 - Clarify the consequences of non-compliance. In the event an employee refuses to participate, what are the consequences? The current policy confuses occupational and non-occupational injuries/illnesses. It currently states: “An employee is not obligated to return to a transitional duty assignment under FMLA. However, if an employee refuses the RTW assignment or refuses to sign the Transitional Duty Agreement, he/she may not be eligible for Workers’ Compensation Disability Benefits.” This portion of the policy primarily applies to employees with occupational injuries/illnesses who have an accepted Workers’ Compensation claim. The policy should clarify that there are no consequences for non-compliance for employees who have non-occupational injuries/illnesses.
 - Include language about the development of job banks via job analyses
 - Provide guidance on the “interactive process” (i.e., who should be involved, what is discussed, how often, what should be documented)
 - Discuss how the RTW/Transitional Duty program links to Employee Health (i.e., outline Employee Health’s responsibilities in RTW/Transitional Duty situations)
 - Discuss how the RTW/Transitional Duty program links to the EEO office (i.e., the RTW/Transitional Duty program is only for temporary disabilities; when a temporary disability becomes a permanent disability, the EEO office assumes responsibility)
 - Discuss when to involve County Counsel. As mentioned in the report, County Counsel should be consulted in complex situations
 - Discuss what happens after a 90 day transitional duty assignment ends and no extension is approved, or what happens after the maximum 90 day extension has been reached
- Create a Roles and Responsibilities overview, which outlines the responsibilities of all parties involved, including the County RTW Manager
- Create and implement an ongoing communications plan to inform and educate employees about the RTW/Transitional Duty program (e.g., communicating via the Employee Handbook, new employee orientation/training). Mature RTW programs recognize the importance of educating the entire organization about RTW so that

employees, supervisors, and medical providers are aware of the program in advance of an injury/illness, which helps minimize the number of lost workdays following an injury/illness.

- Create education materials for employees to give to their treating physicians (for non-occupational situations)
- Develop an Interactive Process Guidelines Chart similar to the EEO office's chart
Revise training materials
- Develop a revised Implementation Check List that includes activities to be performed (current check list is blank)
- Update the RM website to include all new and updated materials such as, job analysis template, sample job bank descriptions
- Explore other RTW "best practices" such as:
 - RTW/Transitional Duty Assignment Plans. Currently, the result of the interactive process when a transitional duty work assignment has been identified is a written agreement. In addition to a written agreement, other organizations develop RTW/Transitional Duty plans for each agreed upon assignment for an employee that includes a graduated work outline with timelines consistent with the employee's physician's assessment, with work of increasing complexity, duration, and/or physical activity. A RTW/Transitional Duty Assignment Plan would also outline the responsibilities of the employee, the supervisor or manager, and any co-workers who would be assisting the employee, and the action each must take to achieve the RTW plan goal.
 - Formal Transitional Employment Teams for complex situations. These teams are often composed of the injured/ill employee, the injured/ill employee's supervisor or manager, a human resources staff member, and any additional members, as needed, such as a Safety representative or Claims specialist. This team develops the Transitional Duty Agreement and Plan, and once the agreement is signed and the employee begins the assignment, the team meets periodically and notes from each meeting are kept to ensure proper documentation.
 - Employee Capabilities form. RTW best practices emphasize that when trying to place an injured/ill employee in a transitional duty work assignment, staff should focus on an employee's capabilities, not limitations. Using SSA's as a template, create an Employee Capabilities sheet.

Appendix H: CEO/Risk Management Response to the Audit Report




County Executive Office

Memorandum

January 13, 2012

To: Steve Danley, Director
Office of Performance Audit

From:  Tom Phillips, Risk Manager
Robert Franz, Chief Financial Officer

Subject: Response to Performance Audit Report of CEO/Office of Risk Management

Following is our response to the findings and recommendations contained in the Performance Audit Report of CEO/Office of Risk Management (RM):

Finding 1: The County Risk Management Policy has not been updated since 1974 and excludes some important clarifying components. (Priority 2)

Recommendation 1: RM should prepare, for Board approval, an update of the existing Countywide Risk Management Policy, considering the recommendations contained in this audit report, consulting with agencies/departments and Board staff, and conducting benchmarking research.

