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Ruralization of Risk Management

A Handbook for Small Transit Operators

December 1992

FEDERAL TRANSIT ADMINISTRATION

Ruralization of Risk Management:

A Handbook for Small Transit Operators

Final Report
December 1992

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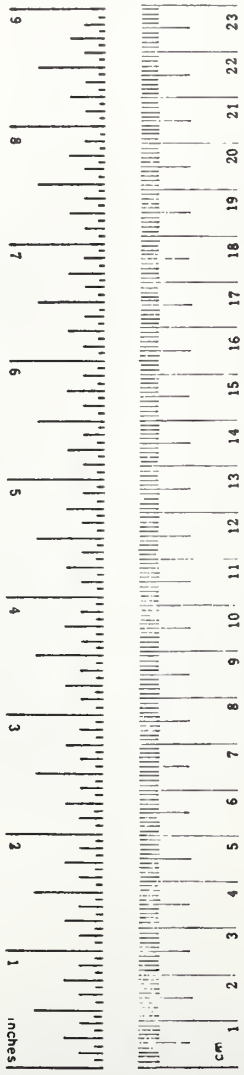
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

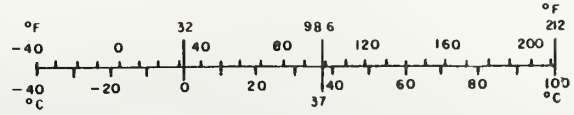
Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
AREA				
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	ecres	0.4	hectares	ha
MASS (weight)				
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
VOLUME				
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	querts	0.95	liters	l
gal	gellons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
TEMPERATURE (exact)				
°F	Fahrenheit temperature	5 9 (alter subtracting 32)	Celsius temperature	°C

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10 286.



Approximate Conversions from Metric Meesures

Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
AREA				
cm^2	square centimeters	0.16	square inches	in
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
MASS (weight)				
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
VOLUME				
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
TEMPERATURE (exact)				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



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CHAPTER ONE: INTRODUCTION AND CONCEPTS

Orientation To The Report

It is often said that we are born into a world of stories and of storytelling. This report is an attempt to tell the story of Risk Management in an easy-to-read, to the point, perhaps witty, and hopefully helpful way. Although it relies on scholarship, it is not written in the traditional "scholarly way." It is an attempt to translate the Risk Management message from the conceptual order and often legalistic language of the insurance and risk management professions into the meaning-producing language of the small transit operator. Basically, this report is an original exercise to tell the story of Risk Management in a way that will help answer the questions and, in some cases, calm the anxieties of the provider of transit services and elevate their understanding of the issues and the concepts to an action-oriented level of knowledge.

The report is an attempt at making a complex process simpler. While it is primarily written for the smaller operator providing paratransit and/or fixed route transit, it should be of value to any transit operator.

Introduction To The Concept of Risk Management

Risk management is <u>not</u> insurance. Insurance is only one of several methods for dealing with risk. Insurance is a method for reducing the uncertainty of the financial loss that often follows a physical loss (loss of or damage to physical property or from personal injury) or from a liability loss (a financial loss following a negligent act). In this report, insurance will be discussed as one tool in the overall process of risk management. Since it is a rather important tool, it will receive detailed attention, but always as part of an overall risk management process.

Risk management may well be viewed as an overall managerial philosophy. It provides a way of viewing your organization, how it

behaves (operates) and how it is or should be run. More technically, risk management is a process of identifying and evaluating all pure risk exposures faced by the transit system and selecting the appropriate method or methods for eliminating, reducing or otherwise handling the risk.

The emphasis here is on the process. Effective risk management is not a one shot activity, nor is it simply a once a year review activity. It is an on-going process. Much of what constitutes that process is already being done by most rural transit systems, only it is not recognized as part of an overall system or process of risk management. For example, if a rural public transportation system has a vehicle preventive maintenance program or a defensive driving training program, then it already has part of a risk management program in place.

First A Few Terms

Before delving into the basic parts of a risk management program, defining a few basic terms may be helpful. The purist among you may not like the looseness of some of these definitions, but their essential correctness is sound. When these discussions move to insurance policies, then the language will begin to tighten. When it comes to an insurance policy, the meanings of words have to get precise. But for now, the focus is on understanding the concepts behind the words.

Loss

A loss is something that costs you money. It may be in the form of property that has been damaged or destroyed and has to be replaced or repaired. It may be real property (a building, for example) or personal property (a rider's glasses or maybe his/her wheelchair). It might be in the form of bodily injury when you physically hurt or "damage" another person. This can range from a simple scratch upon boarding to an accidental death. Losses may also arise from cases of liability -- injury to others from negligence or from intentional action.

When you buy insurance, you will be buying different types of coverage for different types of losses; i.e., bodily injury coverage is

different from physical damage coverage and both are different from liability coverage. If you self insure (also called retention), you would want to establish different accounting line items within the self insurance fund for each type of loss.

Sometimes lawyers get upset over the distinctions just made among bodily injury, property damage and liability coverages. But that's because they view the world from the perspective of their specialty and not from the perspective of purchasing insurance to cover particular risk exposures. So now is as good a time as any to make this difference in perspective clear.

An insurance policy will only pay if: (1) the policy holder (the insured) is legally liable for the damages and (2) if the policy covers those particular damages. While the lawyer is concerned about establishing legal liability, you must be concerned about having the correct coverages in place to pay for all legal liabilities. In insurance terms, bodily injury, property damage and liability are three different types of insurance coverages, even though from the lawyer's perspective they all represent legal liabilities to pay damages. In this report, the term "liability" will be used to mean "liability insurance coverage"

Hazard

A behavior, physical item, or action that may lead to a loss. Storing your old paper records next to the electric heating system produces a hazard. This may result in a fire, which may then result in a loss; i.e., the building burns down.

Peril

The physical or practical means by which a hazard is transformed into a loss. In the above case, the hazard is the improper storage of paper (flammable) records. The peril that occurred was fire. The fire is what caused the loss of the building.

Risk

The probability of a loss occurring from a hazard or a peril. Basically it is a probability distribution that tells you how likely it is that the hazard will eventually produce a loss and what the probability is that the loss will be of any given level of severity; i.e., the entire building burns down or just part of the building burns down. In the above case, if the boiler is housed in a wood frame building that also contains the office and the vehicle storage shed, then the probability is higher that the office and any vehicles in the shed will be lost, than if the boiler is in a fire separated area; i.e., cinder block walls and metal fire doors. Depending upon the thickness of the walls and the door, you have an hour or so before the fire spreads to the office and the vehicle storage area. This allows more time for emergency response which, in turn, reduces the probability of any given level of loss. Add a sprinkler system and you've changed the degree of risk again; i.e., you now have an even lower probability that the fire would spread beyond the boiler room.

Bodily Injury

Physical injury or death inflicted upon another person.

Property Damage

Damage or destruction of property belonging to another or belonging to the transit system.

Tort

"A tort is a wrongful act or omission, arising out of social relationships other than contracts, which violates a person's legal rights, and for which the law provides a remedy in the form of action for damage." (1). In other words, a tort is a violation by act or omission of a lawful duty (other than by agreement) from which legally recoverable damages result.

Negligence

Negligence is a tort of omission and produces a liability risk exposure. The torts considered in this section arise from common law and are assumed to be unintentional.

Negligence is the failure to perform as would a "reasonably prudent person" guided by those ordinary considerations that ordinarily regulate human affairs or the doing of something that a reasonable and prudent person would not do in similar circumstances. This failure produces an unintended outcome which violates a person's legal rights.

Your driver ran through a stop light and hits a car. Your driver was negligent. A wheelchair passenger fell out of his or her chair because (a) it was improperly secured or (b) the securing system was not designed for that particular type of chair, but you accepted the chair and passenger anyway; (c) the van's brakes were improperly relined and it could not stop and ran into a building injuring several people.

In case (a) the driver was negligent; in (b) the system was negligent; and in (c) the system could be judged negligent if did not inspect the relining work if the work was done by a third party (i.e., you contracted it to a third party; say the local van dealer). However, if you did the work in-house, you are negligent since you did the faulty work.

Liability can also arise from failure to do full and proper pre-employment screening. You hire a driver but fail to run a driving record and a criminal record check. It turns out the driver has two DUI convictions and a dropped criminal charge. You don't want to learn this after something bad has happened. Caution: failure to hire based only on dropped charges could lead to a court action by the person not hired. When in doubt consult a labor lawyer.

Thus, negligence may result in property damage or in bodily injury, or both. Additionally, a violation of legal rights may constitute the basis for a liability claim (see below).

Statutory Liability

A statutory liability is one that arises from the violation of statutory law (law enacted by a legislature). In the case of a statutory liability the only thing that the injured party has to prove is that the event took place; i.e., the law as violated. Proving that negligence occurred is not necessary. Statutory liability arises from the failure to observe all applicable government rules and regulations, including civil rights laws and worker's compensation laws (perhaps the most common form of statutory liability).

Strict or Absolute Liability

This is a type of liability that does not require an act of commission or an act of omission. In other words, it can occur without negligence or without a violation of statutory law. An important determinate of strict liability is the degree of care due to the injured party. Strict liability occurs when an extra-ordinary or highest degree of care is owed to persons injured. This highest degree of care is owed to persons who are invited to participate in an activity and to persons who participate in activities that are under the control of another party.

From the transit providers point of view a primary determinate of strict liability is the concept of the invitee. When you "invite" someone to consume your transit services, then you have a strict liability for providing a safe environment in which those services are used. In this case, that translates into a safe trip. In most cases, passengers will be viewed as invitees, thus making the transportation provider strictly liable for any damage that the passenger might suffer while in your care.

Another consideration is the degree of control over the situation that the transit system has. Since the system is considered to be in "control" of its vehicles, any injury that occurs while a passenger is on board will probably be taken as a case of strict liability.

However, what applies to vehicles may or may not apply to passenger waiting rooms or transfer facilities. Since these facilities are open to the non-transit riding public, an ordinary degree of care is most

likely all that is required. In which case, negligence would have to be present for the transit system to be liable for injuries.

A recent Washington State appeals court case illustrates the differences (*Burgdorf vs. State*, 61 Wn. App.918 (1991)). In this case an individual fell inside a transportation facility lobby area. The court ruled that since the individual was in a public area and was not yet a passenger, that the system owed only an ordinary degree of care to the individual and not an extra-ordinary degree of care (i.e., strict liability did not yet hold) (2).

Deductible

The part of any insured loss/claim that you must pay. The insurance company pays the amount in excess of the deductible amount. Be clear as to whether the deductible applies per incident (i.e., per claim, which it frequently does on property coverage) or is an annual deductible regardless of the number of claims per year (most common in medical insurance).

Generally, the higher the deductible the lower the annual premium, but the more you will pay from operating funds for each loss. **Note**: premiums are fully predictable over the course of the budget period, uninsured losses and per occurrence deductibles are not. You may prefer to pay a higher premium in order to reduce the uncertainty of deductible payments.

Most Losses Are Partial

While not a term per se, it is an important point to remember. Most property losses do not result in the total destruction of the property involve. Liability settlements tend to be towards the low end of the scale (remember this is a relative term).

This information becomes important when buying insurance. A higher deductible for property damage should produce a lower premium since the insurance carrier (company) would pay fewer small claims. The claims processing costs for the insurance company are about the same for a small claim as for a large claim, so they charge more

when more small claims are likely; i.e., when you have a low deductible.

Another manner in which this information can be useful is in the purchase of liability coverage. Given a deductible, especially a sizable deductible, the premium per unit of liability coverage (a unit is a $1,000 of coverage) goes down as the amount of coverage goes up, because fewer suits settle in the higher dollar ranges. So it is relatively cheaper on a per unit basis to buy higher levels of liability coverage. Your total liability coverage premium increases, but not by as much as you might normally assume. So ask for bids on higher levels of liability coverage and with various deductible amounts.

Insurance Carrier

The company to whom you pay money (premiums) to pay for losses above the deductible amount. Caution: the insurance company only pays for losses covered by the policy and only up to the policy limits.

In property coverage policies the losses covered by the policy are expressed in terms of perils or hazards, so read the fine print. A named peril policy only pays for losses stemming from those perils specifically named (included) in the policy. All risk policies pay for all losses from all perils not specifically excluded from the policy. Read the fine print. This area is examined in more detail in a subsequent chapter.

Self Insurance or Retention

This is the amount of any loss you choose to pay with system funds. But, a systematic financial policy of reserving funds (placing monies into a self-insurance fund) must be maintained by the system.

For a small system this may be the same as the deductible on a standard insurance policy. For large systems, this could represent a sizable fund with insurance coverage being carried only for very large losses. However, it can be any combination in between. You may self insure for damages to others (in insurance they are termed third party liabilities), for losses to your own property, injuries to your own personnel or any combination of these.

A quick example may be of value. Suppose that you own your own maintenance facility and you have property insurance on the facility and on the major pieces of equipment in the facility. You chose not to purchase insurance to cover the smaller hand tools in your maintenance facility. In which case you would be self insuring for losses to the hand tools.

For financial management as well as for risk management purposes, you should establish a separate accounting line item for the self insurance fund: monies that would be used to replace any lost or stolen hand tools. However, if you own so few hand tools that replacing all of them without advance notice would be possible within the confines of your normal operating budget, then a formal reserve fund may not be necessary. But even in this case, for proper risk management purposes, you should acknowledge that you are self insuring a certain, identifiable number of hand tools and that you are not formally setting funds aside (reserve fund) to pay for their replacement.

Concluding Comment

This chapter sets the stage for a more detailed discussion of risk management by providing you with a working vocabulary and a conceptual base for what is yet to come. It might be worthwhile to take a moment and visualize how these terms and concepts fit into your current operations. Subsequent chapters will explore operational specifics and provide everyday examples that should track pretty closely with what you are visualizing.

CHAPTER TWO: RISK MANAGEMENT PROGRAM ELEMENTS

The Five Parts Of A Risk Management Program

There are five basic parts to a risk management program. This study focuses mainly on the first three parts. The last two parts require little explanation because they are the natural last steps in the overall process. What they do require is a management decision to implement them.

The five parts of a Risk Management Program are:

1) Risk Identification

2) Risk Evaluation

3) Risk Handling: Selecting the most appropriate method(s) to handle the risk:

   a) Avoidance

   b) Loss prevention and loss control

   c) Retention or Self Insurance

   d) Transfer (which includes but is not limited to the purchase of insurance)

4) Implementing the method(s) selected

5) Continuous Monitoring and Review of the program.

The remainder of this chapter is devoted to a brief and introductory review of each of these five parts of the process. Later chapters examine the first three parts in greater depth. Figure 1 provides a visual summary of the five parts and how they interrelate.

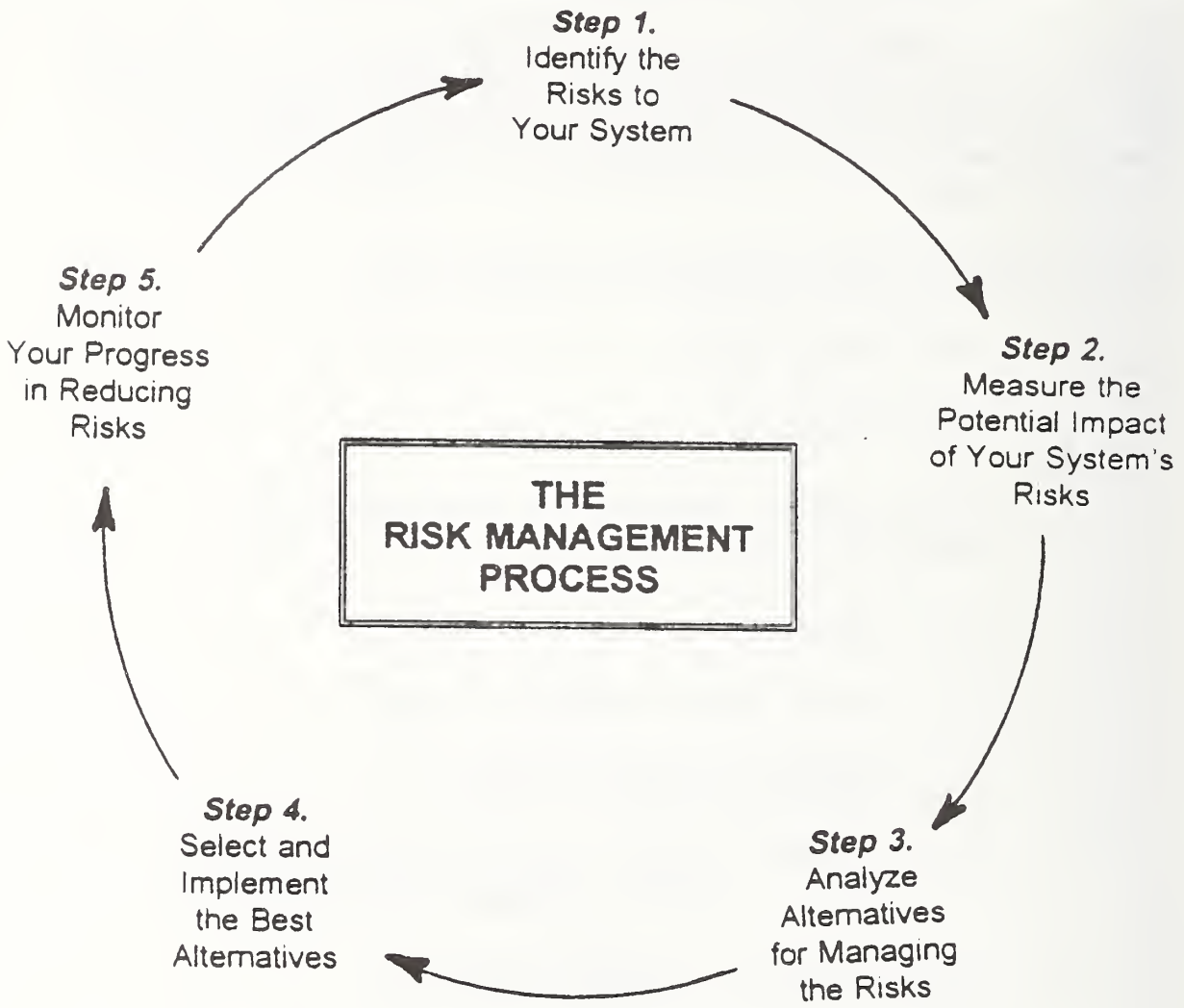

FIGURE 1: RISK MANAGEMENT PROCESS

"RTAP Risk Management for Transit Systems Module," underdevelopment, 1992

Risk Identification: Knowing A Risk When You See One

Risk is basically a probability distribution of what outcomes may follow a particular activity or action. If only one outcome is possible, then there is no risk -- that outcome will occur. If you fall off a cliff, you will fall down, not up. There is only one outcome -- you fall down -- there is no risk.

However, there is risk regarding the extent of personal injury that one may sustain from falling off of the cliff. So, there is risk -- the possibility of various outcomes -- when the question is changed from which way do you fall, to what are the personal injury possibilities from falling off the cliff. Hence asking the right questions, getting a risk-oriented perspective on a matter, is a key element in risk management.

A risk or risk exposure is "something" which may occur which could cause a loss of or to "something." Risks take the form of potential losses of physical property, of bodily injury or of a liability arising from negligence or direct intentional action.

Losses come in a variety of forms following the same general categories as risks, but usually they eventually end up as a matter of dollars and cents. Thus, in the end, losses mean financial payments by the transit system. Such financial payments may be reduced or eliminated by reducing or eliminating losses. Losses may be reduced or eliminated by proper risk management practices.

But what if you didn't know the cliff was there? Then you've got a real problem or, in this context, an unidentified risk exposure. More frequently than one might imagine, organizations suffer losses from risks (cliffs) they did not know were there. In part this occurs due to a perception barrier. A risk cannot be identified if it is not perceived to exist.

Thus, important barriers to a proper risk management program often arise from psychological or perspective factors. Do you perceive that a risk exists? Don't simply rely on your common sense. There is much in your day to day operation that has been going on for so long that you no longer question it. Start questioning it. For example, you

keep your old records, grant applications, contracts, insurance policies in old banana boxes in the storage closet. The cleaning supplies are also kept in the storage closet. They are easy to get to and it always been done that way. What happens when the cleaning supplies leak into the banana boxes? Or worse yet, what if they catch fire? Well, after you've run to find the fire extinguisher (which you may or may not be able to find quickly) and have extinguished the fire, how do you reconstruct the records? You have just suffered a loss from a risk (cliff) you did not perceive you had.

One common method of finding risk is to examine the organization's historical records and see what losses have occurred and why. Predicting the future based on the past is a common method of identifying (and of evaluating) risk. It is also a legitimate method, up to a point. But it is a back door type of approach.

Predicting risks based on the past does not capture risks that have not already produced a loss. Your storage closet has never caught fire. Hence a past loss history approach would not have identified that risk.

Thus, it is necessary to ask "what if" questions. What could occur and what might cause it to occur. This requires looking at your organization from a new perspective. Looking for what you've never noticed before as well as for what is known and familiar, but viewing it in a new light. This is risk identification.

