



Risk Management Solutions

A QUARTERLY NEWSLETTER OF THE ALABAMA MUNICIPAL INSURANCE CORPORATION
AND THE MUNICIPAL WORKERS COMPENSATION FUND, INC.

WINTER 2007

Our Fire Truck is Worth What?

Richard Buttenshaw, Loss Control Representative

In property and auto physical damage insurance, there are several possible methods of establishing the value of insured property to calculate the premium and determine the amount the insurer will pay in the event of a loss. The two most commonly used methods are **Actual Cash Value (ACV)** and **Replacement Cost (RC)**. It is very important to check to see which method is used in your policies as the pay-out amounts can be considerably different. ACV is defined as the cost to repair or replace the damaged property with materials of like kind and quality, less depreciation of the damaged property. RC is defined as the cost to replace it today with property of like kind and quality without any deduction for depreciation. Typically property damage policies are written using RC, but automobile damage policies are written using ACV.

So how does this apply to your fire truck? Even though fire trucks often appreciate in value over time rather than depreciate, they are still automobiles and covered under your auto

policy. So the amount paid to the insured will be the ACV amount, not a RC amount. Remember, this principle actually applies to all your vehicles not just fire trucks and is typical of all auto policies in the insurance industry. However, what makes fire trucks more unique is how to determine the ACV amount. For example, determining the ACV for a standard car is relatively easy using such tools as the Blue Book Value. But with fire trucks, it's not so easy. So, this is the process AMIC uses to determine the amount paid for a totaled fire truck:

1. An independent outside adjuster is hired by AMIC to inspect the damaged vehicle.

2. The expert independent adjuster then submits a written report to AMIC estimating the fire truck's value at the time of the loss.

3. At the same time a second adjuster, this time from AMIC, uses an industry national database service to estimate the value of the vehicle based on comparable vehicles nationwide.

4. Then the AMIC claims department compares the two separate estimates and pays the **higher** of the two.

For example, let's say one of your fire trucks gets totaled in an

accident on the way to a call. The independent adjuster then examines the vehicle and estimates it was worth \$100,000 before the accident. However, using the national database service, a comparable vehicle has an estimated value of \$125,000. AMIC will then pay the \$125,000. This money can then be used by the municipality to purchase a similar used fire truck or it can be put toward the



purchase of a brand new fire truck. That is your choice. Of course, the brand new fire truck may have a price tag of \$250,000 and you would need to pay the difference out of your own pocket!

So, what is your fire truck worth? AMIC tries its best to get the most accurate valuation possible. They do this by collecting two separate independent estimates using different resources and then comparing the results. To be as fair as possible, AMIC then pays out the higher of the two estimates. But remember, automobile insurance policies are designed to put you back in value to where you were before the total loss occurred. They are not designed or priced to buy you a brand new replacement fire truck. ■

HOW MUCH DOES THAT “FREE RIDE” COST?

Things to Consider Before Using Work-Release Inmates or Allowing for Citizen Ride-Alongs

Lori Lein, Deputy General Counsel, Alabama League of Municipalities

Both work-release programs and ride-along programs sound like win-win situations on the surface. But what are the hidden costs for municipalities in utilizing work-release programs and/or citizen ride-alongs? This article is not intended to thoroughly cover all issues related to the use of work-release inmates and ride-alongs but rather raise issues for discussion.

WORK-RELEASE PROGRAMS

Tort Liability

Two liability issues are presented when utilizing work-release inmates. First, what, if any, liability does a municipality face if a work-release inmate is injured “on the job” and what, if any, liability does a municipality face if a work-release inmate injures someone else while “on the job?” Both of these issues must be considered carefully by municipalities who are considering using work-release inmates.

While there may be some immunity for municipalities and their employees who are participating in a state work-release program utilizing state inmates, See *Town of Loxley v. Coleman*, 720 So.2d 907 (Ala. 1998), there is no similar broad immunity for municipalities who operate their own work-release program utilizing municipal inmates.

Under state law, any immunity which may come into play only protects a municipality if they or their employees act negligently. There is no immunity for behavior or activity that goes beyond negligence. Further, under federal law, municipalities could face liability for Section 1983 claims. Because of the potential for liability issues, employees who are supervising work-release inmates should be carefully trained before being allowed to supervise work-release inmates.

Workers’ Compensation Liability

For the most part, an inmate who is injured while participating in a work-release program is not considered an employee within the meaning of the Workers’ Compensation Act so long as the wages paid for the inmate’s work are paid directly to the entity incarcerating the inmate and not directly to the inmate. See *Gober v. Alabama Dept. Of Corrections*, 871 So.2d 838 (Ala. Civ. App. 2003).