❖ Concur. RM will update the existing Countywide Risk Management policy in FY 12-13.

Finding 2: There is no formal, Board-approved policy that guides the Risk Manager and the County Chief Financial Officer (CFO) in funding the long-term liabilities associated with Liability and Workers' Compensation claims. (Priority 2)

Recommendation 2: RM should develop, for Board consideration and approval, a formal policy that specifies to the CFO the preferred confidence level for the long-term funding of Workers' Compensation and Liability costs; the policy should include a procedure for the CFO to request Board approval for a deviation from the recommended funding approach, should other Countywide financial considerations support such an action.

Response to Performance Audit Report of CEO/Office of Risk Management

January 13, 2012

Page 2

- ❖ **Concur.** RM will develop and submit for Board consideration and approval a formal policy which will specify to the Chief Financial Officer (CFO) the preferred confidence levels for funding the Workers' Compensation and Liability programs.

Finding 3: RM makes little use of paperless technologies; consequently, administrative staff members spend significant time performing manual tasks such as sorting and filing paperwork. (Priority 2)

Recommendation 3: RM should work with CEO/IT to identify opportunities for process automation and greater use of paperless technologies (including those identified in the Workers' Compensation section of this report) to reduce the number of manual tasks associated with hard copy files. In addition, RM leadership should work with non-support personnel to encourage a collaborative approach to handling administrative tasks throughout the office.

- ❖ **Concur.** RM has already engaged a consultant to evaluate various Liability Claims Information Systems available on the market for possible implementation in the Liability program. RM will also explore the feasibility of technological improvements, such as automation and greater use of paperless technologies with CEO/Information Technology (CEO/IT) in the Workers' Compensation program.

Finding 4: RM is planning to change its methodologies for allocating total Workers' Compensation and Liability (Property/Casualty) costs across County agencies/departments. The proposed methodologies have a number of problematic consequences, including: a) significant cost increases for a number of agencies/departments in a time of budget contraction, b) increased complexity and difficulty demonstrating compliance with the State Controller requirements for cost allocation, and c) removal of position specific cost index for Workers' Compensation charges. (Priority 1)

Recommendation 4: RM and CEO should consider removing the X-Mod component of the proposed new methodologies, and, instead, utilize the more common 70%/30% split between loss history and exposure. However, if RM continues to pursue the X-Mod methodologies, it should consider obtaining a formal opinion from the State Controller regarding the compliance of the proposed X-Mod calculation with the State Controller Cost Allocation Handbook. In addition, consider utilizing a graded capping methodology whereby loss amounts are included in tiers (e.g., the first \$50K of loss is counted dollar-for-dollar, losses from \$50K to \$100K are counted at fifty-cents-on-the-dollar, etc.); such a modification would better account for agencies/departments that typically have higher severity claims.

Response to Performance Audit Report of CEO/Office of Risk Management

January 13, 2012

Page 3

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- ❖ **Concur.** RM reviewed and researched the proposed new methodology with its consultant and concluded that: 1) the methodology is in compliance with the State Controller's Handbook of Cost Plan Procedures for California Counties, 2) the new methodology better accounts for risk profile differences between County agencies/departments (e.g. Auditor-Controller vs. Sheriff), 3) the new methodology is common and widely used by other public entities clients (e.g., cities, Joint Power Authorities, etc.). RM will continue to discuss the benefits of the proposed new methodology with the Auditor-Controller's office.

Finding 5: There are currently no reporting requirements for the purchase of insurance policies through the County's insurance broker, regardless of the premium size. (Priority 2)

Recommendation 5: On a biannual basis, RM should submit a report to the Board of Supervisors on the consent agenda that details any new commercial insurance policy purchases or existing policy renewals that exceed \$50K. This report should also include a brief description of the purchasing procedure utilized (e.g. number of bids received by the County's insurance broker).

- ❖ **Concur.** On a semi-annual basis, RM will submit a summary report to the Board of Supervisors detailing any new commercial insurance policy purchases or existing policy renewals that exceed \$50K.