Hence the first step in any risk management program is to conduct a systemic, detailed review of the organization and its activities in order to identify risks. Systematic approaches help overcome the perception barrier. This is why a structured systematic approach is a necessary feature of any risk management process. The Risk Exposure Questionnaire in Chapter Eight is designed to provide a structured approach to risk identification.

Risk Evaluation: How Risky Is A Risk?

The second step in risk management is evaluating the identified risks. In other words, what are the likely outcomes and how serious might they be?

One method of risk evaluation is, again, to examine historical data. How frequently do vehicle accidents occur as measured by vehicle miles or vehicle hours? Do these accidents occur most frequently at night? During bad weather? Of the accidents that do occur, how many result in physical damage in excess of $500? Of $1,000? How many result in personal injury? How many result in serious personal injury? Medical bills are a reasonable method of measuring the extent of most personal injury losses, as are law suits. In short, what has been the frequency of occurrence and what has been the average size of the loss, for the past three to five years?

This hindsight method permits you to predict the future based on the past. You can get formal and hire a statistician to make a probability prediction for you, or you can count your losses on the back of an envelope. Either way you find your "normal" loss occurrences and develop a loss history for your organization.

The use of historical data is valuable in identifying areas where losses have occurred and measuring their frequency and their dollar magnitude. If one particular area stands out; i.e., has a higher frequency or a higher dollar loss than others, then management attention needs to be directed to that area in particular. However, all areas of loss require some management evaluation.

This approach does not measure risks that have not yet produced a loss. As part of the risk identification process, these areas of potential loss must also be discovered and potential loss values estimated. Frequently this is a relatively simple matter. How much would it cost to replace an existing van? A body panel? An existing building?

Others are not so simple. How much might a jury award a handicapped person who sues under the civil rights provision of the Americans

With Disabilities Act (ADA)? What if your entire fleet is lost in a single fire? How fast and at what price could you lease replacement vehicles?

This report provides tools for working through questions like these and eliciting reasonable answers. Overall, the second step in risk management is to measure the probable frequency and dollar severity of losses that can arise from the identified risks.

Handling Risks

Once you have identified and evaluated the risks you face, you are in a position to decide what to do about them. As a general rule of thumb, it is best to handle the catastrophic loss potentials first; for example, those that would shut down the system. Next develop procedures and policies for handling the most frequent losses. At the two extremes of the loss range, the action decisions are often the most straight forward. While the decisions for those loss categories that don't shut down the system, but don't occur very frequently can be more complex.

Loss Avoidance

The surest way of reducing a risk is to eliminate the activity that produces the risk exposure. Don't go near the cliff.

Perhaps there are some activities that your organization doesn't need to be doing or shouldn't be doing under the existing circumstances. For example, providing your own vehicle maintenance requires a maintenance facility. With that facility come a variety of risks: personal injury to the mechanics, fire, hazardous materials spillage and hazardous material disposal (used motor oil, for example). These risk exposures can be eliminated by closing the facility and contracting vehicle maintenance to a third party.

Loss Prevention and Control

Now, what if you cannot avoid the cliff? You've identified a risk exposure; i.e., the personal injury that may occur from falling off of the cliff. Additionally, you've decided that it is necessary (unavoidable) to go near the cliff; i.e., you have a substantial financial investment in maintenance equipment and in the training of your mechanics and cannot close down that part of your operation. Now what do you do?

First you have to try to prevent losses. For those that cannot be prevented, you try to limit the size or extent of any possible loss. Walk through your maintenance facility. Are the floors clean or is there oil residue and hence a possibility that someone will slip and fall? How and where are maintenance materials stored? Especially, where are flammable and/or hazardous materials stored? If they are near the welding torch, you've got a problem. What are the procedures for storing and disposing of used motor oil? For used clean up rags? Are the rags tossed in a corner and once a week somebody washes them? If so, you've got a fire risk exposure.

Cleaning up the area, identifying and using proper storage and disposal methods for flammable and for hazardous materials should be part of a loss prevention program. The idea is to find what might lead to a loss and stop it before it can occur. By putting a railing up along the cliff face, you cannot fall off. This is the idea behind loss prevention.

What you cannot prevent, you try to limit. In other words, if you cannot prevent a loss from occurring, you want to be able to quickly limit the amount of damage that it can do. Do you have or should you have a sprinkler system? If not, are there fire extinguishers? Are they readily accessible and are they well marked? When were they last inspected? Do you have a fire wall with fire doors separating the maintenance facility from the office space? If you fuel vehicles on your property, how close to the maintenance facility are the storage tanks and the pumps? Are any of these areas adjacent to a passenger waiting room or to the vehicle parking areas?

All of these items affect the amount of damage that a fire could do, should one start in the maintenance facility. Later we will ask the same types of questions for other risks.

If you cannot avoid the cliff, and if the railing isn't good enough, then you can wear heavily padded clothing and a crash helmet or, better yet, a good safety line. This is the idea behind loss control.

Retention/Self-Insurance

Loss retention is the conscious and intentional decision to pay for some losses with system funds. The system may elect to pay all of the costs of losses of a particular type from system funds or it may elect to pay only up to a particular dollar level from system funds.

It may be more economical for the system to self insure for relatively small losses that occur with a regular frequency. Using data developed through risk evaluation, you should be able to identify the loss type (for example, van hits a telephone pole and dents a fender) and the average dollar loss per occurrence. If you elect to retain the loss, then the appropriate dollar amounts must be contributed to a self insurance budget line item annually. Realize that in some years losses will be above average and other years losses will be below average and allow for this in your budgeting process (i.e., carry forward any excess funds from good years and be prepared to add funds during bad years).

There are two broad approaches to the question of self insurance. You can self insure for all losses from a particular risk exposure (i.e., you do not buy insurance coverage for that particular risk exposure). This approach leaves you vulnerable to sizable losses from the infrequent and, hence, hard to predict catastrophic losses and is probably not advisable for small systems. Clearly full self insurance carries with it an implicit threat to budgetary stability. Additionally, full self-insurance programs must include funds for administering the program and for loss adjustment expenses.

Combining self insurance with commercial insurance can provide both loss protection and budgetary stability. This combination approach is to self insure up to a preset dollar amount per occurrence or on an

aggregate basis for the policy period (normally per year). This is what you are doing when you select a deductible amount for insurance coverage. You are self insuring up to the amount of the deductible. Generally, the larger the deductible (i.e., the greater the amount of self insurance), the lower will be the insurance premium.

For example, during any given year, the system will have a reasonably predictable number of "van hits telephone pole" type accidents. Using data from historical experience or by asking the right questions at a local body shop, you can obtain an average repair cost for the damage to your vehicles. Assume that your system averages six such accidents a year at an average repair cost of $800 each. How much of the average annual loss of $4,800 do you wish to retain through self insurance and how much do you wish to transfer to an insurance carrier? You should look at the actual loss distribution before you decide.

If four of the six accidents had repair costs below $500 each while the remaining two have costs above the $800 average, then you may wish to retain $500 per occurrence and insure for all losses above that amount. In which case the insurance company would pay the amount in excess of $500 for the two losses that were above the $500 retention level. However, if you need budget stability (i.e., your budget does not allow for an unexpected bad year where you have twelve such accidents even if the average annual loss stays the same), then a per occurrence retention may not be right for you.

In such a case, you may wish to consider the alternative approach of an aggregate retention. With this approach you budget an annual reserve fund expenditure and insure for any losses above that amount. In this example, you may wish to retain the first $2,000 or $3,000 of annual vehicle damage losses and insurance for any annual losses that exceed that amount. In this approach, you can maintain the stability of your budget while still being protected against unexpected bad years when your losses are higher than average. Either of these two retention approaches provides the potential for premium dollar savings to the system.

Remember that the insurance carrier's administrative (claim processing) costs are about the same regardless of the size of the

claim. The greater the number of small losses that you retain, the lower should be the carrier's administrative costs and the lower will be its claims payment amounts. These savings should be passed on to you, the insured, in the form of lower premiums. Balance the lower premiums against any increased internal administrative costs your system might incur for processing the loss internally. These costs should not be very different from what it costs you to prepare a claim to be submitted to an insurance carrier, indeed, these costs will probably be a bit lower. If that is the case, then you save on premium payments and on internal administrative expenditures.

However, small transit systems vary greatly in their internal administrative organizations and their financial ability to contribute to self insurance budget line items. Thus, whether or not the generalized statements above actually apply depends on your specific situation. But keep in mind, if you elect a low deductible, then you will face higher insurance premiums. Hence, some level of retention, either on a per occurrence or aggregate basis, is very desirable.

A word of caution is in order at this point. It is common for small transit systems to treat their insurance deductible amounts as routine maintenance expenditures. This practice masks the financial impacts of losses. Financial losses from risks are not routine maintenance and should be budgeted as a separate line item. Such budgeting removes the loss induced peaks and valleys from your maintenance expenditures when viewed across time. It also puts the expenditure into a budget category that more accurately reflects the cause of the expenditure and enables you to focus managerial attention on loss control activities should deductible payments deviate from the expected. So even if you elect to self insure only for the insurance policy deductible amount, payments for the deductible amounts should be a separate budget line item.

Transfer

Probably the most common form of handling a risk is to transfer the financial responsibility to another party. This may be done by contract or by a hold harmless waiver agreement.

The most common approach is to transfer the financial risk by means of an insurance contract. Here an insurance carrier agrees to pay certain types of losses up to the insurance contract (policy) limits in exchange for an annual premium. From the insured's point of view, you have exchanged an unknown financial loss (the dollar value of a year's claims) for a known financial cost (the insurance premium). This is the most frequently chosen method of handling risk and it is examined in greater detail in subsequent chapters.

Contracts with vendors also present an opportunity to transfer risk via contract arrangements. For example, you decide to have the passenger waiting room repainted and the painters drop a gallon of purple paint on a passenger's head. Who pays? Normally your contract with the painter would specify that the painter pays for any damages that arise from the painter's negligence. If the contract does not contain such a clause, then the system should expect to pay, because the financial risk was not transferred from the system to the painters.

Implementation

Now you have to do what you have decided to do. For those risks that you have chosen to avoid (elimination), you must now take steps to cease the risk producing activity. Sometimes this is quite simple: you stop doing something. Other times it is much more complex.

For example, during the risk identification and risk evaluation stages you identified an underground fuel storage tank on your property. If you already knew this because it was in regular use, then your choice is to continue using it and take appropriate loss control steps (this includes pollution/leakage controls) or to discontinue on site vehicle fueling. If you did not know the tank existed or if you have elected to discontinue using the tank, then you must close down the tank in accordance with local, state and federal regulations. Simply stopping the use of the tank does not meet these regulations.

If you have elected self insurance retention for all or some losses, then you must establish the appropriate budgetary line items and place the appropriate dollar amounts into each. You must also

establish internal monitoring (claims adjusting) procedures to oversee the expenditure of the reserved funds when the need arises.

If you have selected some level of insurance coverage, then you must shop for insurance carriers. You can bid out insurance very much like any other contracted service. However, your position is stronger the more you know about your own loss history and about how insurance works.

Loss control methods must be implemented and supervision procedures must be established to ensure their continual observance. Part of loss control is good technical training for your personnel as well as sound written policies and procedures.

Always remember that each decision made in the risk management process requires follow up decisions and actions in order to fully and correctly implement the initial decision.

Monitoring and Review

Basically this stage is simply good management. Losses, loss control methods and procedures must be monitored on an on-going basis. The risk management process should be part of the day-to-day management philosophy and embedded into your operating procedures.

The more you make the risk management viewpoint part of daily operations, the easier the task becomes. With a fully developed employee training program and a fully implemented loss control program, risk management procedures and philosophy become part of day-to-day system operations. At that point, the formal review process can be done on an annual basis; however, addition formal reviews should be done whenever the system undergoes a major change.

Concluding Comment

The objective of this first discussion of risk management was to provide a first look at the five basic steps or stages of the risk management process. The examples provided are intended to illustrate the concepts as well as indicate the broad applicability of

the steps. Remember that insurance and retention policies and amounts should be formally reviewed no less than annually. A full risk management review should also be undertaken prior to the insurance and retention policy reviews.

The next chapters in this discussion develop the various aspects of risk management in greater detail. They will provide suggestions for instilling a risk sensitive perspective in your system as well as a detailed examination of some of the more common insurance policy forms.

CHAPTER THREE: LIABILITY EXPOSURES

Introduction

As indicated earlier, liability is a complex area that deserves some additional attention. This chapter attempts to provide a better understanding of the different types and sources of liability exposure. Additionally, guidance is offered regarding specific insurance options and questions to ask regarding liability coverage.

Do keep in mind that the perspective of this discussion is that of liability insurance coverage that is a narrower concept than that of legal liability. Insurance will only pay claims for which the insured is legally liable and which arise from perils covered by the insurance policy. But the legal liability will be paid from different types of insurance contracts. Thus, the key question here is not "are you legally liable", it is "do you have the correct insurance coverage to pay the claim". Thus, when we refer to liability, we mean legal liabilities that are covered by an insurance contract called "liability insurance". Hence, different sources of legal liability will be discussed in the context of whether and how they can be covered by liability insurance.

The commercial auto policy and the commercial property policy discussed in separate chapters also include insurance coverages for liabilities arising from activities or properties covered by those policies. However, liabilities also arise from activities not covered by those policy documents. For such exposures, a separate all risk commercial general liability umbrella policy is necessary. Most systems will be quite adequately served by a commercial general liability umbrella policy in addition to the liability coverage that is included as part of your vehicle insurance and your property insurance.

Note On Pollution Liabilities

Systems that store hazardous products, have fuel storage tanks (above or below ground), dispose of used motor fluids (most of which are hazardous products) or which transport hazardous cargo for hire need to be very sure that the perils/risks arising from these activities are covered by their liability policy. As a general rule of thumb, any activity that might produce a pollution risk (such as leakage from an underground fuel tank polluting the local drinking water) will require a specific policy endorsement or a separate policy for that risk. Pollution risks are difficult to insure, in part because it is hard to predict the size of the potential loss, and in part because pollution damage is often not discovered until a considerable period after the polluting event occurred. For insurance purposes, pollution risks are treated as a liability insurance coverage, not as a property damage insurance coverage.

Differences Between Liability Coverages and Property or Personal Injury Coverages

Recall the banana box story from Chapter Two. In those banana boxes were stored old insurance policies. Many readers may have wondered why anyone cares about "old" insurance policies. The main answer lies in a difference between the insurance treatment of liability risks and of property damage risks. When property is damaged, you know it's damaged and the payment (claims adjustment) is completed within a reasonably short period of time following the damage. With a liability risk, the claim (or legal action depending upon the situation) may not be made until several years after the actual incident (loss). In part the delay may be because not all bodily injuries are immediately apparent following an accident or it may be because the damage from the negligent action may not be visible until some time after the incident or it may be because it takes some people awhile to realize they can sue you.

But regardless of the reason for the delay in action, the insurance policy that was in force at the time of the negligent act is the one that must pay the claim. This may well be a different carrier and/or a different policy than the one your system has on the day the claim

is actually filed. That's why it is important to keep your "old" insurance policies: claims for loss from negligence often lag in time the actual loss producing incident. You must know what carrier was providing coverage at the time of the incident (not at the time of the claim) and you must know the extent of the coverage provided. Thus, liabilities have "tails," so you have to protect your banana boxes. This also applies to self insurance reserves. Because of the liability "tail," additional funds must be held in reserve following any accident, at least until the statute of limitations expires (usually three to five years, but it may be longer for certain injuries depending upon applicable law).

Another important point to realize about liability risks is that there is no good way of projecting the size of the loss. With property damage, the direct loss will not exceed the value of the property (measured on an Actual Cash Value basis or on a Replacement Cost basis), plus any loss of use or extra expense which might be applicable. With bodily injury, the direct medical expenses are what they are. But with liability, the limits are pretty much what a good lawyer can convince a court to award and may or may not have any relationship to an economic loss.

To clarify, if you are found liable for an injury or loss, then you would be expected to pay for actual economic losses (medical expenses, property damage, lost wages, extra expense, etc.). But because the loss arose from your negligence, you might also face other non-economic-cost-based payments. The most common of these is "pain and suffering." Here the courts award additional monetary damages over and above direct economic losses to compensate the injured party for the trauma of enduring the injury or loss. Non-economic losses are more common in personal injury cases than in property damage cases. In some cases the courts may also award "punitive" damages. These are monetary awards that are meant as a punishment to the wrong doer and, hence, as a deterrent to others.

Liability Through Contract

Whenever you enter into a contract the responsibilities of each party to the contract and the liability risk that each party has, should be explicitly stated. If your contracts are drawn up with the liability

risk in mind and reviewed by your attorney and your risk manager, then this area should present no difficulties.

The painter example from Chapter Two illustrates the matter. You hire an outside vendor to repaint your passenger waiting room. In the contract you may require the vendor to assume all worker's compensation liability for the vendor's employees and be responsible for any damages done to persons or property while the vendor is painting your waiting room. Such clauses are common and language to this effect should handle most any liability exposure arising from painting the waiting room. You have transferred the risks to the vendor by contract.

The above transfer does not handle the risk that the vendor will not be financially able to pay for damages done. Thus, it is also wise and common to require the vendor to provide proof of financial capacity. A Certificate of Insurance showing adequate levels of coverage should be satisfactory. (Don't confuse worker's compensation coverage and liability coverage). It is a good idea to check with the vendor's insurance carrier to make sure the policy is currently in force. Also, don't pay for any work in advance unless the vendor has a valid performance bond or a solid track record.

Notice that this one fairly common activity -- painting -- has provided examples of four different types of risks. First is worker's compensation: risk of injury to the vendor's employees, this risk should never be yours. Second is the risk of damage to property or persons within your waiting area. The financial responsibility for loss from this risk has been transferred by contract. Third is the financial solvency risk that the vendor will not be able to pay for any damages. Since the property in the waiting room belongs to the system and since the persons in the waiting room are either your employees or your customers, if the vendor cannot pay for any damages, you will even if you are not legally responsible. If you're not legally responsible, your liability insurance will not pay for the damages. And fourth, the risk that the vendor will take your up front payment (even if it is only partial) and disappear without finishing the work, hence the notation of a performance bond. As a practical matter, a performance bond for a waiting room paint job would be financially prohibitive, so either don't pay in advance or only pay for

materials and provide those materials directly. The above considerations should handle the risks arising when the system contracts for non-transportation services.

When the system contracts for transportation services, then an additional level of care in the execution of the contract is probably wise. Since your business is transportation, you are in a position to judge the technical competence of competing vendors, thus you will be expected to contract to a vendor who will provide the service with the same level of care and responsibility that you would. Hence, in addition to the expected proofs of financial capacity, you should be requiring a specified level of driver training (including passenger sensitivity training), pre-employment record checks, compliance with applicable government regulations and laws, vehicle maintenance, etc. In short, you specify, in detail, in the contract all of the requirements that you place upon yourself for services operated directly by your system and place them upon the contract service provider.

When the system contracts to provide transportation services for others, then the system is exposed to at least the same risks as when providing transportation services that are not provided under contract. It is very important that you be quite sure that the contract does not require a different type or level of service than you are currently providing to non-contract riders. If it does, then a careful risk management review of the service contract must be undertaken to determine whether or not any new or enhanced risk exposures come into being with the contract.

For example, if you contract to provide service to a special population group, then proper risk management principles, not to mention good customer service principles, require that your drivers and other system personnel be provided with the necessary training to attend to the special needs of that population group. Failure to do so would expose your system to a potential risk should inappropriate treatment be given to any such rider.

Statutory Liability

This is a special category of liability. It will be reviewed separately from the general case of torts because it is relatively simple to discuss. A statutory liability occurs when you have violated a law. All that must be proven is that you did in fact violate the law. Once that is done, then you are liable. Nothing else must be proven. In other words, a statutory liability does not necessarily require bodily injury, property damage or other economic losses to have occurred. Nor does it necessarily require negligence or intent to injure.

The most common form of statutory liability is worker's compensation. Here evidence of injury is all that is required. Then, according to the worker's compensation laws of your state, a certain financial settlement will be made to the worker.

However, violation of various other laws may lead to statutory liability. Of most concern to a transit system would be civil rights violations under the Americans With Disabilities Act (ADA). The ADA is too new to have developed case law precedents; thus, it is impossible to estimate what a jury might award a person protected by the ADA who proves that your system failed to comply with the requirements of the act.

Civil rights violation liabilities are often excluded from commercial liability coverages. Policies that provide coverage for "bodily injury" will not include civil rights violation coverage. However, by endorsement, the policy can usually be modified to cover "personal injury" that has a broader definition. Civil rights violations are often embraced by the personal injury definition. Check your specific policy's definition of the term since civil rights violations are not always included in all states. Civil rights violations are often difficult to insure.

The "rights of others" is an important consideration for both the present and for the future. What constitutes "rights" is an evolving body of common law and statutory law. As "rights" expand, so do liability risk exposures. The rights of the handicapped are an excellent example. It was not that many years ago when handicapped

persons had few "rights" that could be violated by a transportation provider. Their rights to transportation services increased at first through a series of common law decisions, then became part of statutory law. Most recently with the passage of the ADA, their rights have become part of civil rights law. At each stage of the process, the liability exposure potential from violating the rights of the handicapped has increased in magnitude. This same evolution is occurring with other population groups and this requires a continuing effort on the part of the transit provider to be sensitive to the needs of all of their passengers as well as to be aware of changing common law and statutory law requirements.

