

Manager/Supervisor Risk Management

#52– 5/8/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: YCPARMIA LIABILITY COVERAGE

An early theme in this training was that you cannot avoid risk, and the consequence of that unavoidable risk is generally measured in cost. Each entity has two basic options in addressing that cost; they can retain the risk and pay the cost out of entity reserves, or they can transfer the risk to another agency. Traditionally the common approach was to transfer the risk to an insurance company. In the late 1970's, the insurance industry got out of the California public entity business, and public entities responded by banding together to form self-insurance pools, including YCPARMIA.

Today our members are managing their individual liability risks through a combination of self-retention (the member's deductible of \$1K-\$5K per occurrence), and risk transfer to the JPA pool, YCPARMIA (and above us our excess pool, CJPRMA) for coverage above that retention. The specifics of the coverage are laid out in YCPARMIA's "Memorandum of Coverage." It greatly resembles an insurance policy, but it is essential to remember that there is no insurance – the assets used to meet the obligations outlined in the memorandum are pooled monies generated by annual charges against our members.

YCPARMIA's General/Auto Liability Coverage agreement starts by saying that we will "pay...those sums which the covered party shall become legally obligated to pay as damages...caused by an occurrence..." The term "covered party" is defined in the agreement, and includes:

- The member entity with its boards and commissions;
- The entity's elected or appointed officials, employees or volunteers (as discussed in the last topic);
- Persons or entities that the member names in a contract as an additional insured (which will be discussed when we get to contract risk transfer); and
- Persons using an entity vehicle with permission (as discussed in a previous topic on auto liability).

Note that the duty to pay is predicated on legal liability. It is not a moral obligation, it is a legal obligation. The duty to defend is triggered by a claim, but the duty to pay the claim requires that we establish that the entity is legally responsible for the damages. To pay a claim without that legal liability could be considered a gift of public funds. Additionally, to have coverage the legal liability must be caused by an "occurrence." This is a huge insurance issue that for the purposes of this training can be culled down to a single word, "accident" (bodily injury or property damage neither expected nor intended by the covered party).

In the coming weeks we will be discussing the exposures that create an entity's legal liability – this training has already addressed one of those exposures, auto liability – and how the YCPARMIA Memorandum of Coverage addresses most, but not all, of those exposures.

Next topic: Where does public liability come from?