Finding 6: The delineation of responsibility between RM and County Counsel for the review and approval of contract insurance issues is unclear to many County agencies/departments. (Priority 2)

Recommendation 6: In consultation with County Counsel, RM should send a memo to all agencies/departments delineating the authority and responsibility for different types of contracts insurance review.

- ❖ **Concur.** RM will work with County Counsel and issue a Memo to all County agencies/departments explaining the delineation between RM and County Counsel on risk allocation issues in contracts.

Finding 7: Vendors who have multiple contracts with the County must prepare and submit proof of insurance documentation for each contract, potentially leading to extra costs passed on to the County. (Priority 2)

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Recommendation 7: RM should complete its efforts to implement insurance certificate software that would allow agency/department staff to verify proof of insurance from vendors with multiple contracts with the County.

- ❖ **Concur.** An insurance certificate software program has been procured and a pilot program is currently being initiated.

Finding 8: Risk Management has not developed a comprehensive approach to analyzing and reporting on Liability claims data. (Priority 1)

Recommendation 8: RM should take the following actions to improve its ability to manage the risks that create Liability claims:

- a) With input from policy makers and agencies/departments, identify useful risk metrics for which data should be collected, analyzed and reported.
- b) Pursue the development of a new Liability claims information system that will facilitate the collection, analysis, and reporting of risk data for operational managers and policy makers. In the interim, utilize the templates developed by the audit team in this report to prepare and present useful analytics from the existing system.
- c) Develop a Liability risk analysis capability for the County.

- ❖ **Concur.** RM does not currently have a system with the capability to extract information easily which complicates the task of compiling, quantifying and disseminating information to involved agencies. However, RM provides claims information on a monthly basis to OC Sheriff Department (OCSD) as well as Social Services Agency (SSA) in a simple format that contains data about the types of claims filed, etc.
 - a) RM will include key stakeholder departments in developing the Request for Proposal (RFP) specification for a new and more robust Liability Claims Information System.
 - b) RM has already engaged a consultant in assisting in the development of specifications for a new Liability Claims Information System. An RFP is expected to be issued by early summer of 2012 with a final recommendation for a new system to be presented for Board approval in late 2012 or early 2013.
 - c) The new system will have significantly enhanced Liability risk analysis capability.

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Finding 9: RM does not collect data on total hours billed by contract attorneys nor does it track the total costs of subcontractors used by the County's Legal Defense firms (e.g., investigators, medical experts) in an electronic database. (Priority 2)

Recommendation 9: Maintain monthly statistics on the number of attorney hours billed by firm, level, and claim, as well as the use and cost of subcontractors. As an added level of oversight, the Risk Manager should conduct periodic reviews of random case files to ensure his/her satisfaction with the use of and fees charged by subcontractors.

❖ **Concur.** It is not feasible for RM to maintain a separate database that would track the hours worked by each attorney from every law firm utilized by RM. There is not sufficient staff time available to input that information from every invoice processed for payment. However, this information should be available from each law firm as they are required to bill RM for the hours worked by each attorney and provide the hourly rate for that individual. RM will explore obtaining a breakdown on hours worked from each law firm on a quarterly basis and determine the value of tracking this information.

Finding 10: The current Liability Legal Defense Panel contract has been in place for an excessive period of time (ten years). (Priority 3)

Recommendation 10: In the future, RM should refresh selection of a Liability Legal Defense Panel every five to seven years. Include in the contract a specific length of time for the term of the panel.

❖ **Concur.** RM has already started the process of creating a new Liability Legal Defense Panel. Responses to the Request for Qualifications (RFQ) have been received and are currently undergoing the initial review by CEO Procurement before being submitted to the review panel. Included in the RFQ is the information this will be for a five year period of time.

Finding 11: From a cost standpoint it would be more expensive to use County Counsel attorneys and legal support staff for Liability claims litigation defense than contract staff. In addition, there are a number of other operational considerations that support the current model. (Priority 3)

Recommendation 11: Continue with the current model for Liability claims legal defense.