Further, Alabama Courts have made a distinction between inmates acting as voluntary trustees and those acting as a potential employee. Basically, a trustee is an inmate who volunteers to work for a municipality to receive credit against fines rather than a daily credit which may result in some actual pay for the inmate. See *Lanford v. City of Sheffield*, 689 So.2d 176 (Ala.Civ.App. 1997). A city inmate who is injured while working as a trustee for a city is not an employee for workers’ compensation purposes. *Id.* The unanswered question, however, is whether the voluntary trustee distinction is the only thing keeping a work-release inmate from being considered an employee for purposes of the workers’ compensation law. Municipalities must be very careful not to establish any type of employee/employer relationship with work-release inmates.

RIDE-ALONG PROGRAMS

While workers’ compensation issues generally won’t arise in the context of citizen ride-alongs, many of the same liability issues will come into play for municipalities who allow for ride-alongs in emergency vehicles. Perhaps most disturbing for a municipality, on the issue of ride-alongs, is a recent federal case involving an Alabama municipality. The Eleventh Circuit Court of Appeals recently held that a Boy Scouts of America Explorer, who was riding with a police officer as part of his explorer program, and who allegedly participated

in the arrest and beating of an individual, was a state actor for purposes of liability under 42 U.S.C. 1983. See *Johnson v. Olgilvie*, 2006 WL 2970593 (11th Cir. 2006). This decision could result in costly uncovered liability for a municipality who allows for such ride-alongs. In deciding whether or not to allow for citizen ride-alongs the League strongly discourages municipalities from doing so. The benefits are clearly outweighed by the potential costs to municipalities in light of the Eleventh Circuit’s decision as it presently stands.

Conclusion

The decision of whether or not to use work-release inmates or allow for citizen ride-alongs should not be made with the narrow view that one allows for “free labor” and the other promotes citizen involvement in municipal government. Municipalities must weigh the costs and benefits of doing either because of the multiple liability issues and the potential for workers’ compensation issues.

For more information, please contact the legal staff at the League of Municipalities at 334-262-2566. ■

Loss Control Seminar Presentations Now Available Online

For the past couple of years, the Loss Control department has presented seminars on numerous topics at locations around the state. These seminars have been a great success and we look forward to continuing this program in 2007. We frequently receive requests for copies of the presentations made at these seminars for future training of employees. To this end, we are pleased to announce that all the presentations made during 2005 and 2006 can now be downloaded and used for your own in-house training sessions.

The following PowerPoint presentations can be downloaded under the Loss Control section of the Alabama Municipal Insurance Corporation’s website, www.amicentral.org:

Seminars presented in 2005

- Accident Investigation – Todd McCarley
- Hazard Identification for Public Entities - Richard Buttenshaw
- Principals of Risk Management and Safety Programs for Public Entities – Myra Forrest
- Safety is a Way of Thinking – Jason Humphries and Todd McCarley
- Sewer Backup Claim Response – Richard Buttenshaw
- Legal Liabilities of Water and Wastewater Systems – Myra Forrest
- Understanding Your Workers’ Compensation Program – Jason Humphries

Seminars presented in 2006

- Driver Safety 101 – Richard Buttenshaw
- Emergency Preparedness and Evacuation – Todd McCarley
- Equipment Safety – Todd McCarley
- Establishing a Hazardous Materials Program – Jason Humphries
- Health and Wellness Topics – Myra Forrest
- Job Discrimination and Sexual Harassment Training – Myra Forrest
- Top Ten Parks and Recreation Liabilities – Richard Buttenshaw
- Workers Compensation Abuses – Jason Humphries

Why Is Payroll Changed at Audit Time?

This article is a reprint taken from the July/August issue of The Informer, an Iowa League of Cities workers' compensation pool newsletter.

Questions arise every year during payroll audits regarding work classification codes (class codes) and why the payroll auditor may have changed them. Here are some of the most frequently asked questions.

MWCF follows the National Council on Compensation Insurance (NCCI) job description guidelines defining class codes as well as its rules governing their application. This classification system is the foundation for fair and equitable workers' compensation pricing.

By far the most common question arises when an auditor disallows the allocation of an employee's payroll to two or more class codes. According to the Interchange of Labor Rules established by NCCI, this is allowable. However, the rule states clearly that the payroll records must be kept in a manner that reflects the actual hours worked in each class code.

Following are examples illustrating why an auditor may change payroll allocations:

Job Title – Public Works – A city employee works in the streets, water and sewer departments. The city charges one-third of the payroll to each class code. Why did the auditor assign the employee's entire payroll to the streets class code?

Reason – According to the Interchange of Labor Rule, allocating an employee's payroll by percentage is not allowed. If the payroll records do not reflect the actual hours worked in each department (streets, water and sewer), the auditor must assign all payroll to the highest rated code, which in this case is streets (5506).