One of the problems that arises with civil rights violations is the contention that they result from willful actions on the part of the system. This contention could place the loss in the category of an intentional tort by the system management, in which case insurance coverage is less likely to apply or it could place the system in the position of being grossly negligent in which case larger judgments are more probable. You should have a written and inclusive non-discrimination policy statement for your system and take great care to avoid civil rights violations.

Liability Resulting From Intentional Torts

In this case, an injury was intentionally inflicted upon another's person or property. This is not negligence, it is an act intended to do harm. Should this occur, you may or may not be liable and you may or may not have insurance coverage. It depends upon the situation particulars.

An intentional tort committed by an employee <u>without</u> the system's knowledge or approval is usually covered by the system's liability insurance policy. The insurance company will most likely take legal action against the employee to recover their costs for payments made on the system's behave.

But you must be prepared to demonstrate that you had no prior reason to believe that the employee <u>might</u> behave in such a manner. This re-emphasizes the need for a good pre-employment screening process.

An intentional tort committed by an employee acting on behalf of the system, rather than on his or her own, would clearly make the system liable and would not be covered by your insurance policy. Such occurrences should never happen.

However, a civil rights violation might be interpreted by the courts as an intentional tort. This possibility raises two management actions that are needed. First, have a written and specific non-discrimination policy for your system. (Be sure to include persons with AIDS, HIV+ and hepatitis B as persons who will not be discriminated against.) Second, find out whether or not civil rights violations are covered by your insurance policy.

Negligence

To understand this area requires that some time be spent examining the concept of negligence. Negligence must be judged within the context of each situation. However, certain fairly common characteristics of negligence can be discussed.

> Negligence involves a wrong against another resulting in injury to his person or damage to his property. The distinguishing characteristic is that the invasion of another's rights was the result of neglect or carelessness on the part of the one causing the injury. In other words, one party has failed to exercise a socially acceptable degree of care....Negligence is essentially negative in character. It is either the result of the commission of a careless act or, perhaps more accurately, it is the omission of an appropriate degree of care for the rights of others....Negligence has been defined as the failure to use that degree of care required by law of a prudent man under the same or similar circumstances. (3)

The concept of negligence presumes that certain things are true or that certain conditions exist. These are briefly summarized below.

* The person/organization charged with negligence must have a duty to act. Since negligence is the failure to act,

then the person failing to act must have had the duty to have acted to prevent the loss.

* The injury must have been foreseeable to the person failing to act. Foreseeability is to be judged under the conditions at the time of loss, not in terms of hindsight. Hence the person with the duty to act must have been able to foresee that failing to act would cause a loss.

* The degree of care provided (prior to the loss occurring) was in line with that expected by law. In essence this says that certain persons or situations require different levels of care. For example, in dealing with children or with the elderly, the law expects a higher degree of care than when dealing with other age groups.

* The reasonable and prudent man standard requires a level of care and foreseeability that an "average" person who is a responsible member of society would provide. When in doubt, the courts will determine what behavior constitutes reasonable and prudent behavior.

* Reasonable and prudent action is judged in terms of the circumstances surrounding the loss. Hence what constitutes reasonable and prudent action will vary by the specifics of the situation.

Illustration: your van driver swerves to avoid a child that has run into the street in front of the van. In so doing, the van hits a car in the other lane. Was your driver negligent? Well, that depends. Could your driver see the child running towards the street in time to stop safely? Was it an area where children frequently run into the street, perhaps next to a playground, and your driver knew this? The final determination would be left to the courts. However, if the answers to the above questions are no, then most likely the court would rule the van-auto collision not to be negligent. (4). It was prudent to avoid hitting the child (a member of a group that is entitled to an extra degree of care), the event was unforeseeable and most people might be expected to behave in a similar manner under similar circumstances.

Failure to meet any of the above noted criteria normally mean that the potential for a liability claim exists. However, two other conditions must be met.

* There must be a loss to person or to property (including loss of use of property) for there to be a legal action. Negligence that did not produce a loss is not actionable. (Recall that civil rights violations are statutory, not negligence, thus no loss is required.)

* There must be a direct unbroken chain of events linking the negligent act and the loss. The negligent act must be the proximate cause of the loss.

Illustration: your cleaning crew has just mopped the floor of the waiting room rest room. A rider enters, slips on the wet floor and suffers a bodily injury. There was no warning sign in place nor was the rest room closed to customer use. Your customer now has a cause for a negligence action. If the customer was elderly and the injury was to the hip, it could be a very sizable liability.

It should be fairly clear that a wide variety of acts or omissions (non-acts) can lead to a liability claim. It is quite common to violate at least one of these requirements on a daily basis in some area of operations. Hence, the importance of good loss prevention and loss control mechanisms should be self evident.

Constant and comprehensive record keeping must also be part of the loss control program. Document what occurs, how you responded to the event and what steps were taken to prevent the event from happening, or to prevent it from happening again.

Additionally, as a transportation provider, you will be held to a higher standard of care than would a friend driving another friend to the movies. Your riders are your customers and common law is quite clear that customers have a right to expect that a safe environment be provided by those with whom they do business.

Defenses Against Negligence

There are two primary defenses against a charge of negligence. The first is contributory negligence and the second is assumption of risk.

In contributory negligence, if you can prove to the court's satisfaction that the other party's action contributed to the cause of the loss, then you are relieved of all or part of the responsibility for the loss. In some states even a very slight level of contributory negligence constitutes a complete defense (i.e., you would not have any liability). In other states, the loss is shared between the parties based on a formula reflecting the degree of contribution to the negligent act that led to the loss.

The assumption of risk defense requires that the injured party knew that there was a chance of injury and voluntarily elected to undertake the activity. This is a common law defense and may be modified by any applicable statutory law. However, the assumption of risk defense is a very poor defense for any liability arising from passenger injury in public transportation.

Liability Insurance

Liability insurance coverage pays those amounts for which the insured (your system) is "legally liable." In principle this means that you must be found liable in a court of law. In practice it means that if the insurance carrier believes that you will be found liable, then the carrier will pay without a formal court proceeding. Also, in practice, it means that the carrier will pay claims for which you probably would not be found legally liable if the defense costs would be greater than the settlement (claim payment) amount.

This illustrates an additional element in liability coverage that is of major importance. Under most liability policies, the insurance carrier pays for your legal defense against charges of negligence. In these cases, the costs of the legal defense are in addition to the face amount of the policy. Thus, the policy will pay any liability judgment up to the face amount of the policy plus the costs of the legal defense.

However, some Directors and Officers policies and some umbrella policies place separate and specific limits on legal costs or cover them as part of the limits of liability. Be sure to check the specific language of your policy.

What risks your liability policy covers depends upon what coverage(s) you purchase and how you purchase your coverage(s). You will probably purchase policy coverages for specific property categories; for example, a vehicle liability policy that covers risks from the operation of motor vehicles or a boiler and pressure vessel policy (or endorsement to a building policy) that covers liabilities arising from the operation of boilers. These policies may be on a named peril basis or on an all risk basis. The availability of specialized policies permits you to purchase specific coverage for specific known needs while omitting coverages you do not need. These policies, taken as a group, form your base or underlying liability coverages.

You can obtain higher liability limits either by buying a higher limit on the base policies or by purchasing an umbrella liability policy. The umbrella is normally the cheaper alternative. The umbrella coverage picks up when the basic policy's coverage is exhausted. Thus, it is important to have all of the underlying policies explicitly tied into the umbrella policy. Suppose you have a vehicle accident that produces a $1 million settlement. If your underlying auto policy has a liability limit of $750,000, then it would pay $750,000. The remaining $250,000 would come from the umbrella liability policy (less the deductible). Normally, you don't bother with an umbrella policy with coverage limits of less than $1 million.

Your umbrella liability policy should provide all risk coverage. In this manner you would have coverage for unidentified risk exposures, as well as, additional coverage, should a loss exceed the liability limits of the applicable base policy.

At this point it is important to understand how your policy applies the policy limits. In other words, what constitutes an "occurrence"? Illustration: your van is involved in an accident and five passengers are injured. Does your coverage limit apply to each of the five passengers as separate occurrences or does it lump all five together

as a single occurrence? Your base vehicle policy will probably do both. Usually it will specify a limit per occurrence and a limit per person involved in each occurrence. For example, the policy may specify $1 million per occurrence with a per person limit of $300,000. If your base policy has generous limits, then you probably will have adequate coverage for most losses. However, risk management planning requires that you consider the worst case possibility. If the five persons injured in the van accident were high school merit scholars and the accident left them paralyzed, then you probably don't have adequate coverage. In such a case, the $300,000 per person limit will be quickly exhausted, as will the $1 million per occurrence limit. In a case like this a sizable umbrella liability policy to provide the remaining damage payments would be highly desirable. Fortunately losses of this magnitude are quite rare.

Professional Liability

This is an endorsement that would provide coverage for liabilities arising for the provision of professional advice or services for a fee. It will provide a useful measure of protection should a contract rider suffer injury due to a decision of the system's management. This coverage is designed and intended to cover only the actions of management.

Directors and Officers Coverage

This may be a special endorsement to your general liability policy, but it is often a separate policy. It provides liability coverage for wrongful acts, errors and omissions, neglect or breach of duty on the part of members of the transit system's Board and Officers. It would not apply in cases of fraud, dishonesty, intentional torts or gross negligence. Gross negligence is the "willful and wanton disregard of the rights of others" (5). This coverage is sometimes called Board and Officers Coverage or Errors and Omissions Coverage. Some states have statutes that provide immunity from liability for volunteer and/or non-profit organization Boards of Directors.

Concluding Comment

Several aspects of liability should stand out from the above discussion. One is that the potential for exposure is, literally, everywhere in your operation. This fact requires a great sensitivity to the rights of others and to what actions, non-actions and/or physical barriers constitute potential losses. Another is that personnel training and well planned and well-documented internal policies and procedures should limit the risks of a liability loss. Keep detailed written documentation of all training provided, of all policies and procedures of your system, of how these policies and procedures are explained to employees and of how they are enforced.

Driver training, passenger sensitivity, drug testing, pre-employment screening, preventive vehicle maintenance, detailed record keeping (especially following accidents) are all parts of a good risk management program and should serve to reduce your exposure risks.

Your best defense against a liability loss is good advance planning and preparation; in other words, loss prevention and loss control techniques. Once a liability loss has occurred, your defenses are very limited. Hence your energy should be directed toward prevention and control.

With respect to liability insurance coverage, some care must be taken regarding the definitions that the policy uses in order to be clear that you actually do have coverage for all potential liability losses. Generally, Comprehensive General Liability policies and umbrella policies will provide broad coverage on an all risk basis (all perils not explicitly excluded). However, with the general rise in civil rights risks, especially ADA, but also from other groups, it is worth your time to be very clear on whether or not civil rights coverage is provided and in what amounts.

CHAPTER FOUR: RISK REDUCTION AND LOSS CONTROL

Introduction

It is beyond the scope of any single work, of less than epic proportions, to delineate a suggested procedure for each and every potential source of loss (i.e., for each possible peril). The present approach is oriented towards providing a conceptual framework for identifying areas/topics that may require attention, noting specific areas that do require managerial attention and suggesting some particular aspects of those areas that should be considered. The checklists provided for risk identification and risk evaluation add body to this framework. Sources noted in Appendix A provide additional guides to the development of policy and procedure in certain areas. Additionally, training and technical assistance is available from sources such as Rural Transit Assistance Program (RTAP).

The very diversity of transit providers makes the development of any single guide a precarious task. However, transit operations do share a basic core of activities which require each system to develop formal, systematic loss control procedures for:

* Accident/incident investigation,
* Planned inspections,
* Group meetings,
* Proper job instruction,
* Hiring and selection,
* Engineering controls,
* Purchasing controls,

* Rules and practices,
* Supervisory training,
* Special skills training,
* Incident recall and analysis,
* Job analysis and procedures,
* Planned job observations,
* Protective equipment,
* General promotion,
* Personal communication,
* First aid, and emergency preparedness.

Each of these items represents an area of management activity that has been identified as a practical proven tool to aid in the control of accident losses. Most of them involve activities directed at risk elimination or prevention of potential accident causes. (6).

Overview Of Approach

This discussion will include activities that should be undertaken before a loss occurs (pre-occurrence steps), activities associated with the occurrence of the loss as well as activities that occur following a loss (post-occurrence steps).

All three stages are part of the overall risk reduction and loss control process. However, much of this chapter will focus on pre-occurrence stage considerations. Because once a loss occurs, it is too late to establish procedures to reduce the size of the loss. That can only be done before a loss occurs.

Human Factors Approach

In every successful loss reduction program, there is a hard core that focuses directly on the employee as an individual and that publicly rewards the employee for successful loss free activities and for successful display of high quality job skills. This rewarding and reinforcing process is as important as any training program, any equipment or any necessary but unexciting forms.

The human factors approach assumes that the human being is the primary focus of any attempt to reduce risks and to reduce losses. The focus is on the employee first. Practices, procedures and engineering controls are essential parts of the overall program, but they must be viewed as supportive of the actions of people. An emphasis is placed on involving the employee in establishing the procedures and on making the system's goals the employee's goals. This is the embedding of the risk management philosophy into the system culture. You do this by showing how the training and the equipment help the employee do his/her job better and safer. How both help them serve their clients, the riders, better. This is morale building. This is a real test of the human skills of the system manager.

Part of the human factors approach is equipment oriented and is sometimes referred to as human factors engineering. This part of the approach focuses upon the person-machine interface. How do the people and the equipment work together? This is having the right tool for the job and having the employee correctly trained for that tool. The tool could be anything ranging from the hoist in the maintenance shop to the radio in the vehicle to the computer for the manager.

Summarizing this approach is not all that simple; however, the following listing, while broad and covering a wide variety of topics, represents fundamental guiding principles for a sound human factors based risk management approach:

1) Have the correct equipment for the correct task;

2) Have all the equipment you need;

3) Train your people fully and retrain/refresh them regularly; have an on-going training program, and make sure to document your program;

4) Supervisory oversight is an on-going process, surprise visits are to be included;

5) Maintain good morale and a risk reduction orientation;

6) Put all policies in *writing* and be sure all employees buy into the policies willingly, this includes post occurrence reporting procedures;

7) Reward the behavior you want with plaques, pins, ceremonies, dinners and the like;

8) Conduct solid pre-employment screening of potential employees.

9) Have counseling programs/referrals available for current employees, especially those with drug or alcohol problems;

10) *Document everything.*

Generic Steps In Applying A Loss Control Program

The following is a generic process approach (7) to the technical tasks of loss control. These steps focus upon both the physical and engineering approach (programs, procedures, equipment) as well as upon the human skills (training) approach to loss reduction. *But always remember that it is the employee that must use these programs and procedures. Without the employee's support, they may not work.*

Pre-Occurrence Steps (What To Do Before A Loss Occurs)
This is where most of your managerial energy should be focused. This stage is where you provide the necessary training, the correct equipment, the needful policies and procedures, the important morale building activities and the embedding of the risk management philosophy into your employees.

The list of valuable training areas is as limitless as the range of activities in which your system engages and no real point can be served by a listing of all of them. But training for certain high risk areas will be noted.

Since you are a transit system, most of your risk exposure occurs on the road. Hence anything that affects your riders, your drivers and/or your vehicles must be top priority risk management areas.

Equipment This process starts with the purchase of your vehicles. By specifying a construction standard and an interior layout that minimizes risks of on-board injury, the risks of accident are reduced and the control of losses once an accident occurs is strengthened. Remember that the majority of all passenger injuries occur on board the vehicle. Boarding and alighting are important areas, especially for wheelchair users and others with major mobility impairments, but most passenger injuries still occur on board. Hence, the interior layout, the choice of interior materials and the speed with which the driver can respond to any emergency are of critical importance.

The approaches here are mainly engineering, physical item approaches that need to be in place before a loss occurs. Seat belts in vehicles are an example of what this means. As the loss (the accident) is occurring, the seat belt restrains the occupant, thereby reducing the amount of damage the individual suffers (i.e., the individual does not go through the windshield; thus, the individual suffers a lesser degree of loss/injury). For the seat belts to actually reduce loss, they must be installed before they are needed. But if they are not used, they are of no value even if installed. Thus, the correct equipment must always be combined with the correct training and policies regarding equipment usage. Thus, engineering techniques do not supplant the importance of personnel training.

The risk reduction process continues by the equipping of your vehicle with loss control aids, which may or may not be part of the original vehicle procurement specifications. While the listing is not exhaustive, your vehicle should have:

* Rear window with magnifying inset;
* Mirrors giving the driver a view of the area behind the vehicle;
* Side mirrors;
* Reflecting triangles as well as flares;
* Pop-out side windows;
* Reinforced roof for roll over protection;
* Reinforced sides for collision protection;
* Roof escape hatch;
* Heavy duty shock absorbers;
* Reinforced bumpers;
* Driver's side air bag where available;
* Over the shoulder passenger seat belts where available;
* A first aid kit (should meet appropriate OSHA regulations);
* A biohazard kit (see separate section below);
* Fire extinguishers (see separate section below)
* Blankets;
* Accident reporting kits;

* A radio or cellular phone.

Blankets serve two basic functions. One is to keep accident victims warm and help prevent or slow the shock process. The second is to provide padding for the head of any rider that has a seizure on your vehicle.

A fire warning system and automatic extinguisher system that monitors the engine is also desirable. Such systems are termed Fire Suppression Systems and can be included as part of your vehicle specifications. They generally cost between $1,500 and $6,000 depending upon the system particulars. While more expensive than hand held fire extinguishers, these automatic systems are much more effective and should be given serious consideration. But remember, these systems are for under the hood/engine fires, not for passenger compartment fires. Thus, hand held fire extinguishers are still needed.

High quality shock absorbers, extra bumper reinforcement, side of vehicle reinforcement, roof reinforcements, pop out windows are all examples of items that reduce losses as they occur; but which must be in place before the loss occurrence. The importance of detailed vehicle specifications cannot be overstated. (8).

This discussion is not going into the areas of vehicle and building preventive maintenance. Solid preventive maintenance programs in these areas are important parts of an overall risk management program.

Training Once you have the physical equipment part right, the next part is the training. While both the equipment and the training are important, good training can compensate for not so good equipment, but good equipment can never compensate for not so good training. So make sure to train your personnel, constantly, on an on-going basis. Make sure they understand that the training benefits them, benefits the rider and benefits the system as a whole. Let it give them pride in the organization by being the best.

Driver training would include, but not be limited to:

* Where the equipment is on the vehicle;
* How to use the equipment;
* Defensive driving;
* Pre-trip and post-trip checklists and vehicle inspections;
* Post-accident procedures and documentation;
* Passenger sensitivity training;
* Biohazard clean-up procedures;
* Use of fire extinguishers;
* Basic first aid;
* Passenger assistance training and techniques (get your client organizations involved on both assistance and sensitivity training sessions);
* Radio protocol;
* Fare collection procedures;
* Who to call and how to call should an emergency arise;
* Commercial Drivers License training;
* CPR training;
* Record keeping.

Also train your dispatchers in these functions as well as in the dispatch function. Remember that should your driver have an emergency, the first person the driver can contact at the system is the dispatcher and the dispatcher should be able to provide support and suggestions appropriate to the situation.

The Rural Transit Assistance Program (RTAP) currently has training modules in many of these areas and others are underdevelopment. Contact your state's RTAP coordinator listed in the Appendix C for additional information.

Training for mechanics is not discussed here. Rather the assumption is made that your mechanics meet appropriate licensing standards and are trained to use the equipment that you actually have

Establish a training schedule for all new employees and a refresher training schedule for continuing employees. Train all employees (new and continuing) on all new technologies, equipment and procedures that your system adopts. Maintain records of these training activities. When you put together a package about your system for the insurance purchase process, the extent and regularity of employee training is a factor that will work in your favor.

Another technique used by some systems is the on-the-road checker. These are individuals whose job is to observe the behavior of the driver while on the road. Clearly, this is to be done without the driver knowing and requires the use of a vehicle not immediately identifiable as belonging to the system. Most rural transit systems will be too small to cost justify regular on the road checkers (even though the system manager may do this task from time to time). However, in many communities you already have them in the form of regular citizens who call the system manager when they see something they do not like. While such individuals may misinterpret what they see, afterall they are not necessarily professionally trained in transit, their comments should be taken seriously and viewed as free information that is frequently valuable.

Routing A means for reducing system risk exposure that is often overlooked is the routing itself. Even though some systems, such as demand responsive systems, don't have fixed routes, the concepts explored can also be applied to choosing the route used to pick-up the scheduled demand responsive riders.

* Reduce vehicle backing to a minimum. Since one of the most common forms of vehicle accident is a backing

accident, design routes with as little backing up activity as possible;

* Minimize left hand turns;

* Place any regular passenger pickup points and/or "bus" stops in areas with clear visibility for other vehicles (not after blind curves for example) and out of the traffic lane (use a turn out where possible);

* Select pickup and drop off points, to the degree possible, with ease of passenger access to the point in mind. Such terrain considerations as hills, sidewalks and street crossing lights can make it safer and easier for your riders to get to and from the pick up/drop off points.