❖ **Concur.**

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Finding 12: A significant number of manual procedures, driven by dependence on hard copy documentation, lead to inefficiencies in the Workers' Compensation operation. The amount of manual workload also hinders RM staff's ability to be consistently responsive to agency/department needs. (Priority 2)

Recommendation 12: Work with CEO/IT to develop a database to replace the current index card system and begin the scanning and electronic storage of forms/documents.

❖ **Concur.** RM is developing a searchable Microsoft Access data base for the index cards and will also consult with CEO/IT for other solutions.

Finding 13: The current contract with RM's Workers' Compensation TPA (York) contains service level expectations, but these expectations are not closely and frequently tracked. In addition, there are no associated financial penalties in the contract to hold the TPA accountable for meeting service level expectations. (Priority 2)

Recommendation 13: RM should develop a series of specific performance targets to include in the Workers' Compensation TPA contract. RM should also consult with other County agencies/departments that utilize service levels/performance targets (e.g., Employee Benefits, CEO/IT). In addition, some structure for assessing financial penalties should be developed to hold the TPA accountable for any lapses in performance. Lastly, performance against these targets should be reported more frequently (e.g., quarterly) to RM, where appropriate.

❖ **Concur.** RM has obtained the performance standards used by Employee Benefits and the Los Angeles County Workers' Compensation program. RM will develop contract provisions to be included at the next contract award/amendment to the extent feasible.

Finding 14: The detailed database of Workers' Compensation information maintained by the TPA is not being fully utilized by RM to proactively facilitate the management of safety risks in agency/department operations. (Priority 2)

Recommendation 14: RM should develop training opportunities to educate agency/department staff on (a) the level of Workers' Compensation data that is available and (b) tools and techniques for analyzing this information. In addition, RM should collaborate with agencies/departments to develop additional reports and information that would be helpful to them in identifying and managing Workers' Compensation risks in their operations.

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- ❖ **Concur.** RM will reach out to agencies/departments to gather information on their data needs and determine if existing reports meet those needs, or if additional reports are required.

Finding 15: The County has employees who are on unresolved Leave without Pay (LOP) status for as many as 10+ years. (Priority 2)

Recommendation 15: RM should a) establish a regular meeting (e.g., on a quarterly basis) with the Human Resources Department (and County Counsel, if necessary) to examine the list of employees who are on Leave without Pay (LOP) status to minimize instances where employees remain on leave for long periods of time without resolution, and b) in conjunction with HRD, develop a reference manual to help manage employee leaves of absence.

- ❖ **Partially concur.** The leave without pay status is for employees who, for medical reasons, cannot return to work which may be the result of a work related or non-work related injury and/or illness. Only one-third of the employees identified as being on long-term leave without pay were work related. The remaining two-thirds were on leave without pay for non-work related reasons. The reasons employees may be off for extended times will vary depending on the employee's medical status and the County's ability to accommodate the employee back into the workplace safely and effectively. The County must adhere to Federal and State leave, Workers' Compensation, disability, and retirement laws that overlap in this area which requires partnership with Human Resources Department (HRD) and County Counsel to assess cases on an individual basis. Included in the assessment process is an evaluation of appropriate action based on the liability risk to the County. In some cases the County's potential liability is reduced by not separating the employee and continuing their unpaid leave status.
 - a) Over the last six (6) months RM has, in partnership with HRD and County Counsel, been reassessing employees on a leave without pay status. After this process has been completed, RM will continue on an "as needed" basis to partner with HRD and County Counsel regarding cases that involve Workers' Compensation or short term return to work opportunities.
 - b) RM and HRD recognizes that a more immediate need is to provide updated training in this area which would include training material that staff could reference. Recently, HRD posted guidelines on their HR Portal that were established previously to guide departments with employees on a leave of absence. After conducting the training, the current guide can be updated but developing a reference manual is not necessary at this time.

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Finding 16: RM's current level of oversight and enforcement of safety compliance is not fully consistent with the County Safety and Loss Prevention Manual. (Priority 2)

Recommendation 16: RM should either fulfill its compliance enforcement responsibilities or revise the County Safety and Loss Prevention Manual.