Job Title – City Clerk/Water Meter Reader – An employee divides time between performing clerical work and working outside the office reading meters. At the time of the audit, why was payroll reassigned to 7520 (Water Department)?

Reason – The clerical code 8810 contemplates office work only, which has the lowest risk of injury. Whenever clerical employees perform work in another class code, they are at greater risk of injury and all their payroll must be assigned to the higher rated code according to the Interchange of Labor Rule.

Job Title – Independent Contractor – A handyman who lives in a city is hired as an independent contractor to mow the grass on city property each summer. Why did the auditor include the city's payment to the handyman in the payroll when that person is an independent contractor and not an employee?

Reason – Independent contractors must provide a certificate of insurance showing they have their own workers' compensation coverage. If they cannot provide proof of coverage, the city may be held liable if this individual sustains an injury while performing work for the city. If there is no certificate on file, the auditor assigns the payroll to the city in the appropriate class code for the work done. ■

Defining Moment

Safety Culture: A way of working or an atmosphere within an entity that influences safe behavior. It consists of shared beliefs, practices and attitudes. A safety culture extends beyond rules and regulations to motivate people to work safely at all times.

Source: CIRSA's Coverage Line; Summer 2006 edition

Previous issues of *Risk Management Solutions* can be found by visiting www.amicentral.org or www.alalm.org and clicking on the MWCF link.

HOT TOPIC!

Groundbreaking New Construction Requirements in the 2006 NFPA 101®: Life Safety Code® Revolutionizes Fire and Life Safety!

Is your community using the new 2006 Life Safety Code? There have been some changes made that will greatly benefit your municipality. From sprinklers, alarms, and egress to emergency lighting, smoke barriers, and special hazard protection, today's *Life Safety Code*® is a major milestone in the fight against fire. Unique in the field, *NFPA 101* is the only document that establishes a minimum threshold of safety in all new and existing buildings ... plus contains a performance-based compliance option. The 2006 edition incorporates the latest technologies, advances and safety strategies to help you meet today's challenges and achieve higher levels of protection for building occupants. In previous Code editions, modifications to existing buildings had to comply with provisions for new construction. The 2006 *Life Safety Code*'s new Chapter 43 introduces specific requirements for repairs, renovations, additions, reconstruction, change of use or occupancy classification and work on historic buildings. Don't work without today's facts. Order your 2006 *Life Safety Code* from the NFPA website, www.nfpa.org, or by calling 1-800-344-3555.

Source: NFPA's Fire Prevention Week Web site, www.firepreventionweek.org. ©2006 NFPA

2007 SKIDCAR SCHEDULE

Madison	February 6 – February 16
Muscle Shoals	February 27– March 9
Homewood	May 15 – May 25
Russellville	June 12 – June 22
Open	July 10 – July 20
Decatur	August 7– August 17
Troy	September 11 – September 21
Open	October 9 – October 19
Orange Beach/ Gulf Shores	November 6– November 16
Montgomery	December 4 – December 14

Dates/locations subject to change.



For additional information, contact
Donna Wagner at 334-262-2566.

Additions to the Safety Video Library

- 5.058 Driving Safely in Winter Conditions *
- 7.088 Preventing Slips, Trips and Falls (General Industry)*
- 7.089 Working Safely in Hot Environments*
- 15.006 Highway Work Zone Safety 2*

***DVD ONLY**

Other topics that might be of interest for this season:

- 7.044 Space Heaters
- 5.046 Winter Driving

To check-out a safety VHS cassette or DVD: call, FAX or e-mail your request to Rachel Wagner at: **334-262-2566**; rachelw@alalm.org; or FAX at **334-263-0200**.

EMPLOYMENT PRACTICES LAW HOTLINE

1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30 minute consultation.

IT'S TIME FOR WORKERS COMP PAYROLL AUDITS!

Every member of the Municipal Workers Compensation Fund, Inc. should have received an audit request for payroll information for the 2006 Fund Year. Some members will be subject to an independent audit from Overland Solutions, Inc. Those members will be contacted to set up an appointment. All other members should have received an Audit Request Form. Please fill in this form according to the instructions provided and return as soon as possible to our underwriters at Millennium Risk Managers. All audit information is due by **March 31, 2007**. If you have not received a request or have any questions, please call Carla Thienpont at Millennium Risk Managers **1-888-736-0210**.

REMINDER FOR ALL MEMBERS OF THE MUNICIPAL WORKERS COMP FUND!

**No premium discount will be issued for
2007 Statements of Commitment
received after February 1, 2007!**



*For more information, call:
334-262-2566.*



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