These suggestions are not great insights, just some common sense suggestions. System operators often take their routing as a given; something determined by passenger origin and destination locations. While this is true to a considerable degree, you do have some level of control over certain particulars, such as how your vehicle moves and parks while at a pick up or drop off point. Examine such movements with a view towards risk reduction.

Biohazard Kits Each vehicle should be equipped with and the vehicle operator trained in the use of a biohazard kit. If a transit system operates waiting rooms or transfer facilities, then a kit should be located at all such facilities and the facility personnel properly trained in its usage. Biohazard kits may be purchased or they can be created from items found in local stores including grocery stores and drug stores. The kits can be stored underneath the driver's seat or a passenger seat near the front of the vehicle. The kits must be secured and bungee cords are often used for this purpose.

A Biohazard kit should contain:

* Disposable latex gloves (minimum of two pair);

* Paper towels;

* A dust pan and brush;

* Chlorine bleach (a diluted solution of at least 5% bleach) or a disinfectant that is effective on the HIV virus. While bleach kills the HIV virus, it can also damage vehicle seat or floor coverings. Disinfectant sprays and foams are commercially available that are effective on the HIV-1 virus. If a chlorine bleach solution is used, care should be taken that the container is well sealed and does not leak;

* Plastic trash bags (2) -- orange or red bags or orange or red tape applied to any color bag (orange and red denote biohazardous materials). Bags with the biohazard symbol printed on them would be preferred and are required for systems subject to the OSHA Occupational Exposure to Bloodborne Pathogens regulations.

* Solidifying powder may be used if desired to turn a liquid spill into a gummy spill (anything that absorbs liquid will do: sawdust or kitty litter or commercially prepared absorbent powers for example);

* Respiratory masks are not needed for HIV purposes as HIV does not transmit by air; but, they may be useful for other purposes and some kits come with them. They are useful in protecting the AIDS/HIV+ passenger from air born infections carried by transportation system personnel. *Always remember that the AIDS/HIV+ passenger is at risk for infection from system personnel;*

* Alcohol hand wipes may be used to clean hands after the removal of the latex gloves and some kits include them; this is a good general health care procedure;

* A second plastic trash bag into which the first orange/red or orange/red striped bag is placed will be needed if the exterior of the first orange/red bag is contaminated by the bodily fluid spill. Otherwise, it is an additional precaution that is optional.

Some kits contain latex shoe covers. These are not necessary for HIV purposes, but they do keep the driver's shoes clean when the spill is especially messy. Ask your drivers' opinions and preferences on shoe covers.

Arrangements should be made with a local hospital or health clinic for the disposal of the plastic bag(s) containing the biohazardous material. All biohazardous materials must be properly destroyed. Since all medical facilities must have proper disposal methods in place, the transit system should not attempt to develop its own. *Under no circumstances should a used biohazard bag be tossed into the regular trash.* It must be placed into a separate container and disposal must be completed according to medical regulations regarding biohazardous materials. Thus, let the local hospital or health clinic handle it; they already have a system in place for these matters.

Cleaning A Biohazardous Spill If a biohazardous spill occurs as part of a vehicular accident, then first aid for injured passengers should be the first priority, along with notification of appropriate medical assistance personnel. Biohazardous spills may also occur from an on-vehicle injury absent a vehicular accident. Again, first aid provision comes first. Anytime the driver administers first aid, latex gloves should be used. These gloves are then placed in the orange/red plastic bag before spill clean up is attempted. A second set of gloves is used for clean up.

Alternatively, a biohazardous spill may occur from something as simple and common as a child vomiting or someone losing bladder control. Regardless of the origin of the spill, all spills should be treated as if they are biohazardous. Thus, all bodily fluid spills should be cleaned with the same level of care that would be used if you knew that the fluid did in fact contain an infectious agent.

The following steps should be used when cleaning a bodily fluid spill:

* Put on a new pair of latex gloves, (*never* reuse latex gloves):

* Contain the spill as best as possible with paper towels and/or solidifying powder;

* Clean up spill with paper towels; a dust pan and brush may be used for clean up when a solidifying powder is used;

* Clean area of spill with the chlorine bleach solution or disinfectant spray/foam and wipe with paper towels and/or fresh solidifying powder;

* Place all items used to clean up the spill into the orange/red plastic trash bag. If a dust pan and brush is used, it should either be disposed of with the other clean up items or it should be cleaned with the chlorine bleach sc'ution or the disinfectant spray/foam before restorage;

* If the exterior of the orange/red bag has <u>not</u> been contaminated by the spill, then remove both latex gloves and place them inside the orange/red bag and seal the bag;

* <u>OR</u>, if the exterior of the orange/red bag has been contaminated by the spill, remove one latex glove and place it in the orange/red bag;

* <u>THEN</u> using the other, still gloved hand, seal the first orange/red bag and place it inside the second orange/red plastic bag, (when in doubt use this procedure);

* Remove remaining glove and place it inside the second orange/red bag and seal that bag;

* Upon returning to home base, place the plastic bag(s) into a separate disposal container (the separate disposal

container should be marked with orange/red stripping or should be orange/red in color and have a sealable lid);

* Take to, or have picked up by, an appropriate medical hazard disposal organization for proper ultimate destruction.

Since HIV is not spread by air, no other parts of the vehicle need to be cleaned/disinfected other then those directly affected by the bodily fluid spill. As an additional note, the HIV virus does not survive outside the human body for very long. The exact out of body survival time varies by external conditions (temperature, humidity, etc.), but it is a short survival time. Hepatitis B virus, on the other hand, can survive outside of the human body for thirty minutes or more depending upon environmental conditions. (9).

Fire Extinguishers Hand held fire extinguishers are a vital part of any risk reduction program. They should be used in buildings and in vehicles. However, there are a few things that you should know in order to make informed choices:

* They are for small fires only. Make sure you position them for easy excess and quick response.

* They should be sprayed at the base of the fire. Practice is very helpful.

* An extinguisher fully discharges in a matter of seconds (15 to 20 seconds regardless of the size of the extinguisher). A misdirected spray is a wasted spray. Practice can make the difference between an effective use and an ineffective use of an extinguisher.

* Extinguishers are activated by different methods depending upon the make and model. Because of this you may want all of your extinguishers to have the same activation method.

* Standard dry chemical extinguishers will damage the material on which it is sprayed. In most cases this will

not be of importance as the fire has already caused damage. However, in the case of an engine fire, you may wish to consider Halon extinguishers that do not damage the object sprayed.

* The weight on the label of an extinguisher is the weight of the chemicals inside the extinguisher. It is not the total weight of the extinguisher (chemicals and housing). As a rule of thumb add 2 to 7 pounds to the chemical weight to approximate the total extinguisher weight. Thus, a 15 pound extinguisher can have a total weight of 22 pounds. An extinguisher that is too heavy for employees to easily lift and control is a fairly useless extinguisher. So match the extinguisher's total weight with your personnel's capabilities.

* Extinguishers are classified by type or class of fire on which they are effective (10):

    * Class A is for most combustibles: wood, paper, cloth and some plastics. It is denoted by a green triangle with a capital "A" inside the triangle.

    * Class B is for paint, oil, grease, gasoline, diesel and similar combustibles. It is denoted by a red square with a capital "B" inside the square.

    * Class C is for electrical fires including electrical wiring and electrical equipment. It is denoted by a blue circle with a capital "C" inside the circle.

    * Class D is for fires from combustible metals like zinc, powdered aluminum, sodium, magnesium, etc. It is denoted by a yellow five pointed star with a capital "D" inside the star.

* The most useful type of extinguisher for your purposes will be one that handles Class A, B and C fires. Few transportation systems have Class D fire risks. However, systems with maintenance shops that work with

combustible metals would want a Class D extinguisher in the shop and metal storage areas.

* Thus, extinguishers marked "ABC" are desirable for most all transit related usages.

* Halon extinguishers work by removing the oxygen from the air. This makes them useful for the same types/classes of fires as the ABC extinguishers. Since they don't put a chemical on to the fire, they don't damage the materials sprayed. But, because they do remove oxygen, using them in an enclosed space (like the interior of a van) may not be a good idea. A driver could pass out from lack of oxygen, even though training techniques could avoid this potential outcome. Thus, Halon extinguishers are more useful for engine compartment fires where you don't really want to add more damage to the engine and which usually occur with more open space than vehicle interior fires.

* For computer and electronic equipment fires, (or fires near such equipment) Halon is much the preferred approach. However, remember the need for adequate ventilation.

* Checking the extinguisher pressure gauge should be part of a regular risk management program. On vehicle extinguishers should be checked as part of the pre-trip inspection and any extinguisher not registering in the normal operating range on the built-in gauge should be replaced before the vehicle goes on the road. Extinguishers inside or outside buildings should be checked monthly. Those not registering in the normal operating range should be replaced. The extinguishers removed are serviced and then returned to use. So replace does not mean discard.

* Fire extinguishers must be well marked and conveniently placed. Recall, they are designed for small fires. Thus, the faster they can be used, the more effective they will be.

* In high risk areas an automatic sprinkler system may be preferred or, in some cases, required.

* Annual checks and certification of the extinguishers by licensed personnel are normally required by local fire codes.

* Practice with the extinguisher type(s) that you do select. While this will cost some money, it makes the usage of extinguishers more effective when they are needed.

* A fire warning and automatic extinguisher system (Fire Suppression System) that monitors the engine is also desirable and can be included as part of your vehicle specifications. These automatic systems are much more effective than hand held extinguishers and should be given serious consideration. Recall that these systems are for hood/engine compartment fires, not for passenger compartment fires.

ADA Wheelchair Requirements As of the time of this report, the American With Disabilities Act (ADA) requirements for wheelchairs are very straight forward. If the chair fits on your lift you have to accept it even if you cannot secure it to your satisfaction. The present view is that you should buy new securement devices so that you can secure the chair to your satisfaction.

Three wheeled scooters are included in the term "wheelchair." So if the scooter fits your lift, you have to transport it. Asking the wheelchair passenger to a sign a waiver of liability is not allowable.

Self-Inspections An important element in risk management is knowing what your circumstances are. While the risk exposure questionnaire provides a structured approach to identifying many of your risk exposures, the following discussion walks you through a number of activities which you should do on a regular basis in order to identify risk exposure areas. It also makes some suggestions of changes you might make, of particulars which should be considered and of sources of additional technical support.

Begin by ascertaining that your workplace is in compliance with all Occupational Safety and Health Act of 1970 as amended (OSHA) regulations. Be sure to obtain the Material Safety Data Sheets (MSDS) for all hazardous chemicals used in the workplace. Also obtain a copy of the Occupational Exposure To Bloodborne Pathogens regulations. The discussion of biohazard kits will handle the most common on the job exposures covered by this regulation. In general, get copies of the guidelines and handbooks available from OSHA and check your system yourself.

Next check for compliance with fire codes. You can ask the local fire marshal to come and inspect your facilities. Usually, the fire marshal provides a list of what needs to be done (what violates local code) and a time limit in which you can correct the problems before any fines or other action is taken.

To a certain extent you can do this yourself by getting a copy of the latest version of Fire Prevention Code (11). Many state and local fire codes are based on the contents of this document. (Often you can purchase a copy from your local fire department.) Unfortunately, this document is not as clear as its' name implies and leaves a fair amount of room for local interpretation.

Another useful source of assistance may be your current insurance carrier. Often insurance carriers will provide free on-site inspections. The more effort you expend to prevent and to reduce losses, the less the insurance carrier will pay in claims. So it is in their interest as well as in yours to reduce risk exposures.

Check the construction of your building. Wood frame buildings burn faster than do concrete block buildings. Those parts of your operation that have a higher fire risk (boilers, water heaters, electric heating systems, paper storage areas, fuel and motor oil storage areas, any activity that produces heat or flame, etc.) should be separated from the rest of your facility by a fire wall and by fire doors with at least a one hour rating. A one hour rating means that it will take about an hour for a fire on one side of the door/wall to burn through the door/wall to the other side (some walls collapse rather than burn through, but the idea is the same).

Storing critical papers and computer records in file cabinets with an appropriate UL fire rating is another often overlooked loss control technique. Monitor and restrict the use of electric space heaters and do not permit the use of liquid fuel (kerosene for example) space heaters anywhere in your facility.

Hazardous Materials If you have hazardous materials on your property, store them in wire cages with locks. This restricts who can physically get to the materials. The cage area should be within a concrete block structure without a drain that empties into a public sewer system or into the ground. If a drain is used, it must drain into a self contained area so that pollution of the surrounding environment cannot occur.

Fire extinguishing devices that work on the stored materials should be placed nearby. It is very important that the fire extinguisher chemicals be properly matched with the stored hazardous materials. Some hazardous chemical situations can be made worse by an inappropriate fire extinguishing chemical.

The concrete block walls serve as fire and explosion separation devices from the rest of your facility. Also position the storage area (the entrance is a critical element here) so that if an explosion occurs, the force of the explosion is directed away from areas where more damage can be done and towards an area designed to absorb the impact.

The space between the concrete block walls and the wire cage allows emergency personnel to spray or foam the hazardous materials without having to go inside the cage. You may also wish to put a slight slope to the floor so that any spillage will flow to an area designed for collection and easier clean up of hazardous spills.

If you have above ground fuel storage tanks, then you should fire separate them from other areas and cover the ground below them with a concrete catch basin designed to contain and collect any spillage.

Occurrence Steps (What To Do While A Loss Occurs)

At this stage a loss occurrence is happening. The task here is to contain (reduce) that loss as it occurs. Interestingly enough, at this point, there really isn't all that much for you to do. This is where you find out if you have properly and fully anticipated the potential risks during the pre-occurrence activities. Occurrence steps are the implementation of the equipment (engineering) decisions already made and the utilization of the training already provided. The main activity here is acting upon the training, the procedures and the equipment decisions made during the pre-occurrence stage.

As a practical matter, managerial attention must focus on pre-occurrence and post-occurrence steps. If these are done well, the occurrence steps will take care of themselves.

Post-Occurrence Steps (What To Do After A Loss Occurs)

After the loss has occurred, prompt action must be taken to limit the extent of the loss. In the case of a vehicle accident, the driver would notify the base and proceed with first aid while the base dispatcher would contact the appropriate public agencies (fire, police, emergency medical services, etc.). The driver would then evacuate the vehicle if need be and place reflective triangles (and/or flares) appropriately on the roadway to warn on coming vehicles. The order of these two activities would depend upon the circumstances. If the vehicle is on fire, then you evacuate first; otherwise, you will most likely want to position the warning reflective triangles and/or flares first. The deciding factor should always be how best to protect passenger safety.

The other critical element of the post-occurrence action steps is the documentation. The present discussion shall focus upon vehicle accident documentation; however, the same approach and basic logic would apply to other types of losses.

Establish standard documentation procedures and reporting materials for all losses. For vehicle accident related losses, these materials should be carried on the vehicle itself. Some of the information noted

below will normally be provided as part of the routine documentation supplied by the police, fire or EMS personnel, if it is not so provided, then the driver needs to ask for it and record it in a systemic manner on system provided forms.

Additionally, someone from the system should go to the accident scene with photographic equipment as soon as is possible. The objective of photographic evidence is to be able to establish beyond dispute the positioning of the vehicle(s) involve as well as terrain or climactic conditions that may have contributed to the accident. A camcorder has the advantage of being able to capture sound as well as pictures. This permits the recording of spoken statements from those persons present on the scene at the time of the accident. The photographic record would also establish just what physical damage was done to property by the accident. This will have value in the claims adjustment process as well as in any court proceedings that might follow an accident. The sound track from the video tape may or may not be admissible into court.

The driver should have an accident documentation or accident reporting kit on the vehicle. Often times insurance companies will provide such kits. If not, they are easy to make. Accident reporting kits should contain structured (predetermined) methods (forms/cards/maps) for obtaining the following information:

* Witness identification cards. On these cards persons who saw the accident (including all passengers) would record their name, address, phone number and a brief statement of what they saw. The driver should collect the cards before the witnesses leave the accident scene;

* If another vehicle is involved, the name, address and phone number of the driver and of the vehicle owner (they may be different) should be obtained along with the vehicle license tag number, the vehicle registration number and complete insurance information (policy number, insurance carrier name and address and insurance agent name, address and phone number);

* A method of recording the name, organization, badge or other identifying number and organizational address and phone number of any emergency personnel who come to the scene of the accident. This would include police, fire and EMS personnel. Usually these organizations will provide this information as part of your copy of the report or other event documentation which they complete for their official needs; however, if they do not provide the information, the driver should request it and have a form on which to record it;

* Accident injury cards. On these cards, record identifying information on any persons injured in the accident, information regarding any medical treatment provided at the accident site and by who, where injured passengers were taken for additional medical treatment and who provided transportation to such locations;

* Careful notation of any person(s) arrested or charged with a legal violation while at the accident site should also be made, with as complete identifying information as possible;

* A drawing/map of the accident site showing the position(s) of vehicle(s), road hazards and/or road landmarks should be made (the basic street layout from the standard police accident report should be quite sufficient). If the police provide this information as part of their report, you may not need to complete a separate one, provided your driver agrees with the police drawing. But, you should have such a drawing form available for your driver to complete as the vehicles may have to be moved, for safety reasons, before law enforcement officials can arrive on the scene;

* If a vehicle(s) is towed or otherwise removed from the scene, be sure you know where the vehicle(s) were taken and by whom;

* Descriptions of any non-vehicle property damage should be made and the location of the damaged property should be shown on the accident drawing/map;

* Make as complete a photographic record of the incident as possible. Since it is probably not practical to keep cameras in each vehicle, have someone from the home base arrive with a camera and/or a video tape recorder as soon as is possible.

Management follow-up activities are needed in the tracking of any injured persons, the physical location of any damaged vehicles, the filing of appropriate police reports and the notification of the insurance carrier. The insurance carrier needs to be notified even if a claim filing is not anticipated. (12).

After sufficient information has been gathered to reasonably explain the causation of the accident, management and drivers need to determine if the accident was a preventable accident or a non-preventable accident. This determination differs from whether or not an accident is a "chargeable" accident under state motor vehicle laws.

Then drivers and management (mechanics, in-house or external, must be include whenever a mechanical problem may be a contributing cause, or they may be include as a general policy) meet to discuss the accident. The causes are reviewed as well as the post-occurrence activities of all persons involved. The purpose of the meeting is <u>not</u> to fix blame, but to learn from the event. All accidents present the opportunity to teach other drivers what to do or what not to do, as the case may be. System procedures for post-occurrence activities including documentation procedures would be reviewed and modified if the events warrant. Remember, the only positive thing that can come from an accident is information on how to prevent it from happening again. Use this opportunity for learning and skill enhancement. If disciplinary actions are necessary, they should be handled according to your personnel policy and not in a group meeting.

Employee Dishonesty: Fidelity Bonds

Your best defenses against employee dishonesty lie in pre-employment screening, in maintaining good employee morale and in good record keeping. While theft of materials, such as mechanics tools, is a matter of concern, the focus of the present discussion is on financial dishonesty.

All systems that collect fares or otherwise handle money, including grant funds, have some degree of risk that an employee will steal some of the cash or falsify records so as to remove funds from accounts at financial institutions. These risks can be reduced by sound financial management practices and a strong accounting system.

When drivers bring fare revenues to the financial manager (or other designated employee), the reported revenues should be checked against ridership records. When other revenues are received, the amount received and deposited should be matched with the amount on the contract or grant form (the amount expected). A paper trail tracking the movements of all funds should be maintained. Assistance in developing and maintaining accounting records is available from a variety of sources including the reports of the Transportation Accounting Consortium, local CPA firms and probably your state department of transportation. The strength of your financial management system is part of the risk evaluation process.

For insurance purposes, fidelity bonds (actually an insurance contract) are designed to pay the insured for financial losses from employee dishonesty up to the bond amount less a deductible. Fidelity bonds are not the same as forgery bonds and you may desire both coverages. Forgery would cover falsified payroll checks or deposit slips for example, while fidelity bonds would cover embezzlement.

Since monetary losses from employee dishonesty are often not discovered until long after the actual occurrence, the language used in the insurance contract is important. Insurance written on an occurrence basis would cover fidelity losses that occurred while the contract was active regardless of when the loss is discovered.

Somewhat like liability coverage, this requires you to maintain records of your insurance coverage for an extended period of time. In some cases it is possible to obtain the coverage on a discovery basis. In which case the insurance policy in existence at the time the loss is discovered, regardless of when it actually occurred, would pay the claim. A policy written on a discovery basis would be preferred as it simplifies your record keeping.

In practice it may be simpler to include fidelity coverage as part of a comprehensive crime or comprehensive dishonesty, disappearance and destruction policy rather than to purchase separate fidelity and/or forgery bonds. However, the discovery versus occurrence language concern would still apply.

Concluding Comment

While it has not been practical to suggest risk reduction and loss control activities for all of the areas of your operation; the above examples and specific suggestions will provide a flavor as well as some specifics of the approach to be used. Extending this basic approach to all areas of your operation should lead to a variety of risk reduction and loss control activities that will benefit your system.