- ❖ **Concur.** RM agrees that many of the County Safety and Loss Prevention Manual (CSLPM) policies need to be revised to more closely align with the industry best practice cooperative approach that is currently employed by RM. As the report notes in Item #4, page 67 of the "Program Strengths" section, the County Safety Office is currently in the process of revising the CSLPM to reflect this approach.

Finding 17: There is little reporting on the safety-related aspects of the RM's Liability Claims program, and the practice of root cause analysis for both the Liability and Workers' Compensation programs has not been established. (Priority 2)

Recommendation 17: RM should a) develop additional metrics to report safety-related Liability claims data, b) consider working with OC Public Works Fleet Division to develop a formal Countywide fleet safety program, and c) establish the practice of Root Cause Analysis, in conjunction with the Liability Claims and Workers' Compensation programs.

- ❖ **Concur.** Although the underlying concept of Root Cause Analysis (RCA) has been incorporated into various workplace safety accident investigation policies/forms for some time, RM concurs that a more aggressive approach in this area is warranted. Towards that end, RM presented a training course in November 2011 to County Safety and Training Officers and Department Safety Representatives on the fundamentals of RCA.
 - a) RM is already in the process of securing a state-of-the-art management information system for general liability data that will provide much more detailed metrics pertaining to general liability.
 - b) RM concurs that developing a formal Countywide fleet safety should be considered. RM did wish to note that the County currently participates in the State DMV's "Pull Notice Program", a vehicle accident review procedure and, if warranted, remedial "defensive driving" classes for drivers involved in

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"preventable" accidents. Defensive driving classes are also available to County employees on a preventive/proactive basis.

- c) Going forward RM will continue to aggressively incorporate the concept of RCA into its various accident/incident investigation policies and training classes.

Finding 18: There is little communication of safety information from RM to line staff throughout the County. (Priority 3)

Recommendation 18: RM should reinstitute regular safety-related communications to employees Countywide and consider creating a Countywide safety campaign.

- ❖ **Concur.** RM would like to note that it meets regularly with department-based Safety and Training Officers and Department Safety Representatives. RM has been in the process of revamping its Safety Newsletter to make it more relevant to County employees. RM also agrees with the concept of aggressively communicating safety issues to line employees and will be pursuing various options to achieve that goal in 2012.

Finding 19: RM is unclear about its role related to ADA Title II, and, as a result, there is no central Countywide oversight of compliance with this law. RM also does not fulfill its recordkeeping responsibilities established in its ADA Title II Complaint Procedure. (Priority 2)

Recommendation 19: RM should a) clarify its ADA Title II role to the Board and agencies/departments, and b) fulfill its recordkeeping role by contacting agencies/departments on a quarterly basis to obtain data on all complaints and resolutions and creating an electronic log of all complaints.

- ❖ **Concur.**

- a) RM has a clear understanding of its role in Countywide oversight and will communicate with the Board and agencies/departments its areas of responsibilities. The County ADA Title II Coordinator oversees and insures the process of agencies/departments complying with external complaints relative to public access to county programs and services. The County ADA Title II Coordinator responds to complaints and ensures that effective resolution of the problems (barrier to public service access or request for accommodation) is

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achieved and works in close collaboration with the affected agency/department and County Counsel and OC Public Works (OCPW) as appropriate.

In regards to conducting inspections, specific compliance designs and inspections were completed and documented in the July 2002 Accessibility Survey Report and Transition Plan of all County owned facilities. Since becoming compliant with Title II for all County owned and leased facilities, ADA Title II inspections are only required when new County owned facilities are constructed or facilities are modified. RM works with OCPW on inspections as required because of their technical expertise in building codes and facility repairs/modifications and upgrades.

- b) RM will contact agencies/departments on a quarterly basis and request they submit their complaints/accommodations that they have received and their responses/resolutions. RM will look into developing an electronic log of all complaints.

Finding 20: RM's minimal engagement with agencies/departments prior to the RTW program launch has resulted in implementation inefficiencies and agency/department confusion and frustration. (Priority 1)

Recommendation 20: In the short-term, RM should work with a subcommittee of agencies/departments (e.g., SSA, Probation, OCSD) apart from the full RTW Committee to develop/revise/create components of the program prior to presenting them at RTW Committee meetings, and then dissolve this subcommittee once key elements of the program have been developed; RM should continue to tap RTW Committee members to lead discussions at meetings in order to gain agency/department participation and buy-in.

❖ **Concur.** (creation of subcommittee)

In 2009, RM began the process of developing a formal Return to Work (RTW) policy on a Countywide basis. The RTW policy provides the framework and guidance in assisting County departments in developing their individual programs. Policy development included a review of existing policies from neighboring Counties, HRD and County Counsel review internally, and a review with key departments. Key program components need to reflect best practices as well as legal and HR issues. While every County department was not solicited, the policy developed does not conflict with existing informal practices and incorporated a focus on non-occupational medical disabilities as well. The

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policy serves to provide a uniform organizational approach to RTW which is something requested to be developed by RM.

Going from policy development to program implementation is a major organization undertaking, particularly so in a very decentralized environment. RM put together numerous materials to assist in this process. One would certainly expect administrative issues to come up during the implementation process where certain areas require additional refinement in terms of program administration. The RTW Committee has served an important role in identifying issues needing clarification and this will continue to occur until the RTW Program fully matures. RM will task the subcommittee with reviewing the proposed Reference Guide on RTW discussed in response to Recommendation #21.

Data metrics to fully evaluate the RTW program in terms of efficiency and effectiveness is critical. RM has produced metric reports on a bi-annual basis for occupational injuries concerning RTW and provided them to the major County departments for the last three years. There is no current database to capture non-occupational data. RM will create a subcommittee to work on this very specific and important area in conjunction with CEO/IT and the Auditor-Controller's office to determine in-house system capabilities as well as potential off the shelf software applications.

Finding 21: Other than a review of the Countywide RTW/Transitional Duty policy document language, County Counsel was not included in the development of program details and the RTW Committee. As a result, there are legal considerations that are missing from program documents (e.g., presentations, training materials). (Priority 1)

Recommendation 21: RM should a) have County Counsel join the RTW Committee and the smaller working group to ensure that the County does not expose itself to legal risks as it implements the Countywide RTW/Transitional Duty program, b) work with County Counsel to review legal issues related to the program that have been developed to-date, c) revise the Countywide RTW/Transitional Duty program policy to include guidance on when to involve County Counsel in RTW/Transitional Duty situations, and d) ask County Counsel to conduct training on the legal aspects of the RTW/Transitional Duty program (i.e., relevant labor and disability laws).

❖ Partially concur.

- a) RM will notify County Counsel of meetings and provide them committee meeting minutes and will ensure they are present if legal issues are on the agenda.

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- b) RM will work with County Counsel on any legal issues should they arise, however, current issues focus more on program administration.
 - c) RM intends to develop an administrative Reference Guide on the RTW Program for use by County departments. Guidance information on when to involve County Counsel will be included.
 - d) HRD and County departments already have regular training and legal updates concerning labor and disability laws. The implementation of a formal RTW Program does not require additional training to what is already provided.

Finding 22: The Countywide RTW/Transitional Duty policy is vague about the differences between occupational and non-occupational injuries/illnesses and between what is mandatory and what is simply a "guideline." (Priority 2)

Recommendation 22: RM should a) revise the Countywide RTW/Transitional Duty policy by creating two distinct sections – one for employees with occupational (Workers' Compensation) injuries/illnesses and one for employees with non-occupational injuries/illnesses, and b) work with County Counsel to determine what elements of the policy should be required/mandated and make this distinction clear in a revised policy.

❖ Do not concur.

- a) The County's approach to early RTW efforts should apply equally to both occupational and non-occupational injuries/illnesses. In either case, employees can choose to refuse the modified duty/alternative work assignment. The policy currently reflects the potential ability of the County to suspend disability benefits (i.e.-temporary disability benefits) if an employee were to refuse a RTW assignment.
- b) RM is not in support of trying to establish precise requirements for 90 day extensions of RTW. This was vetted carefully with County Counsel and the decision on granting extensions must be made on a "case by case basis." Many factors are in play including job performance, the ability of the agency/department to continue to provide a modified duty/alternative work assignment, and the employees' medical progress in terms of work restrictions. It is always important to document all RTW efforts in all situations.