CHAPTER FIVE: INSURANCE CONTRACTS: COMMON COMPONENTS

Introduction

There are a number of things that you must remember about insurance contracts. One of the most basic is that the contract (policy) probably doesn't cover what you think it does unless you have done a thorough contract review. A second thing is a line from an old radio show: "The big print giveth and the small print taken away." That is some of the soundest advice you will ever get with respect to any contract, but especially with insurance contracts. The contract exclusions (things not covered) and the definitions are two of the most important parts of the contact and they are, naturally, the last parts of most contracts.

Additionally, insurance contracts are contracts of adhesion. Contracts of adhesion are written by one party (the insurance company) and agreed to by another party (the insured) with little or no input from the second party (the insured). In other words, they are take it or leave it contracts. A basic contract can be modified by endorsement. Endorsements are the only viable method available for modifying the basic insurance contract. However, the endorsements are written by the insurance company and are take it or leave it endorsements. The language of all insurance contracts and endorsements must be approved, prior to being offered for sale, by the state insurance regulatory office. Thus, the contract or endorsement language will be standardized throughout any given state. Exceptions to this can only be made with the approval of the state insurance regulatory office.

Insurance is a vital and necessary part of any modern society. But an insurance contract is written to do very specific things and the contract language has specific legal meanings and these may very well be different from what you would expect based on the common every day usage of the same terms. These specific meanings have evolved through the course of various legal actions and state

regulatory processes. Over the last decade or so, the terms have be modified so that they come closer to common English.

The other source of potential confusion in interpreting an insurance contract is the structure of the contract. There are two areas of policy structure that require special attention. First is the basic policy document itself. This normally contains several "yes, but" type statements. Yes, the item is covered if one or all of a list of conditions holds true. Alternatively, the item is not covered unless one or all of a list of conditions holds true.

The second source of structural confusion arises from endorsements to the basic policy document. Endorsements, which address a wide variety of risks, modify the coverages provided or the coverages excluded by the basic document. But they are in a physically different part of the policy document than are the sections they are changing. So you must flip back and forth when reading the document to learn what sections have been changed and in what ways. Generally endorsements may be purchased at your option, but some are mandated by the state law.

Components of the Insurance Contract

The insurance policy is composed of a declarations page and a set of insurance coverage forms plus endorsements, if any. These three parts (declarations page, coverage forms and endorsements) constitute the legal insurance contract. You should keep all parts together in one place that is readily accessible and protected from fire.

In the vast majority of cases, the policy forms and the endorsements are standard Insurance Services Office, Inc. (ISO) forms. This organization provides standardized forms (i.e., language and structure) to the insurance industry. The forms will carry an identifying number and a date of last revision as well as a name. For some coverages there is not a standard policy form. This is the case for pollution coverage, for example.

The language in the policy forms and in the endorsements must be approved by your state insurance commission or equivalent office.

What these offices can and cannot approve is a function of what laws your state legislature has passed. This helps to explain why different states require different endorsements for the same type of coverage (uninsured motorist for example) or require endorsements to modify the basic policy form to fit the particularities of your state law. However, there is a great deal of similarity in basic policy language across the nation.

The Declarations Page

This is the first page of your contract. It will contain numerous items of importance. Included on the declarations page (which may be more than one actual page) will be the name of the insurance carrier and the name and address of the insurance agency that sold the coverage.

It will also list the name and address of the named insured. The named insured is the person(s) or organization(s) that is (are) covered by the insurance contract. As the contract will only pay claims arising against the named insured, it is important who is the named insured. Normally who should be the named insured is a straight forward matter; i.e., the transit organization. However, if the transit program is organizationally linked to another non-transit program, it may be wise to ask your legal counsel whether or not the other organization should also be listed as a named insured.

For example, if the transportation program is organizationally part of a community action agency, an aging program or a local governmental entity, than it may be wise for that entity to be either the named insured or listed as an additional named insured. This is especially so if the non-transit organization has or could be interpreted to have any financial responsibility for the actions of the transit operation.

Alternatively, many human service organizations that operate Section 18 programs have found it to be more cost effective to separately insure the transit operation. In many cases this has required incorporating the transportation entity as a separate organization.

In cases where the transit program operates as part of a local government, the transportation insurance coverages may be

incorporated into the local government's insurance program or the transportation program may be insured separately. Which ever approach is selected, it is important to have transportation specific insurance. In many cases where the transit operation is insured under the local government's insurance policy, the policy does not have transportation specific coverages and the transportation operation is underinsured, which means that you have unintentionally retained risk.

The declarations page will include a description of what is insured. In some cases this will entail a detailed listing or schedule describing the property insured. Your auto policy, for example, will include a descriptive listing of all vehicles covered by the policy. Sometimes this will be part of the declarations page, sometimes it will be an attachment to the policy. Regardless of which way it is done on your particular policy, be sure to check that the items (autos, real property, etc.) are correctly described and that all of them that you want covered are listed.

The next item on a declarations page is a description of the coverages provided. In other words, what insurance is provided by the policy. Check to be sure that the coverages are of the desired type(s) (bodily injury, property damage, comprehensive, liability, specific named perils, etc.) and of the desired amounts (coverage limits for each type of coverage). Here is where you compare the property and the liability risks that you have determined represent risk exposures for you with the coverages that you purchased. The declarations page will also show the deductible chosen for each coverage type that has a deductible. If you are purchasing umbrella coverage(s), you would also want to check to be sure the umbrella policy limits pick up where the underlying or base policy limits end.

Also check for endorsements, exclusions, exceptions and other forms that may be attached to your policy. They will be listed by form number in a separate space on the declarations page. Be sure that copies of all forms so listed are attached to your copy of the policy and that you understand what each of them means.

The other items to check on the declarations page are fairly routine ones. The page should also list the name of the insurance company

and its home office address, the name and address of the insurance agent. Additionally, the policy period will be displayed. This will provide the start and end dates of the policy coverage in day, month and year. It will also include a time of day when coverage begins and ends. Normally this is 12:01 AM standard time at the address of the named insured.

The other item of interest is the premium. The premium for the policy period for each type of coverage should also be shown on the declarations page. As you can tell, the declarations page provides a quick summary listing of the major elements of your insurance contact.

Insuring Agreement

Following the declarations page you will find the body of the insurance contract. This describes what coverages are provided by the contract. It also details any exceptions or exclusions to the coverage. Additionally, it specifies the duties of both parties (the insured and the insurance company) in the event of a loss and concludes with definitions of the key terms as they apply to the policy.

Endorsements or Exceptions

These are attachments to the policy that modify the insuring agreement. They may be used to expand coverage by adding endorsements or to restrict coverage by adding exclusions. Mostly these are purchased at your option (and for an additional premium) and are used to tailor a standard policy form to your particular and individual needs. Sometimes the endorsements or exceptions are required by the laws of your state.

Concluding Comment

This discussion reviewed the common components of insurance contracts. A key one of which is the declarations page. The following two chapters walk you through the standard commercial auto policy and the standard commercial property policy. Umbrella liability policy considerations will be covered following the discussion of the

standard commercial property policy. Hopefully these discussions will provide an understanding of the policy provisions and of how insurance contracts can be read.

CHAPTER SIX: INSURANCE CONTRACTS: COMMERCIAL AUTO

Introduction

This chapter devotes its full attention to the Commercial Auto Policy form. For operators of public transportation, this is a critical part of your overall risk management program and of your insurance program.

Commercial Auto: Business Auto Coverage Form

This form will be the heart of your fleet coverage and, hence, a critical core of your entire insurance program. The form version that is used here as an example is the ISO form: CA 00 01 01 97 "Business Auto Coverage Form". The examples of policy language used in this chapter are quotes from this policy form. Your particular coverage should be provided by either the same form having the same language or a very similar form with very similar language. It may be useful to read your policy along with this section.

Section I of this form defines "Covered Auto". It references the vehicle listing on the declarations page and describes the meaning of the numeric symbols beside each of the vehicles listed. Basically it is a categorization system for the vehicles based on ownership and/or on usage and/or on eligibility for particular coverages mandated by particular state laws such as no fault or compulsory uninsured motorist laws. This section also tells you what coverage applies to autos you acquire during the policy period. In other words if you buy or lease an additional vehicle after the coverage begins, hence it is not listed on the declarations page, does the policy cover it or not? In most cases the vehicle will be covered automatically if it is of the same vehicle type as those already covered under the policy. (Be sure to notify the insurer when you add or remove vehicles.) However, in some cases, you will only have coverage if you notify the insurance company of the vehicle acquisition and request coverage under the existing policy. Be clear on this point, otherwise you could end up with an uninsured vehicle without realizing it.

Section II is the liability coverage. Part A describes what the company will do:

> We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto."
>
> We have the right and duty to defend any "suit" asking for these damages. However, we have no duty to defend "suits" for "bodily injury" or "property damage" not covered by this Coverage Form. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

The above language is the core of the liability insuring agreement. The words in quotes have definitions in Section V of the policy and you should be familiar with the definitions.

The rest of Section II, part A is spent stating who is an insured, what the coverage extensions are and what the coverage exclusions are. Here an insured is defined by behavior and relationship to the named insured. Basically it is you (the named insured) and anyone using your vehicle with your permission except five categories of individuals. Most notable are such categories as person who are in the business of repairing or serving "autos." Thus, if you have your vehicles repaired by an outside firm, that firm is expected to have its own insurance and is not covered under your policy.

Coverage extensions are payments in addition to the limits of insurance. These are expenses the insurance company incurs in defending or settling a suit or claim, $250 for bail bonds, expenses you incur at the insurer's request as part of suit defense or settlement, and other claim defense related matters.

The part where you need to pay special attention is Section II, part B: Exclusions. This part lists those areas not covered by the policy. In

general these exclusions are activities that such be covered by other insurance or for which insurance is not designed. Intentional torts, for example, are specifically excluded from coverage.

Other areas such as worker's compensation or other on-the-job injuries are also excluded from this policy. The liability coverage is intended to cover you for liabilities to those outside your organization; hence, injuries to those inside your organization are expected to be insured separately.

Earlier we discussed transferring liability by contract. The previous discussion was in terms of you transferring liability to someone else. However, it works both ways; someone else may transfer liability to you via a contract. If they do, then this policy excludes any liability so transferred unless it is transferred by an "insured contract."

At this point turn to Section V and read the definition of "insured contract." You will note that a lease for premises is an "insured contract." But a lease for vehicles is not part of the standard definition. However, Section I, part A of the Business Auto Coverage Form includes a category for rented (less than 30 days) or leased (30 or more days) autos as covered "autos". Leased vehicles are usually treated as owned vehicles. But, in some states you will need an endorsement that modifies the definition of "insured contract" to include rental or lease of any "auto" (ISO endorsement form: CA 00 29 12 88).

Overall, the "insured contract" exclusion provisions will not present a meaningful problem for most transit operators. Torts for which you would be liable in the absence of a contract are covered, and this is the most significant exposure for most systems. However, each system should review this definition in light of its particular contracts.

The other exclusion that needs particular attention is the Care, Custody or Control exclusion. This paragraph excludes liability stemming from the transporting of property by the insured system. If a passenger's property is damaged due to your negligence while on your vehicle, it is not covered.

To avoid this absence of coverage, you could purchase the "Public Transportation Autos" endorsement (form: ISO CA 235) which modifies this exclusion so that it "does not apply to 'property damage' to property of the 'insured's' passengers while such property is carried by the covered 'auto.'" In other words, you have coverage with the endorsement when without the endorsement you don't.

The other exclusion that needs attention is the pollution exclusion. While the language of this exclusion is confusing, it boils down to: no coverage unless the pollutant is used as part of the normal functioning of a covered "auto" and its release occurs directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such pollutants." This section of the policy provides coverage if your vehicle leaks/spills fuel or oil. But it is not intended to provide coverage for the storage or transportation of motor fuels or oils or other pollutants.

For systems that do no on-site vehicle maintenance and no on-site vehicle fueling, this coverage is probably adequate. However, if you do your own maintenance or if you fuel your own vehicles, then you do not have the necessary coverage and need to purchase coverage specific to your needs. A garage policy should be considered by those systems with on-site maintenance and/or fueling. A specific pollution policy should also be considered for those who store hazardous materials (motor oils, motor fuels for example) on-site. An endorsement or a separate policy should be considered by those who transport hazardous materials on their vehicles. This would include buying motor oil at the local discount auto supply store and carrying the cans back to your facility on your vehicle.

Section III of this policy specifics the coverage for Physical Damage. Part A specifies the coverages while part B specifies the exclusions. The coverages consist of two main parts: Comprehensive Coverage and Collision Coverage.

Collision is pretty much what the word says. It covers damages from the vehicle hitting another object and from vehicle overturn.

Comprehensive covers risks not associated with collision or overturn. This is an all risk coverage.

In addition, Section III includes six specific causes of loss that are also covered. These six are (note that more than six perils are included): "(1) Fire, lightning or explosion; (2) Theft; (3) Windstorm, hail or earthquake; (4) Flood; (5) Mischief or vandalism; or (6) The sinking, burning, collision or derailment or any conveyance transporting the covered 'auto'." If you want coverage for any additional perils, they would have to be added by endorsement.

Additional part A coverage includes towing and glass breakage. Towing coverage pays for the towing of a disabled covered "auto" up to the towing limit specified on the declarations page.

"Glass breakage-hitting a bird or animal-falling object or missiles" coverage is provided when comprehensive coverage is purchased. This section provides coverage for "loss" caused by hitting birds or animals or by falling objects or missiles. All types of losses caused by these actions are covered; glass breakage is just the most common. Missiles are propelled objects other than birds or animals.

Accompanying comprehensive coverage is a coverage extension for transportation expenses incurred due to the theft of a covered "auto." The standard policy form provides for a maximum of $10.00 per day up to $300.00 total. While this coverage is standard and comes at no extra premium cost to you, it is also of limited value to a transportation provider.

As usual, the exclusions (part B) are of as much interest as are the coverages. The primary exclusion of interest is the exclusion of two-way radio equipment and of telephone equipment, including antennas. These items are excluded "unless permanently installed in the dash or console opening normally used by the 'auto' manufacturer for the installation of a radio." Thus, most operators who have radio or cellular phone equipped vehicles will need an endorsement to specifically cover such equipment. Be sure you have one if you own such equipment.

"Wear and tear, freezing, mechanical or electrical breakdown" are also excluded, as weil as damage to tires from "blowouts, punctures or other road damage." So, if a tire blows out, the driver loses

control and hits a telephone pole, the collision damage would be covered under collision. But the blown tire would not be covered.

Section IV - Business Auto Conditions specifies additional policy conditions. While you should read this section in detail, part A section 2 (Duties in the event of accident, claim, suit or loss) should be read with particular attention, because it sets forth what you must do in the event of a loss. You will note that many of these "things you must do" are the same as those listed previously as part of the accident reporting kit. The two key elements are: (1) to report the loss with as much information as possible and as quickly as possible to the insurance company or to your agent (as a practical matter this means to your agent); and (2) to take "all reasonable steps" to prevent further loss. The other requirements relate to providing information regarding how, when and where the loss occurred and information regarding, injured persons, damaged property and witnesses. There are also limits on the financial commitments you can make without the permission of the insurance company; i.e., you can't make any. So don't agree to anything that costs money or implies an agreement to settle without the prior consent of the insurer.

Section V of the policy contains the definitions of terms. Some of these terms have already been noted. In general there are no surprises in this policy form; however, a careful reading of the definitions is a good practice. As you will observe, "loss" refers to "direct and accident loss or damage" while "property damage" refers to "damage to or loss of use of tangible property," and "bodily injury" refers to "bodily injury, sickness or disease sustained by a person including death resulting from any of these."

The section also says that indirect losses are not covered under any of these definitions. Therefore, if someone loses income (an indirect loss), for example, due to a bodily injury or property damage inflicted by your vehicle, the policy does not cover it under "bodily injury" or "property damage." But, if the courts award damages for loss of income, your policy would cover it under the liability section.

The other part of the definitions section that should be noted is the definition of mobile equipment. Since mobile equipment is commonly

excluded from coverage under this policy, it is useful to check to see if you have any such equipment. Generally, transit operators will not have mobile equipment with the possible exception of vehicles used only on your own property. If you have air compressors or welding equipment that is mobile, then check the definition. Depending upon the particulars in your case, such equipment may or may not be excluded from coverage.

There is a coverage familiar to you from your personal auto policy that has not been discussed so far; namely, Auto Medical Payments Coverage (Auto Med Pay). It has been omitted so far because it is not part of the basic policy form that we have been examining.

You may add Auto Med Pay by endorsement (ISO CA 247). In the absence of Auto Med Pay, medical expenses for "bodily injury" resulting from an "accident" for which you are liable would be paid under the liability coverage after a finding of negligence. Under the Auto Med Pay coverage, the insurance company pays "reasonable expenses incurred for necessary medical and funeral services to or for an 'insured' who sustains 'bodily injury' caused by 'accident'. We will pay only those expenses incurred within three years from the date of the 'accident'."

Under the Auto Med Pay coverage, "insured" includes you and anyone else "occupying" a covered "auto". It would cover your passengers when added to the Business Auto Coverage Form. The idea behind Auto Med Pay is to have coverage for immediate and necessary medical treatment and care which follows an accident. Auto Med Pay is not intended to cover major medical or long term care expenses. Those expenses are intended to be covered by the liability coverage.

"Occupying" is defined as meaning "in, upon, getting in, on, out or off" of the covered "auto". You don't have to wreck the van to have this coverage be of value. If someone falls getting into, or out of, or while on the vehicle, then coverage by Auto Med Pay is quite reasonable. This is a useful and fairly inexpensive endorsement to have. If you purchase it, it will have a separate limit of coverage that will be shown on the declarations page.

While this walk through the basic business auto policy and some of the potentially useful endorsements did not cover all aspects of the policy form, it did touch upon the major items. Additional questions are sure to surface as you read your policy. Be sure to ask your insurance agent for answers to your questions. It is important that you understand your insurance contract and are familiar with what coverages are and are not provided.

Umbrella Liability

Even though the discussion of this coverage is included in the following chapter, it is worth noting here, that umbrella policies can be attached to the commercial auto policy. Depending upon your particular situation, you may not need property coverage. However, you would be well advised to explore the advantages of an umbrella liability policy for your auto policy exposures.

Concluding Comment

This discussion has focused on the basic auto coverages and how you can apply them to your specific situation. The following chapter addresses the basic commercial property policy and the umbrella liability policy option. The umbrella liability approach can be added to a commercial auto policy independently of property coverage.

CHAPTER SEVEN: INSURANCE CONTRACTS: COMMERCIAL PROPERTY AND UMBRELLA LIABILITY COVERAGES

Introduction

This chapter focuses on the Commercial Property Coverage Form and related coverages. It includes discussions of the property form, fidelity coverage and umbrella liability coverages. These coverages are important parts of your overall risk management program. They are also necessary parts of an insurance program for systems that own real property, personal property and/or handle money.

Commercial Property Insurance

If you own a building(s) or if you rent facilities, you need some form of property insurance. If you own, then you need coverage on the building(s) (i.e., real property) and on its contents (i.e., personal property). If you rent, then you need coverage on the contents. In either case you need liability coverage. If you rent, check your lease for any transfer of liability to you for the building itself. If there is such a transfer, then you may need a higher liability limit.

If your system is part of a local government and that local governmental unit provides the space you use, then your real property insurance needs may be covered by the government's policy. But, you would still need personal property and liability coverage. The following will describe the basic multi-peril property coverage and will note some useful endorsements.

The policy will be composed of a declarations page, an insuring agreement and endorsements or restrictions, if any. The policy form is based on the standard fire policy and is frequently written on a named perils basis. Often it can be written on or endorsed to an all risk basis. In the first case, only losses from the perils specifically named in the policy are covered. In the second case, losses from all perils not specifically excluded are covered. Work with your

insurance agent to build a policy that fits your particular needs either (1) by adding endorsements for coverage or for additional perils to a named perils policy, or (2) by adding exclusions for perils you don't need covered by an all risk policy. But remember that if you make an error in selecting coverage, it is better to err on the side of too many perils covered than on not enough covered.

The Commercial Property policy has two sections: Section I provides property coverage while Section II provides liability coverage. Section I consists of two coverages: Coverage A for real property and Coverage B for personal property. Section II contains Coverage C: Bodily Injury and Property Damage Liability and Coverage D: Premises Medical Payments. Two optional sections may be added to the basic policy: Section III: Crime Coverage and Section IV: Boiler and Machinery Coverage. These may be purchased independently of each other. Overall Section III offers a wide variety of endorsements to permit you to tailor the coverage to fit your particular needs.

Deductibles apply to each coverage and the property coverage normally carries a coinsurance clause. You are already familiar with the deductible concept, but coinsurance may be new to you. A coinsurance clause requires you to carry insurance (limit of coverage) equal to a certain percentage of the value of the property insured. For example, if your building has an actual cash value of $100,000 and your insurance policy has a 90% coinsurance clause, then your limits of coverage must be at least equal to 90% of the actual cash value of the building or $90,000. Nevertheless, nothing prevents you from carrying a coverage limit of $100,000 or 100% of actual cash value. One of the purposes of a coinsurance clause is to prevent you from being underinsured.

However, if your limits of coverage are less than the coinsurance amount, then the policy only pays a percentage of any loss. The percentage paid is based on the ratio of coverage to the building's actual cash value. So if your limit of coverage is only $80,000 (80% of the actual cash value of the building) in the above example, the policy would only pay 80% of any loss since you have not fulfilled the coinsurance requirement. So there is a penalty for being underinsured.

It should also be noted that the premium rate per unit of coverage normally declines as the ratio of coverage limits to property value increases. So as you increase you coverage from 80% of the building's value to 100%, your premium per unit of coverage would decrease. (For property insurance a unit of coverage is $100.)

When you first purchase coverage, having too little insurance coverage does not normally occur except by intent. However, as you renew your coverage an underinsurance problem may arise if you do not increase your limits of coverage to correspond with increases in the value of your property. Hence, part of your annual insurance review should be a comparison of the current actual cash value of your property to the limits of coverage in your policy. Increase those limits as the value of your property rises. If the value of your property declines, then you can decrease your limits of coverage.

The policy will provide a limit of coverage for each location. If you own multiple locations, there would be a different limit of coverage for each location. If you aggregate property values across multiple locations for accounting purposes, you will need to disaggregate them by location for insurance purposes.

There are several particular coverages, noted below, that you need to check when reviewing any given policy or when preparing an insurance bid. Some of these coverages are included in the basic policy form but only up to a particular dollar amount. You may need to increase the coverage limit by endorsement. Others are not included in the basic policy and you may need to add them by endorsement, again specifying a specific dollar amount of coverage.

The basic policy will normally include coverage for property of others under your care, custody or control. This coverage is normally a percentage of your building limit of coverage. For most operations this should be a satisfactory amount of coverage. However, if you operate a Greyhound Connection or similar operation, handle baggage and/or freight, or have a package delivery service, then you will most likely need to extend the coverage limit by endorsement.

Coverage for the personal effects of officers and employees is normally part of the basic policy. For most purposes the coverage

that is part of the basic policy will be sufficient, but check the limit and compare it to the total value of employee property that is in your facility just to be sure you're fully covered.

Valuable Papers and Records coverage also comes with most basic policies. However, the costs to reconstruct, as opposed to copy, lost records are not normally part of the basic policy. Check how you store valuable records and where (or if) backup records are kept. If these could all be lost to the same peril, then you want to change your recording storage procedures. You may also want to add, by endorsement, coverage for reconstruction of records. It is generally less of a problem as well as better management policy to change your storage procedures than it is to insure for reconstruction of records and, then, have to reconstruct them.

The basic policy will also provide some coverage for trees, shrubs and plants, but the coverage limit is often rather low. This is an exposure area frequently overlooked. If you have a well-landscaped facility, then you may want to expand the limits of coverage by endorsement.

Improvements and betterments coverage is also a frequently overlooked area of exposure. Improvements and betterments are changes you have made in the building that increases its value. If you have made improvements and betterments during the policy year, then their value would not be included in the limits of coverage of the policy. The standard policy form allows for this by providing a separate limit of coverage for improvements and betterments. At policy renewal time, their value should be incorporated into the value of the building and be reflected in the Coverage A limits. If you undertake a major remodeling program during a policy period, then be sure to check with your agent to be sure that you have sufficient coverage. In some cases, probably infrequent, you may want to purchase an endorsement to expand coverage for improvements and betterments until your next scheduled policy renewal period.

There are several exclusions from the basic policy coverage that need to be mentioned. You can obtain coverage for these items by endorsement. The standard policy excludes coverage for fences, signs (not attached to the building), paved walkways, paved parking lots and

underground property (underground storage tanks are probably the most likely underground property for a transportation provider). Other items such as pets, wharves and growing crops are also excluded, but it is doubtful that many transit systems will need coverage for these items.

The excluded items can be covered by endorsement. Many transit operators will need coverage for several of these items. Others you may elect to exclude them from coverage and self-insure. It would not be uncommon to self-insure for walkways, small parking lots and inexpensive fences. However, check the costs of replacing these items before you decide how to handle the risks they represent.

In addition to the above considerations, there are a couple of Coverage B: Personal Property Coverage endorsements that would be of particular value to most transit operators. Personal computers need to be specifically covered by an Electronic Data Processing Equipment endorsement. This endorsement can also cover software as well as hardware. It will cover your input/output devices as well as the computer processing and memory units.

Additionally, systems with radio systems will need specific endorsements for the radio transmitting and receiving equipment including transponders and broadcast towers. The towers are often overlooked in determining property insurance needs. (Towers also pose an additional liability risk. This exposure needs to be considered when setting the limits of coverage in Section II: Liability Coverage of the property insurance policy.)

Systems that operate their own garages for in-house vehicle maintenance will need to purchase additional coverage for those risks. In some cases you may be able to add the necessary coverages to the basic property policy by endorsement, in other cases you will need to purchase a separate policy. If you do maintenance work on vehicles owned by others, then you will need a separate "Garagekeepers Coverage". This is a specific policy designed for the risks arising from storing, operating and performing work on the vehicles of others.

Of special concern is cash. Systems that collect cash fares and hence have some amount of cash on the property, even for short periods need to be clear on the amount of coverage for cash that the policy provides. Since cash has a way of walking off with few trails, insurance policies intentionally limit the coverage provided in any basic policy. If you do handle cash be sure that you have clear procedures for doing so and add adequate coverage by endorsement to your personal property coverage. If you have checks or other financial instruments other than (or in addition to) cash on your property, have appropriate safe guarding procedures and cover this exposure by endorsement. Normally you can cover cash and financial instruments in a single endorsement.

Fidelity coverage (employee dishonesty) is a separate policy rather than an endorsement (see Chapter Four). An alternative method for covering cash and financial instruments is an endorsement to the optional Section III: Crime Coverage, but such an endorsement may not cover employee theft or simple disappearance. Review your financial procedures with your insurance agent and jointly find the best method of covering this exposure in your particular situation.

Section II: Liability Coverage really doesn't require much comment given how much as been said about liability exposures already in this report. The main concern here will be in setting the correct limits of coverage. If you have a passenger waiting room, then you will have a greater exposure and need higher coverage limits than if you have no waiting room. If you handle baggage or freight, you have a higher exposure and need higher limits than if you don't. If you rent or lease furniture or other office equipment, then you would need higher limits for liability than if you own the furniture or equipment.

Another consideration is the probability that a loss beginning on your property will cause a loss to adjacent property. Say a fire begins in your office, what are the chances that it will spread to the office suite or building next to yours? If that is a reasonable probability, then you need higher limits of coverage. The risk exposure questionnaire is designed to help you answer just these types of questions.

The optional sections covering crime losses and boiler and machinery risks will be of value to particular systems. Review your operations and your exposures to determine if these additional levels of coverage are warranted in your particular case. You may or may not be able to obtain satisfactory crime coverages by endorsement to the personal property coverage, it depends on the particulars of your circumstances.

Boiler and machinery coverage is needed if you have such equipment. For example if your facility has steam heat, then boiler coverage is necessary. Boiler coverage also includes hot water heaters. Depending upon the size (capacity) of the hot water heater in your location, you may need coverage separate from that provided in Section I of the basic policy. Again, the risk exposure questionnaire is designed to help you identify concerns such as these and you can work with your insurance agent to develop the most cost effective coverage approach for your particular situation.

The above is a general walk through the commercial property insurance coverages. Hopefully, it has proved to be of some value in increasing your understanding of this coverage type. Now that you have been through the policy, it is probably worthwhile to review again the perils covered by your particular policy. If it is a named peril policy, review the perils named to be sure you have all that you need named. If it is an all risk policy, review the exclusions to be sure that something you need is not excluded. If you find that your policy does not cover a peril you need covered, then seek an endorsement that provides the necessary coverage. Do the same for the loss coverages. This process should be part of your annual risk management review process.

Umbrella Liability Coverage

While this type of coverage does not appear to be particularly common among transit operators, it is a very valuable coverage to have. An umbrella liability policy provides coverage for liability claims that exceed the limits of liability coverage provided in an underlying policy, such as your business auto or commercial property policies. It is a secondary insurance coverage that comes into effect only after the limits of the underlying primary (base) policy has been

exhausted. This means that it is relatively inexpensive to purchase since you will only use it in the event of an unusually high liability settlement.

Unlike the liability coverages discussed above, an umbrella coverage can cover any type of liability exposure. The umbrella policy must be specifically tied to the underlying base policies. Since most liability claims are relatively small, the base policy would handle the most frequent claims, leaving the umbrella for the usually high ones.

Let's assume that your business auto policy has a $300,000 per occurrence limit for bodily injury and you carry a $1 million umbrella liability policy. Suppose you have a particularly unpleasant accident with one of your vehicles, such as the merit scholar example used earlier, and the courts award a judgment of $1 million, then your business auto policy would pay up to its $300,000 limit for bodily injury, less any deductible. Your umbrella policy would then pay the remaining $700,000, less any deductible. If the loss originated in your waiting room and your property insurance policy had a $300,000 per occurrence limit for bodily injury, then the example would work the same way with the same umbrella policy picking up where the base policy ends. If you had no umbrella policy, then, in these examples, you would have to find the $700,000 somewhere in your operating budget.

The umbrella approach permits you to carry fairly sizable amounts of liability insurance coverage at a reasonable cost. The premium per unit of umbrella liability coverage is less than that per unit if you carried higher limits on one of your base policies. So, in some cases, you may be able to reduce the base policy limits when you add an umbrella. Say you are carrying a $1 million liability limit on your auto policy and a $1 million liability limit on your property policy. You could combine the two coverages into a single umbrella policy for $1 million, reduce the limits on your base policy to $500,000 or, perhaps, $300,000 and probably reduce total premium costs. It is usually wise to have your umbrella policy written by the same insurance company that writes your base policy(ies), this way there is less chance of a gap in coverage.

Concluding Comment

This discussion has focused on the property insurance coverages and endorsements that should be of primary interest to most transit operators. Hopefully the discussion has provided some insights and understandings of the basic property coverages, the role of umbrella liability coverages and how you can apply them to your specific situation.

The risk identification questionnaire is designed to assist you in converting your situation specifics into specific insurance coverages and endorsements.

CHAPTER EIGHT: RISK EXPOSURE QUESTIONNAIRE FOR RURAL PUBLIC TRANSIT SYSTEMS

I. Who Are You?

1) What is your organization's legal form:

a) _____ Private Non-Profit

b) _____ Private For Profit

c) _____ Unit of Local or Regional Government

2) Is the transportation operation:

a) _____ Separately incorporated

b) _____ A subunit of a Private Non-Profit

c) _____ A subunit of a local or regional government

IF b) or c): should the parent organization be a "named insured" on any insurance coverages carried by the transportation program?

_____ Yes _____ No _____ Not Sure

_____ Transportation program <u>not</u> separately insured from the parent organization.

3) Do you have/are you governed by:

a) _____ A Board of Directors specifically for the transportation activities

b) _____ Governed by County Commission or City Council

c) _____ Governed by Board of Parent Organization

d) _____ A Citizens Advisory Board/Committee

e) _____ A Handicapped Advisory Board/Committee

f) _____ An Employee Council/Committee

g) _____ A Safety Committee

h) _____ An Accident Investigation Committee

i) _____ Other: Specify: _____

II. What Do You Do?

1) Do you transport: (Check all that apply)

a) _____ General Public

b) _____ Physically Disabled

c) _____ Wheelchair Users

d) _____ Mentally Handicapped

e) _____ Elderly

f) _____ Emotionally Troubled

g) _____ Dialysis Patients

h) _____ Youths (how young? _____)

Do you provide child seats: _____ Yes _____ No

If No, do you require the person traveling with the child to provide a child seat: _____ Yes _____ No

i) _____ Others that may need special assistance:

Specify:_____

2) Do passengers carry onto your vehicles personal possessions:

a) _____ Yes b) _____ No

3) Do you transport cargo, freight or packages for a fee on your vehicles: (excludes intercity bus)

a) _____ Yes b) _____ No

4) Do you transport cargo, freight or packages without charge on your vehicles: (excludes intercity bus)

a) _____ Yes: How is liability handled:

_____

b) _____ No

5) In space that you own, rent or lease, do you have:

a) _____ Passenger Waiting Room/Area

b) _____ Area where passengers purchase tickets, obtain ID cards, or other transit related services

c) _____ Other areas open to the general public

6) Do you provide Passenger Assistance: (includes wheelchair assistance)

a) _____ Door-to-Door (includes b and c)

b) _____ Curb-to-Curb

c) _____ In-vehicle Only

7) Do you operate: (Check all that apply)

a) _____ Demand Responsive Service

b) _____ Fixed Route Service

c) _____ Route Deviation Service

d) _____ Subscription Bus Service

e) _____ Vanpools (all types)

f) _____ Other: Describe: _____

8) Do you provide connections to intercity bus services:

a) _____ Yes b) _____ No (Skip to Question 10)

9) As part of your intercity bus services do you:

a) _____ Have a passenger waiting room

b) _____ Handle checked passenger luggage

c) _____ Handle freight, cargo or packages

10) Do you rent or lease space to others:

a) _____ Yes b) _____ No (Skip to Question 13)

11) Do you require renters or lessors to have:

a) _____ General Liability Insurance

b) _____ Real Property Coverage

c) _____ Personal Property Coverage

12) If any response in Question 11 above is checked:

Do you require proof that coverage is continually in effect? _____ Yes _____ No _____ Not Sure

13) Do you rent or lease space <u>from</u> others:

a) _____ Yes b) _____ No (Skip to Question 16)

14) Does the rental or lease agreement require you to have:

a) _____ General Liability Insurance

b) _____ Real Property Coverages

c) _____ Personal Property Coverages

d) _____ Other Insurance: Specify _____

15) Does the rental or lease agreement make you responsible for:

a) _____ Major Exterior Building Maintenance

b) _____ Major Interior Building Maintenance

c) _____ Minor Interior or Exterior Building Maintenance

d) _____ Plumbing Maintenance or Repair

e) _____ Heating/Cooling System Maintenance or Repair

f) _____ Other Maintenance or Repair Expenses:

Specify _____

16) Do you provide in-house vehicle maintenance for:

a) _____ Vehicles you own (Skip to Question 18)

b) _____ Vehicles you lease (Skip to Question 18)

c) _____ Vehicles belonging to the general public

d) _____ Vehicles belonging to private non-profit organizations

e) _____ Vehicles belonging to local government

17) If you do provide vehicle maintenance for others do you have Garage Coverage insurance:

a) _____ Yes b) _____ No c) _____ Not Sure

If No, how do you cover the liability for property damage to the vehicles of others:_____

_____

18) Do you contract any or all of your vehicle maintenance to others:

a) _____ Yes, All

b) _____ Yes, Some

c) _____ No (Skip to Question 20)

19) Does your contract or other maintenance agreement require that the vendor have/provide:

a) _____ Warranty

b) _____ Property Damage Insurance

c) _____ Liability Insurance

20) Do you have a Preventive Maintenance Program that applies regardless of how your vehicle maintenance is done:

a) ____ Yes b) _____ No c) _____ Not Sure

If Yes: How is compliance monitored and documented: _____

_____

_____

(If written program, please attach)

21) Do you ever charge a fare for transportation:

a) _____ Yes b) _____ No (Skip to Part III)

22) How are fares paid: (Check all that apply)

a) _____ Collected on the vehicle

b) _____ Billed to another agency

c) _____ Billed to the passenger

d) _____ Billed to Medicare/Medicaid

23) Describe record keeping procedures including how cash fares have handled:

_____

_____

_____

(If written policy, please attach)

III. What Do You Own, Rent or Lease?

1) Vehicles used for transportation of passengers:

Vehicle Number	Description	Seating Capacity	Average Monthly Mileage	Actual Cash Value

Attach full listing

2) Vehicles use for transportation of employees (if same as vehicles listed above, so note)

Attach full listing

3) Do any of these vehicles operate outside of your system's regular service area, but within your home state: (e.g. trips to regional medical center)

a) _____ Yes: How Often: _____

Trip Purpose	
Average Trip Mileage	
Average Number of Passengers	
Which Vehicle(s) are used	

b) _____ No

4) Do any of your vehicles operate outside of your home state (i.e. cross state lines to provide service).

a) _____ Yes: How Often: _____

Trip Purpose	
Average Trip Mileage	
Average Number of Passengers	
Which Vehicle(s) are used	

b) Are you licensed by the appropriate agency in the non-home state:

_____ Yes _____ No _____ Not Sure

c) _____ No, do not operate outside of home state.

5) Do any of your vehicles transport employees or others on a non-fare basis outside of your regular service area (if out of state please note under c)

a) _____ Yes: How Often: _____

Trip Purpose	
Average Trip Mileage	
Average Number of Passengers	
Which Vehicle(s) are used	

b) _____ No

c) Out of state: How Often: _____

Trip Purpose	
Average Trip Mileage	
Average Number of Passengers	
Which Vehicle(s) are used	

6) Do you have vehicles not licensed for on road use, which are used only off road or on system property only (If none, so note)

Vehicle Number	Description	Seating Capacity	Average Monthly Mileage	Actual Cash Value

Attach full listing

7) Do you have mobile equipment such as hoists used for the maintenance of vehicle or other property (If none, so note)

Description	Serial Number	Usage	Actual Cash Value	Replacement Cost Value

Attach full listing

8) Do you have watercraft or aircraft used for public transportation purposes (If none, so note) (If owned or operated, but not for public transportation purposes, note this and complete the information below)

Serial Number	Description	Seating Capacity	Average Monthly Trips	Actual Cash Value

Attach full listing

9) Do you have real property, including vehicle parking or storage areas: (If none, so note)

Description Location	Usage	Value	Sq. Ft./Acres

Attach full listing

10) What protective/warning devices are used:

Device		Location
a)	_____ Fence(s)	_____
b)	_____ Halon Extinguishers	_____
c)	_____ ABC Extinguishers	_____ per vehicle
		_____ per building
		Total Number Owned: _____
d)	_____ Sprinkler System(s)	_____
e)	_____ Alarm System(s)	_____
f)	_____ Guards/Private Service	_____
g)	_____ Other: Specify:	_____

11) Are there any ponds, pools, lakes, rivers, streams, high voltage power transmission lines on or next to your property

a) _____ Yes b) _____ No

If Yes, what provisions have you made to prevent general public access or to warn the general public of the hazards: (describe for each property listed above)_____

_____

12) In addition to the items noted in Question 11 above, are there underground springs, wells or underground water tables below your property or below property next to your property:

a) _____ Yes b)_____ No c)_____ Not Sure

If Yes, what provisions have you made to prevent contamination by a hazardous or toxic spill:

_____

_____

13) a) For each property owned, rented or leased, describe the present uses of the properties next to yours:

Property Location:	North	South	East	West
1)				
2)				
3)				
4)				

b) Enter response above: For each property, how likely would it be that a loss (fire, spill, etc.) that starts on your property would spread to the properties next to yours:

0 - Very Unlikely 1 - Somewhat Likely 2- Very Unlikely

Property Location:	North	South	East	West
1)	0 1 2	0 1 2	0 1 2	0 1 2
2)	0 1 2	0 1 2	0 1 2	0 1 2
3)	0 1 2	0 1 2	0 1 2	0 1 2
4)	0 1 2	0 1 2	0 1 2	0 1 2

14) Attach a listing of all personal property owned. The following questions highlight particular high value property, but they are not intended to substitute for a property inventory listing.

Do you have:

a) _____ Radio Transmitter: If a tower, how many
feet high: _____
Number of transmitters: _____
Number of receiving units: _____

b) _____ Cellular Phones: Number of units: _____

c) _____ Personal Computers: Attach listing of types, brand names, identification numbers
Number of units: _____

Describe procedures for "backing up" critical documents:

_____

_____

d) _____ Above ground fuel storage tanks _____#

e) _____ Underground fuel storage tanks _____#

Do you have in place emergency response procedures for storage tank leaks:

Describe: _____

_____

f) _____ Mobile equipment (listed previously)

g) _____ Boiler(s) (e.g., steam heat) _____#

h) _____ Hot Water Heater(s) _____#

i) _____ A/C Compressors _____#

j) _____ Other major equipment: Specify: _____

_____

15) Do you rent or lease personal property from others:

a) _____ Yes b) _____ No (Skip to Question 17)

If Yes, attach a detailed listing of the property.