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Finding 23: RM's current guidance to agencies/departments to allow supervisors to directly contact an employee's physician to obtain work restrictions could lead to problematic situations. (Priority 1)

Recommendation 23: RM should consider requiring that work restrictions be obtained from employees' physicians only via agency/department RTW staff (or designated personnel) for occupational RTW cases, or through HCA/Employee Health Services for all non-occupational RTW cases.

- ❖ **Concur.** RM does agree that whoever is assigned RTW responsibilities should have the responsibility for working with either HCA/Employee Health for non-occupational cases or RM on occupational cases. RM will either include this information in the existing policy or add it to the proposed Administrative Reference Guide.

Finding 24: The development of Transitional Duty work assignments requires line supervisors to be able to identify all physical aspects of a job—expertise that line supervisors typically do not possess. (Priority 1)

Recommendation 24: RM should a) request that agencies/departments identify specific staff that will conduct job analyses for the development of job banks, b) provide training on how to conduct a job analysis, as needed, c) require that all jobs listed in job banks first undergo a job analysis, and d) modify appropriate policies and training materials to reflect these new requirements.

- ❖ **Concur.**
 - a) RM will work with agencies/departments to have them identify specific staff who will have the responsibility for developing job task banks or conducting job analysis.
 - b) RM will arrange for training of County staff on developing job banks and conducting job analysis in addition to what has been provided in this area through the RTW Committee.
 - c) RM believes it may not always be necessary to conduct a full blown job analysis on every single job task identified in the job bank. The training provided will enable agencies/departments to develop sufficient information on the identified job assignments listed in the job bank to conduct a level of analysis appropriate for the RTW Program.

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- d) RM will the review the existing policy and the proposed Desk Reference Manual and determine where best to reflect this procedure.

Finding 25: The current metrics identified by RM do not fully capture the efficiency and effectiveness of the Countywide RTW/Transitional Duty program. (Priority 2)

Recommendation 25: RM should a) refine existing program efficiency metrics, b) add program effectiveness metrics, c) begin measuring qualitative performance, d) work with HCA/EHS to determine the feasibility of capturing data to aid in the tracking of employees with non-occupational injuries/illnesses in transitional duty assignments, and e) work with York to evaluate its ability to designate Workers' Compensation claims with transitional duty work assignments.

❖ Partially concur.

- a) The development of metrics as previously mentioned is a huge undertaking that will be refined and developed over time. RM will be working with the subcommittee on additional metric refinements.
- b) RM will work with the subcommittee in the area of qualitative performance measurement.
- c) d) & e) RM will explore with HCA/Employee Health Services the feasibility and their capacity to assist in non-occupational data collection. While York may have the ability to capture more information in their claims system it is certainly not needed for the administration and provision of Workers' Compensation benefits. Additionally, this provides no solution for the non-occupational data collection efforts. As discussed under a different recommendation, RM will be evaluating this whole area in conjunction with the subcommittee, CEO/IT and Auditor-Controller's office.

Finding 26: The County does not have a formal, integrated mechanism to proactively identify, analyze, and manage key organization-wide risks. (Priority 2)

Recommendation 26: The County should consider instituting a limited ERM approach to augment its strategy discussions. An initial step would be to establish a Risk Committee that meets periodically and is composed of the following staff: two Board members, the CEO, the Risk Manager, and one Department Head from each of the following agency/department groupings: Community Services, Infrastructure, Public

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Protection, and General Government.

- ❖ **Partially concur.** A program of this nature will require a sizable commitment of County resources to include County staff and outside consultants. The County should initiate this effort only after careful and thoughtful consideration. The governance structure and decentralized nature of the County will present significant challenges to the initiation of an integrated ERM program. RM is only aware of one other California County, the City/County of San Francisco who has implemented a limited approach to ERM in the areas of Crisis Management and Business Continuity should a major conflagration impact their community.

cc: Thomas G. Mauk, County Executive Officer