16) Describe provision made for replacing or repairing the rented or leased personal property described above: (If not liable for replacement or repair, note contract provision which so states):

_____

_____

17) Do you store hazardous materials on your property or transport hazardous materials on <u>any</u> vehicles that you own or lease:

a) _____ Storage Materials, including above or underground tanks

Describe materials stored by location and precautions taken to prevent or lessen spills, fire hazards, explosion hazard, etc.:

Property Location	Materials Stored	Warning Signage Used	Safety Procedures	Emergency Plans In Place?
1)				Yes No
2)				Yes No
3)				Yes No
4)				Yes No

Attach full listing

b) _____ Transport Materials

Describe materials transported and precautions taken:

Vehicle Used	Materials Transported	Warning Signage Used	Safety Procedures	Emergency Plans In Place?
1)				Yes No
2)				Yes No
3)				Yes No
4)				Yes No

Attach full listing, if more than four vehicles used

Describe origin(s) and destination(s) and note any sensitive areas transversed

Origin	Destination	Sensitive Areas	Precautions
1)			
2)			
3)			
4)			

18) How do you dispose of used motor oil or other motor fuels:

a) _____ Outside organization pickup

b) _____ Burn on property

c) _____ Transport to disposal site (describe in Question 17 above)

d) _____ Flush down drain

e) _____ Other: Specify: _____

19) Do you own, rent or lease any property (personal or real) which has not been identified above:

a) _____ Yes: Describe: _____

_____

_____

b) _____ No

IV. What Procedures Do You Have?

1) Do you have a procedure for storing:

a) _____ Insurance contracts (complete copies)

b) _____ Purchase contracts (other than transportation services)

c) _____ Transportation Contracts

d) _____ Federal grant applications

e) _____ Non-federal grant applications

f) _____ Client lists

g) _____ Vehicle accident records

h) _____ Non-vehicle accident records

i) _____ Loss records (all types)

j) _____ Legal documents (deeds, suits, etc.)

k) _____ OSHA inspection records

l) _____ Fire department inspection records

m) _____ Safety inspection records for inspections you conduct

n) _____ Pre-trip/Post-trip vehicle inspections

o) _____ Vehicle maintenance records

p) _____ Equipment maintenance records

q) _____ Computerized data/records

Continues Next Page

r) _____ Inventory records

s) _____ Financial records other than grants

2) Describe where these records are kept and in what type of environment they are stored:

_____

_____

_____

3) What procedures are in place for up dating the stored records:

_____

_____

4) What are your procedures for handling money (cash, grant receipts, client billings, accounts payable, etc.):

_____

_____

5) How many individuals are involved in the process described above:

Number: _____

6) Are transactions checked by someone not directly involved in making the transaction:

a) _____ Yes, describe process: _____

_____

b) _____ No

7) Do you conduct any of the following prior to employment: (Check all that apply)

a) _____ Drug Test(s)

b) _____ Driver's License Check

c) _____ Criminal/Court Record Check

d) _____ References Check

Continues Next Page

e) _____ Physical Examination

f) _____ Other: Specify: _____

8) Do you have a drug testing policy in place:

a) _____ Yes

b) _____ In development

c) _____ No

9) Do you have an employee counseling program or referral service in place:

a) _____ Yes

b) _____ In development

c) _____ No

10) Do you have standard procedures and are employees trained in those procedures for:

a) _____ Vehicle Accidents

b) _____ Fires

c) _____ Earthquake

d) _____ Windstorm (tornadoes, etc.)

e) _____ Flood

f) _____ Hazardous materials spills

g) _____ Biohazard spill (bodily fluid spill)

h) _____ First Aid/CPR

i) _____ Employee injuries

Provide copies of procedures and describe how employees are trained to follow the policies:

_____

_____

_____

11) Do you have regular employee training and refresher training in the following areas:

a) _____ Accident Loss Reduction Techniques

b) _____ Accident Reporting/Documentation

c) _____ Passenger Assistance

d) _____ Passenger Sensitivity

e) _____ Biohazard Spills/Bloodborne Pathogens

f) _____ Defensive Driving

g) _____ First Aid/CPR

h) _____ Radio/Dispatch Techniques

i) _____ Commercial Drivers License Testing

j) _____ Accounting Procedures

k) _____ Wheelchair Assistance

l) _____ Pre-trip/Post-trip Safety Inspections

m) _____ Handling and Storage of Hazardous Materials

n) _____ Hazardous Materials Spills

o) _____ Other: Describe: _____

12) What is your training schedule and your time table for refresher training:

Describe: _____

_____

_____

13) Are your contracts (all types) reviewed by:

a) _____ Attorney

b) _____ Risk Manager

c) _____ CPA

d) _____ Other: Specify: _____

14) Is the assumption of liability risks an explicit part of the contract review process:

a) _____ Yes b) _____ No c) _____ Not Sure

15) Are your passenger vehicles equipped with:

a) _____ Lifts: Location(s): _____

b) _____ Raised Roofs

c) _____ ABC Fire Extinguishers

d) _____ Halon Fire Extinguishers

e) _____ Automatic Engine Fire Warning System

f) _____ First Aid Kits

g) _____ Biohazard Kits

h) _____ Flares

i) _____ Reflective Triangles

j) _____ Accident Reporting Kits

k) _____ Backing Visual Assistance Devices
What type(s): _____

l) _____ Wheelchair tie downs: Number: _____

m) _____ Other notable feature(s): Specify: _____

_____

16) How are keys to vehicles and to buildings stored and accounted for when not in use by authorized personnel: (Especially overnight storage methods should be noted.)

_____

_____

_____

(If written policy, please attach)

V. What Are Your Experiences?

1) List your vehicle related property damage losses for the past five years: (Note if legal action was taken by you or against you)

Date of Incident	Loss in Dollars	Vehicle Involved	Driver Involved	Chargeable Event?	How Paid	Notes

2) List your vehicle related bodily injury losses for the past five years: (Note if legal action was taken by you or against you)

Date of Incident	Loss in Dollars	Vehicle Involved	Driver Involved	Chargeable Event?	How Paid	Notes

3) List your non-vehicle related property damage losses for the past five years: (Note if legal action was taken by you or against you)

Date of Incident	Loss in Dollars	Location of Loss	Personnel Involved	Nature of Loss	How Paid	Notes

4) List your non-vehicle related bodily injury losses for the past five years: (Note if legal action was taken by you or against you)

Date of Incident	Loss in Dollars	Location of Loss	Personnel Involved	Nature of Loss	How Paid	Notes

5) List any liability losses not covered above:

Date of Incident	Loss in Dollars	Location of Loss	Personnel Involved	Nature of Loss	How Paid	Notes

6) List any theft losses discovered in the past five years:

Date of Incident	Loss in Dollars	Location of Loss	Cause of Loss	Nature of Loss	How Paid	Notes

7) List any employee dishonesty losses discovered in the past five years:

Date of Incident	Loss in Dollars	Location of Loss	Cause of Loss	Nature of Loss	How Paid	Notes

8) List any other legal action taken against or by your system, including any civil rights charges, during the past five years:

Date of Incident	Loss in Dollars	Location of Loss	Cause of Loss	Nature of Loss	How Paid	Notes

VI. What Insurance Coverages Do You Have?

1) If you have the specified coverage in force, check or write yes on the line following the coverage description. In the next column enter the deductible required by that policy (if no deductible, enter zero)

Commercial Auto

Property Damage _____ $_____

Bodily Injury _____ $_____

Liability _____ $_____

Medical Payments _____ $_____

Uninsured/Underinsured Motorist _____ $_____

Public Transportation Endorsement _____ $_____

General Liability _____ $_____

Professional Liability _____ $_____

Offices and Directors Liability _____ $_____

Garage Coverage _____ $_____

Boiler and Pressure Vessels _____ $_____

Real Property:

All Risk _____ $_____

Named Perils _____ $_____

Personal Property:

All Risk _____ $_____

Named Perils _____ $_____

Fidelity/Surety _____ $_____

Pollution Liability _____ $_____

2) What are the policy limits for the Commercial/Business Auto Coverage:

Property Damage:

Per Occurrence: $_____

Bodily Injury:

Per Person: $_____

Per Occurrence $_____

Liability: $_____

3) What is the policy limit for the General Liability Coverage:

$_____ _____ No Coverage

4) What is the policy limit for the Professional Liability Coverage:

$_____ _____ No Coverage

5) What is the policy limit for the Real Property Coverage:

$_____ _____ No Coverage

a) All Risk Basis: $_____

Are there any property classes excluded by the policy:

_____

_____

Are there any named perils excluded by the policy:

_____

_____

b) Named Peril Basis: $_____

Check Perils Covered:

Fire _____

Hail _____

Windstorm _____

Explosion _____

Smoke _____

Sinkhole _____

Earthquake _____

Flood _____

Water Damage _____

Other _____ Specify: _____

_____

CHAPTER NINE: QUESTION-BY-QUESTION GUIDE TO THE RISK EXPOSURE QUESTIONNAIRE

Introduction

This chapter provides a guide to each question contained in the Risk Exposure Questionnaire. The purpose here is to place into context the reason for each question and the information that it seeks to obtain.

The Questionnaire is designed to be self administered: it is not necessary to bring in outside assistance to complete the instrument. This is not to say that outside specialists would not be helpful in some situations. Indeed, if your insurance carrier offers such assistance as part of its services (i.e., at no extra charge), it is well worthwhile to have the carrier send a risk management or a loss control specialist to your property to complete the questionnaire or to administer one of the carrier's own risk assessment questionnaires. Regardless of how you approach the matter, it will still be up to you to provide the basic information about your system and your system's practices and its loss experiences. This questionnaire is designed to capture that information in an organized form.

Thus, the questionnaire's objectives are really two fold. First, it systematically walks you through your system from a perspective that you may not normally use and, thereby, lets you gather valuable information to assist you in making better management decisions. Second, it collects information that can be provided to insurance carriers when you ask for bids for insurance coverage. While insurance carriers will vary somewhat in the type of information they will require, they all will want the basic information captured by this questionnaire. Thus, by preparing this information and by keeping it up to-date, not only do you have a useful in-house management tool, but you also have the heart of an insurance bid package.

Here is a thought to keep in mind while completing the questionnaire and when providing bid information to an insurance carrier: what you don't do (i.e., risk exposures which you do not have) is often as important as what you do do (i.e., risk exposures that you do have). Hence, be sure to complete all sections of the questionnaire fully, even those that don't apply to your operations (complete them by stating, in writing, that they don't apply). This approach will provide the documentation on the exposures that you do have and the documentation on the exposures that you don't have.

For some questions, the questionnaire does not attempt to provide sufficient space for all possible systems; e.g., the vehicle listings. Develop a separate listing and attach it to the questionnaire. You may also want to include in your response additional information of use to your system that is not specifically requested by the question, just be sure to include all the information that the question does request.

The rest of this chapter reviews each question asked on the questionnaire. Each question is briefly summarized. The questionnaire itself is contained in Chapter Eight.

Question-By-Question Review

Part I: Who Are You?

This part of the questionnaire seeks some basic descriptive information about the organizational structure of your system and its relationship(s), if any, to other organizations, such as local governments.

Question 1 asks for the legal organizational form of your system. Only one of the options in this question should apply.

Question 2 focuses on the transportation operation's legal organizational form. For many systems there will be no difference between question 1 and question 2. However, some systems operate their transportation services as a component or subdivision of a larger organization. This question seeks to find that out and then tie it to the matter of insurance coverage.

In some cases the larger, or "parent" organization, if you will, should be named as an insured party on the transportation component's insurance contract. In other cases, the response to this question will reveal that the transportation component is part of the parent organization's insurance policy. If this is the case, then a careful review of that coverage is necessary to be sure that the special needs that come with providing a transportation service are specifically covered.

Question 3 asks about the internal and external governing arrangements under which the system operates. Multiple responses are probable to this question.

Some of the responses concern governing boards or supervisory boards; i.e., Board of Directors. The other responses ask about internal oversight arrangements; i.e., do you have certain advisory committees, such as a Handicapped Advisory Board or an Accident Investigation Committee? If you do not have one or more of the internal oversight arrangements in place, you may wish to consider whether or not to form one or more of them.

Part II: What Do You Do?

This part of the questionnaire seeks information about your operating activities. A wide range of activities are included in this section, many of which will not apply to any single system. However, this diversity is necessary because transit systems are a very diverse group of operations. As you read over the alternatives, you might get some ideas for expanding or changing your existing system.

Question 1 asks about the types or categories of persons whom you transport. As you already know, these different groups represent different passenger assistance needs and different risk exposures. The responses you provide here should correlate with the types of training you provide your system employees and with the policies and procedures that your system maintains. They are asked for later in the questionnaire, so a comparison can be made.

Question 2 asks if passengers carry personal possessions on to your vehicles. In most cases the answer here will be yes. The importance

is to be sure that you have coverage for damage to such property. The need for this would arise if your vehicle is involved in an accident and a passenger's property is destroyed.

Question 3 asks if you transport freight or cargo (includes package delivery) for a fee. If you do, then you need to specifically insure for freight transport and you need to have appropriate record keeping procedures. However, this question excludes freight carried on or handled as part of an intercity bus operation. That matter is covered starting with question 8.

Question 4 is not a different way of asking question 2; even though it looks that way. In question 2 the passengers carried on the packages, in question 4 you are transporting the packages independent of a passenger and without a freight charge. The question asks how the potential liability for damage or loss of the packages is handled. One method is a hold harmless agreement and another is insurance for the property of others (as could be done if you answered yes to question 2).

Some systems transport groceries or medicines for system riders who are ill or otherwise incapable of going to get the groceries or medicines themselves. Some systems transport these for the regular passenger fare rather than charge a "freight" fee. This case is probably best handled as a yes to question 4 with a brief explanation of the transportation activity. Careful procedures need to be in place for handling the items and for handling any payments for the groceries or medicines (i.e., bringing change back).

Question 5 asks if you have any areas where the public can come and go. If you do, then you have a risk exposure for people falling or slipping or otherwise suffering injury.

Question 6 asks about the level of passenger assistance you provide. The training provided to your system employees and your insurance coverage should reflect the level of service actually provided.

Question 7 asks the different types of service you provide. One measure of your risk exposure is the types of service offered. For example, if you only offer fixed route service, then where your

vehicles will be and over what roads they will travel are well established. The same could be said for subscription bus/van service and for vanpools. However, if you provide demand responsive and/or route deviation service, then there is greater variety in the roads traveled, times traveled and conditions under which your vehicles will operate.

Question 8 begins a series of questions about intercity bus service. If you do not provide connections to intercity bus service, then respond no and skip to question 10 as instructed. Otherwise proceed to question 9.

Question 9 asks about risk exposures connected with intercity bus service. In particular it asks if you have a waiting room, if you handle checked luggage, and/or if you handle freight. If you responded yes to any of these, then you have risk exposures that need to be addressed by procedures, insurance coverage or some combination of the approaches reviewed previously in this report.

Question 10 asks if you rent or lease space to others. If no, then skip to question 13, otherwise proceed to question 11.

Question 11 follows-up on question 10. If you do rent or lease space to others, then you may have a liability exposure with respect to bodily injury and/or to property of others. You would want to transfer this liability to those to whom you rent or lease the space by means of the lease or rental contract.

However, you also have another possible source of loss stemming from the lease or rental of space; namely, that a loss to your property may arise in the leased or rented space due to the negligence of the leaser or renter. To protect yourself from the financial impact of such losses, you should require the leaser or renter to carry appropriate insurance. This question asks if you do that.

Question 12 asks if you enforce the contractual requirement discussed in connection with question 11. People frequently forget to check up on such requirements on an on-going basis.

Question 13 flips the previous line of questions and asks if you rent or lease space from others. If you don't, then you skip to question 16; otherwise you proceed to question 14.

Question 14 asks if your lease or rental agreement requires you to carry any of the specific types of insurance coverage noted.

Question 15 asks about risk exposures transferred to you by the lease or rental agreement. If any of the listed items are your responsibility, then you will want to budget for them. In some cases you may also wish to include them in your insurance coverage. This question is intended to help identify areas of actual or potential cost that are often overlooked.

Question 16 asks about vehicle maintenance. Depending upon your response you may answer all of this series of questions or you may skip to question 18. Each part of the question poses a different liability exposure possibility.

How responses to this question are to be interpreted depends, in part, on how previous questions have been answered. For example, if you provide vehicle maintenance for local government vehicles, then you have a liability for the proper care of the vehicles while in your care and you need to be specifically insured for this exposure. However, if you are a division of the same local government whose vehicles you are repairing, then you may be covered by the local government's insurance coverage. You would want to be sure that your local government has the proper insurance for this activity.

Question 17 specifically asks if you have Garage Coverage insurance and if not, how do you handle the liability exposure.

Question 18 asks if you contract out some or all of your vehicle maintenance. If not, skip to question 20, otherwise answer question 19.

Question 19 asks if you require the organization to whom you contract for any vehicle maintenance to provide warranties or carry specific types of insurance coverage(s). There are two objectives to this question. First, does the vendor warranty his or her work? Does

the vendor have the insurance coverage(s) to pay for any damage to your vehicle while in the vendor's possession? These are fairly straight forward concerns. The second consideration is a bit more complex: namely, what happens if your vehicle is involved in an accident because of improper or incomplete maintenance work? Can you recover damages from the vendor? This is not so much a legal question as it is one of the vendor's financial capacity. If the vendor is legally liable, but has insufficient financial resources, then you're stuck with the bill.

Question 20 asks about your Preventive Maintenance Program. If you don't have one, start one. If you do have one, then attach a description of the program and of how compliance is monitored. Just having a program is of no real value if it only exists on paper. It must be an enforceable program and your insurance carrier will want proof (your governing body may want some proof also, especially if you have an equipment failure that leads to an accident).

Question 21 asks about your fare policy. Some systems do not charge fares for some or all of their riders. This question lets such systems skip to Part III. For the majority that do charge fares, then the remaining questions in Part II are intended to review how the money is handled.

Question 22 asks about the various methods by which fares are paid. Multiple answers will be common.

Question 23 asks about your system's methods for maintaining records of fare billings and payments. Any written policies or procedures should be attached. Later in the questionnaire, additional questions will be asked about financial management of all funds. This question just deals with fare collection. Implicit in this question is the key role of the driver and that should be the focus of the procedures part of the question.

Part III: What Do You Own, Rent or Lease?

This part of the questionnaire goes into depth about what property your system has, and how and where does it use that property. This part addresses the main or major areas of liability which a transit system faces.

Question 1 asks about the vehicles that your system operates for passenger service. You may wish to use a different format for answering this question. What is important is that you have a listing of vehicles containing the requested information. Actual Cash Value (AVC) means what could you sell the vehicle for right now. Insurance policies cover vehicles for their ACV not for their replacement costs. The difference is often substantial. However, other types of property, such as computers or office furniture, can be insured on a replacement cost basis. But if you don't specify replacement cost, you normally get ACV coverage. So be sensitive to the differences. Now back to the question.

The question asks for a description of the vehicle (1976 Dodge with a rear door). Next it asks for some identifying number. For some systems that will be a system generated number. For other systems it will be the VIN number (Vehicle Identification Number) that comes from the manufacturer. For other systems it may be a number assigned by the state motor vehicle people. Whatever it is for your system, be consistent and note the origin of the identification number.

The question then asks for seating capacity. It would be appropriate to note at this point the wheelchair capacity of the vehicle and where any lifts are located. The lift location may be a part of the vehicle description (1976 Dodge with rear door lift). Since your internal records probably already have such information, modify the question to go with your records. There is no need to modify your records (assuming they are complete) to go with the question.

The question then asks about vehicle usage. In this case it asks for the average monthly mileage per vehicle. Some insurance carriers will also want to know the radius from home base that the vehicle

travels. A fairly standard break down is 50 or fewer mile radius, more than 50 but less than 100 mile radius and 100 or more mile radius. You may wish to add the radius information to the question. If you routinely operate a vehicle in excess of a 50 mile radius from its home base, then you should include that information.

The above information provides some insight into the degree of risk that the vehicle presents. The larger the vehicle capacity, the more miles it travels and the further away from its home base that it travels, the greater the risk presented by that vehicle. This information is then combined with the ACV information to form a measure of the potential dollar losses that could arise from the operation of the vehicle.

Question 2 asks the same information as question 1, but it asks about vehicles that transport employees rather than passengers. The level of liability is different between passengers and employees as are the methods for handling any injuries that might arise. Your employees will probably be covered by worker's compensation and probably have group medical for example, your riders don't (or at least not under your medical coverage).

However, most systems do not transport employees on as regular a basis as they do passengers. Usually when employees are transported it is in one or two particular vehicle(s). Thus, this question may be answered by listing those one or two vehicles. If your system has no particular vehicle for this purpose, then say: "see answer to question 1".

Question 3 seeks information about out-of-service area trips for passengers. Many systems transport passengers for medical treatment to sites outside of their regular service area. These trips may or may not pose a somewhat higher risk than in-service area trips. This question captures that information and permits you to focus attention on the risk question.

Question 4 is essentially question 3 with the additional element of operating out of your home state. When you cross state lines you add an additional consideration to your risk management activities. Be sure you meet the legal requirements to operate in the other state

and meet any mandatory insurance requirements that the other state may have.

Service that crosses state lines is often a delicate matter. Some systems do operate across state lines without registering as required by law in the second state. If any accident should occur in the second state, the system may have some explaining to do. In other cases, systems endure operating inefficiencies and higher costs because they will not cross a state line to reach the nearest medical facility because of the legal complications posed by the second state. If your system fits either of these cases, then it is probably worthwhile to devote some management time and consideration to the questions posed.

Question 5 asks about transporting non-passengers; that is: do you transport employees or others (say the county commission) who are not regular fare paying passengers outside of your regular service area (question 2 asked about service within your regular service area) or out of state. This may occur when attending a conference or training session or transporting others to such activities. Normally this will not present a risk management concern as long as the vehicle(s) used are in good condition and your driver is properly trained. However, it should be noted and if it occurs on a regular (say monthly) basis, then that should be part of your insurance bid information.

Question 6 asks about vehicles not used for on-road use. Relatively few systems will have vehicles that meet the requirements of this question. However, for those that do, the vehicles are a source of potential liability that is routinely overlooked.

Question 7 asks about mobile equipment. The exact definition of mobile equipment will vary somewhat by insurance carrier and/or by state. In general, mobile equipment, as used here, refers to <u>self-powered</u> equipment used on system property. Frequently the equipment is used for vehicle repair, such as hoists.

The question asks for descriptive information, and identifying number, such as a serial and model number or an internal system

control number, a notation of the usage of the equipment and an estimate of its ACV and its Replacement Cost Value (RCV).

Other movable equipment that is not self-powered would not be covered by this question. Such equipment will be included in subsequent questions.

Question 8 asks for information about water craft or aircraft owned or operated by the system. The main focus is on such craft used for public transportation purposes. However, it should also be completed if such craft is/are owned even if not operated for public transportation purposes. The descriptive and identification information asked for are already familiar from previous questions as are the seating capacity and the ACV questions.

Question 9 asks about real property owned, leased or rented by the system. For these purposes real property includes undeveloped land, parking lots as well as buildings and other structures on the land. The real property should be described and its location indicated. In some cases the descriptions used for local property tax purposes would be satisfactory (even if the property is tax exempt, a description is probably available). In other cases, a more detailed description would be of value.

The question continues by asking about the usage of the property. It also asks for the value of the property. How to determine value is left to the individual system since more than one approach is possible. Give a measure of size of the property, either square feet or acres depending up which is most appropriate (square feet for buildings and parking lots, acres for developed or undeveloped land).

As with vehicle listings, feel free to format the question in a manner that fits with existing records. However, be sure to include all the necessary information. If you are renting or leasing real property and you have made significant or permanent improvements to the property, then a separate notation would be appropriate. The objective of the question is to determine the amount of real property at risk.

Question 10 asks about protective devices used at each location described in question 9 above.

Question 11 asks about items which present risks that may or may not be on property under the control of the system. Ponds, lakes and the like may attract children who could then fall in and suffer injury. Even if the item(s) noted in the question are not on property under your control but on adjacent property, note its existence as people may cross your property to reach the pond, etc. If such items exist, you may need to erect protective barriers or warning signs. The second part of the question asks about this. An additional concern is the potential for pollution of the items noted. Thus, their existence must be recorded.

Question 12 asks about the same items covered in question 11 and adds underground water tables under or next to your property. The objective is to determine the risk of a hazardous materials spill turning into a pollution liability. The question also asks what provisions have been made to prevent such an occurrence.

Question 13 (a) asks you to describe the usages of the property next to property under your control. The major objective of this question is to determine if those usages could present any risk to your property. The (b) section of the question asks you to rate the probability of such an occurrence.

Question 14 asks for a listing of personal property owned by the system (personal property leased or rented is covered under question 15). The question specifically asks about particular high value items. However, in addition to those items you should maintain a complete inventory of all personal property owned by the system.

With respect to computerized documents/records, the question asks you to describe back up procedures for critical documents.

Fuel storage tanks are a special area of focus of the question. Not only is the number of such tanks requested, system procedures for responding to tank leaks are also requested. As you will have noted by now, several questions have addressed pollution liabilities. Pollution liability is a highly sensitive area and one for which

insurance is difficult to obtain. Risk reduction or elimination are probably your best approaches to pollution liabilities give the difficulty in obtaining insurance for such risks.

Question 15 asks about personal property rented or leased from others. If you have such property, please attach a listing. Otherwise skip to question 17.

Question 16 refers to the property listed in question 15. Note what provisions have been made to replace this property should it be lost, damaged or destroyed while in your care. If you are not responsible for the property, please note why this is so.

Question 17 directly addresses the hazardous materials liabilities. While some attention has already been given to this topic, question 17 questions in more depth your system's use, storage and transportation of hazardous materials. Of special concern to transit systems would be motor fuel, motor oils and automotive fluids (anti-freeze, transmission fluid, etc.). The first part of this question asks about storage procedures, including tanks. Describe the location of storage, the types of materials stored at each location and what safety precautions are in place at each location.

The second part of the question asks about transportation of hazardous materials. For systems with their own maintenance facilities, this may be a matter of more concern than for those who contract out for maintenance. The questionnaire specifically asks if the materials are transported through any environmentally sensitive areas.

Question 18 follows along these same lines with respect to the disposal of used motor fluids. If you are burning the materials on the property or flushing them down the drain, you probably have a problem that needs to be addressed.

Question 19 is a final catch all. If the previous questions have missed some property that your system owns, rents or leases, then it should be described at this point.

Part IV. What Procedures Do You Have?

This part of the questionnaire is pretty much self explanatory. It seeks to learn if you have in place, written procedures for dealing with a variety of potential occurrences. It makes no judgment on the quality of those procedures, it just asks if you have them. If you do not have a procedure for dealing with a listed item and that item seems to be relevant to your operations, then you should probably develop a procedure. Copies of written procedures are useful for a variety of purposes including preparation of an insurance bid package.

Question 1 lists a wide variety of documents and records that your system may have and asks if you have a procedure for storing those documents and records.

Question 2 asks how the documents/records identified in question 2 are stored. Storing means safely storing, i.e., protecting from fire, water damage, theft, etc.

Question 3 asks about up-dating the stored records. What is your policy on frequency and mechanism for up-dating the records?

Questions 4 through 6 ask about procedures for handling money. Question 4 seeks the procedures for handling money and client billings, etc. Question 5 asks how many people actually handle these records, including cash. Question 6 asks if the records are checked by someone not directly involved in the original transaction.

Question 7 involves what pre-employment personnel checks are utilized by the system.

Question 8 asks if you have a drug testing policy. For Section 18 systems, the policy would have to meet FTA requirements.

Question 9 is related to drug testing, but can embrace a wide variety of concerns. If your counseling or referral program extends beyond that required by FTA drug testing regulations, then what is included should be noted.

Question 10 provides a listing of possible emergency situations and asks if you have a policy for responding to each possible emergency and if your employees are trained in the implementation of those policies. Just having a policy is insufficient. Employees must be trained in the requirements of and the procedures set forth in the policy.

Question 11 asks about employee training programs. These programs would be for new hires and for refresher training for continuing employees.

Question 12 follows up on question 11 by asking the frequency of training. Employee skills in responding to emergencies and in handling day to day job activities are an important factor in judging the risk presented by an organization. The better trained, more frequently trained and more broadly trained are your employees, the lower is the probability that a risk will produce a significant loss.

Question 13 is a procedural question regarding who reviews all contracts signed by the system. Several perspectives are represented by the skill areas listed.

Question 14 asks about the contracting process with respect to the assumption of liability. It intentionally follows question 13 in that the review(s) noted in question 13 should catch any unintentional assumption of liability.

Question 15 asks about equipment on your vehicles. While not all items would be desired by all systems, most of the items noted on the list are basic safety or safety related items and should be included on all vehicles. If you find that a number of the listed items are not on your vehicles, then you might wish to reexamine your vehicle procurement specifications.

Question 16 asks about how keys to vehicles and to buildings are handled, stored and accounted for. There should be some policy and procedure for storing keys. Some systems leave keys in the vehicles over night. Rarely is this a safe or sound procedure.

Part V. What Are Your Experiences?

This part requests information on your system's loss history. Whenever possible you would probably prefer to have your insurance company compute your insurance rate based on your own loss history. Public transit, in general, has a better loss history than operating characteristics of the industry would lead one to believe. Detailed loss records are essential to good risk management and are also very useful in preparing an insurance bid package.

The questions in this section all have the same format. They specify a particular type of loss and ask for date of loss, the dollar amount of the loss, whether or not the loss was chargeable against your insurance rating (some losses will produce chargeable drivers license points and some will produce insurance points and some will produce both), how the loss was paid (by the insurance carrier, or by the system), and then leaves a space for any explanatory notes that may be of value in interpretation of the loss information, any legal action should be noted. Loss information is requested for the previous five years. In some cases, the previous three years will be sufficient; however, the longer the loss record is, the stronger can be your case for a good loss record.

The losses may occur in connection with a vehicle accident or they may occur in a waiting room or on any system owned or operated property. So don't think only in terms of vehicle related losses. Remember the previous questions about what types of property you own, lease or rent. The loss could occur on any type of property. Therefore the questions differentiate between vehicle related and non-vehicle related losses.

Question 1 asks regarding vehicle related property damage losses.

Question 2 asks regarding vehicle related bodily injury losses.

Question 3 asks regarding non-vehicle related property losses.

Question 4 asks regarding non-vehicle related bodily injury losses.

Question 5 is a catch all for any liability losses not captured in questions 1 - 4.

Question 6 requests information on any non-employee theft losses.

Question 7 asks about employee dishonesty losses. This could be a theft of property or a misuse of funds, for example.

Question 8 is a catch all question for any legal action not captured in questions 1 - 7. If you have a breach of contract suit, for example, it would be listed here as it would not fit under any of the above questions.

Part VI. What Insurance Coverages Do You Have?

This part of the questionnaire is designed to force you to systematically review your insurance coverage. In each case if you do not have a listed coverage, ask yourself why not. There may be a very good reason, like you don't need it. Alternatively, you may not have it because no one ever thought about it. In other words, no one ever asked the questions you are about to ask yourself.

The second matter of concern is about the limits of coverage. The questionnaire asks you to state the policy limits and the deductible for each coverage type. As you review your responses, ask yourself if the coverage limits are sufficient for present needs.

The questions themselves don't need any additional explanation, even though you may wish to refer back to the earlier discussions of insurance policy/coverage types. What really needs to be done with the information collected in this section of the questionnaire is a good management review of your system's coverages and the limits of coverage.

Concluding Comment

The Risk Exposure Questionnaire is designed to provide you with a structured approach to examining and describing your system from a risk oriented perspective. The above walk through the questions asked should provide you with a better idea why certain information

is being requested. Knowing why information is wanted helps you to provide a better and more informed response. Since no questionnaire can be complete for all systems for all purposes, take your knowledge of your system and combine it with why information is being asked to produce your own risk oriented picture of your environment.

CHAPTER TEN: OBSERVATIONS AND SUMMARY COMMENTS

Introduction

The Risk Exposure Questionnaire contained in this report was tested by numerous transit operators representing a fairly wide array of operational characteristics. These experiences are reflected in the present version of the instrument. Testing of the instrument was accompanied by wide ranging discussions of the risk management practices of various operators. Some system sites were inspected directly. Additionally, the insurance policies of several systems were examined and reviewed.

As might be expected given the diversity found in transit systems, no two systems were quite alike. However, the questionnaire worked equally well for all the systems studied. Additionally, there was a high degree of similarity in the basic insurance coverages carried by each system. Allowing for differences that reflect different operational characteristics, the major differences among system coverages were found in the policy endorsements, not in the basic policies. However, no consistent reason for the variations in endorsements was apparent. The variations seem to be the result of who asked their insurance agent what questions. The better informed an operator was about risks, perils and coverage options, the more complete was the insurance coverage.

The preceding chapters have reflected the experiences recounted by many operators both those who so kindly participated in this effort and others who shared their experiences prior to this report being developed. Other examples or illustrations used previously represent potential loss situations observed to exist, even though no losses have arisen. Hopefully, they will have sparked some recognition or presented some grounds for rethinking existing practices and situations such that enhanced risk management procedures may be incorporated into existing operations. Alternatively, perhaps they have reconfirmed existing practices as appropriate and worthwhile.

Observations

The following observations are based on numerous conversations and system visits. While they are felt to be fair and to be generally representative, it is well to remember that they are generalizations and their applicability will vary, often widely, from system to system:

* Risk management practices need to be more systematically incorporated into system operations by means of a formalized inspection, review and evaluation process.

* Risk management practices for vehicle risks are generally rather well done; driver training levels and vehicle inspection and maintenance programs are generally fairly well in place. However, additional safety related equipment is needed by many systems as are some specific types of driver training; such as biohazard kits and training, accident reporting materials and training, and fire extinguishers.

* In some cases rear windows have been omitted from vans in an effort to save on equipment expenditures; however, this increases the risk of accidents while the van is backing up, an area that already has sufficient risk even with a rear window. There is no need to add more risk.

* Risk management approaches for buildings and contents (real property and personal property) were not as well developed as those for vehicles; it did not reflect the same level of attention as was observed with respect to vehicle risks. This is not to say that unsafe practices were observed with any regularity. Rather, the attention to detail in storage of records, in the use of space heaters, in the placement of fire extinguishers, the use of fire separation and the use of physical security (as

opposed to good procedures) for financial instruments (cash and checks) was not what it should be.

* Systems utilizing older buildings (especially buildings converted from another usage) often didn't have adequate fire walls separating maintenance and/or storage areas from office areas. Normally this was not observed in newer buildings.

* Insurance limits of coverage were generally adequate and satisfactory for the routine higher frequency losses. However, coverage limits were generally quite inadequate for the infrequent severe loss. This stood out most clearly in the lack of umbrella liability policies and the generally modest levels of liability coverage carried in the base policies. In part this reflects operating budgets that are inadequate to support higher levels of insurance coverage. In part it reflects a lack of understanding of the potential higher risk levels on the part of system operators. Many had not thought of or known to request umbrellas with their higher coverage limits while others have assumed that such coverage would be too expensive and, have, did not request it. It also implies a lack of understanding of transit operations on the part of the insurance industry or at least some insurance agents and companies, as few agents were observed to suggest such coverage.

* When the real property was owned by a local governmental unit and insured by that government, it was not unusual for the transportation operator to have no knowledge of or only limited knowledge of the extent and types of coverages provided. This could lead to unpleasant surprises in the event of a loss.

* Insurance coverage types were generally fairly inclusive; however, gaps in coverage were observed. These most commonly took the form of endorsements not purchased. Usually the non-purchase was by default not be direct decision, implying a lack of systematic risk identification and review.

* Pollution coverages were notably absent, even for systems with in-house maintenance and on-site fueling facilities. The risk management procedures for these risks varied from very poor to fairly well done. Pollution liabilities are an area of current importance that will only increase over time and must have more direct and detailed attention by system operators. Since insurance for pollution risks is very hard to obtain, notably increased loss control efforts are required in this area.

* When systems were covered as part of the insurance policy of a local governmental unit, gaps in coverage and the absence of transportation specific coverages were more common. Generally systems so positioned reported an absence of consultation by the local governmental unit on insurance matters.

* Risk management site inspections by trained risk analysts should be seriously considered by systems that have their own maintenance facilities, operate out of older facilities and/or operate from multi-use facilities. As a general rule of thumb these inspectors may know relatively little about passenger transportation risks, but they would be well versed in property risks, an area that seems to be a weak point for many transportation providers.

* Coverage gaps were more common on real property and personal property exposures than on vehicle

exposures; especially in the area of electronic data processing equipment.

* Some systems located close to state borders reported that the closest destination for particular services was in the adjoining state, but because of the insurance difficulties involved with interstate operations the system made much longer intrastate trips to more distant service providers. Since trip length is a useful measure of risk exposure (the longer the trip the greater the risk exposure), a reexamination of the interstate transportation difficulties may be worthwhile.

Concluding Comment

Using the methods, procedures and questionnaire contained in this report should provide a sound base for the development of a systematic risk management process or for the improvement of an existing process. The information developed as part of the evaluation and risk identification process as well as the data developed and procedures implemented as part of a loss control process are valuable inputs into an insurance bidding procedure. These processes also serve to identify types of coverage needed, especially in the endorsement area, and to indicate the limits of coverage that it would be wise to carry.

Small transit systems are really very complex operations and system managers, drivers, dispatchers and maintenance personnel handle a wide variety of risks on a daily basis. All in all, they do a remarkably safe job of dealing with risks which often confound the outside observer. Unfortunately, they rarely receive the degree of credit that they deserve. In part, that is because of the inability of most systems to put forward in written form an evaluation and analysis of what they do in this area. A systematic risk management process would not only improve procedures for handling risk and should improve insurance coverages, but would also provide documentation for insurance companies, governing boards and the general public of what is being done to continually protect and enhance the safety of

the riding public. Hopefully, the approaches, procedures and specific suggestions contained in this document, along with the Risk Exposure Questionnaire will provide a solid basis for the development for more formal procedures and better documentation of activities for many small transit operations.

ENDNOTES

(1) Huebner, Black and Cline, Property and Liability Insurance, second edition, Prentice-Hall, 1976, page 418.

(2) Bob Kerslake, Jr., "When Is A Person A Passenger?", The WSTA Newsletter, Fall 1992, page. 31.

(3) Huebner, et. al., example modified from page 419.

(4) Huebner, et. al., page 422.

(5) Huebner, et. al.

(6) Huebner, et. al., adapted from page 620.

(7) Huebner, et. al., adapted from material on pages 621-623.

(8) The information used in this section comes from many sources, especially from field experiences. For a very useful discussion of these topics and of their relationship to bid specifications see: John Balog's presentation during the "Safety/Risk Management Session", The Ninth National Conference on Rural Public Transportation: Final Report, U.S. Department of Transportation, DOT-T-91-01, Washington, DC, September 1990, pages 64 - 71.

(9) "Transporting Passengers with AIDS/HIV+", Erskine S. Walther, presentation, Safety Training for Transit Professional, Iowa Public Transit Association, Iowa City, Iowa, November 4, 1992, pages 5 - 7.

(10) Insurance and Risk Management Services for Transportation Providers, David L. Ellis Agency, "Fire Extinguishers: Check Them Before You Need Them," Harrisburg, PA, February 1990.

(11) Fire Prevention Code, American Insurance Association, Engineering and Safety Service, 85 John Street, New York, NY 10038, ask for most recent edition.

(12) "Accident Investigation", Risk Management Services for Transportation Providers, David L. Ellis Agency, Inc., Harrisburg, PA, no date, page 3.

A small note on sources. While there are several very high quality insurance textbooks available, this report draws heavily upon the Huebner, Black and Cline volume for two reasons: (1) it is a classic in its field, and (2) the author of this report had the pleasure of being taught insurance by Robert S. Cline of Huebner, Black and Cline and; as such he is very familiar with the book and the thinking process which it represents.

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Erskine S. Walther
Greensboro, North Carolina
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APPENDIX A: LITERATURE REVIEW

Introduction

The literature in this field has the rather remarkable properties of being extremely extensive and practically non-existent. Within the insurance profession and within particular modes of transportation, such as motor freight, highways and water transport, the literature is massive. No attempt will be made to review that body of literature here. However a few representative pieces of work will be noted; thus, providing an indication of the type of information available. Most of this body of work is proprietary and is available for purchase.

On the other hand, literature regarding risk management in public transportation is relatively scarce. One reason for this may be the nature of public transportation risk management. It is predominately the providence of large urban systems that frequently have a specialized risk management operation. Such professionals draw from the extensive pool of information noted above. Those systems without a specialized risk management function generally do not have the time or the technical insurance training to tap the same informational pool. These system managers need information developed specifically for their needs and usage. The relatively small amount of literature fitting those requirements is noted below.

Representative Insurance Industry Literature of Relevance

While one might be somewhat foolish to attempt to categorize a body of literature of this size into two major groupings. It can be argued that, for the purposes at hand, this literature can be divided into the categories of checklists and guidelines, and short how-to articles. Checklists and guidelines are readily obtainable from insurance industry service organizations, insurance carriers, management professional associations and some risk management college text books.

How-to articles are available from a variety of sources. College level risk management readers, insurance industry training materials, and insurance carrier agent training materials are potential sources. Some of these step through very particular risk exposures such as George Head's "A Flow Chart For Warehouse Deliveries," while others are more conceptual and principles oriented such as James Cristy's "Fundamental of Risk Management."

The function of checklists and guidelines is to force the risk manager through a complete risk and exposure identification process. Thus, they tend to be lengthy, all inclusive and generic. An Asset Exposure Analysis published by the American Management Association includes missiles and satellites and nuclear and radioactive property, for example. Board based checklists exist as do highly detailed ones focusing on a specialized topic area.

An excellent source of information is the International Risk Management Institute, Inc. This organization produces several on-going sources of informational support for risk managers. Of particular relevance to the present topic would be the Exposure Survey Questionnaire that would be of value to any system operator. Another publication is the Manual of Insurance Checklists, while of interest to the professional risk manager, topic coverage is much too extensive to justify the expenditure by the typical transit system operator. Regular updating of both of these publications is available. Additionally this organization publishes a monthly newsletter, "The Risk Report," that helps the professional risk manager stay current in a field that regularly changes. Other for-profit organizations publish similar informational documents and newsletters that would also be of interest to the professional risk manager.

Other publications are oriented towards developing insurance coverage for particular classes of risks or for certain types of organizations. These articles tend to focus on the coverages available under particular policy packages that are standard packages in the insurance industry. Trade associations and insurance industry associations are sources of such materials.

The items noted above are by no means inclusive of the vast array of such information, rather it is meant to be suggestive of the types of

supportive documentation that is available within the insurance industry. When such information is specifically utilized in this report, it is cited at the appropriate moment.

Transit Specific Literature

The transit specific information tends to concentration on insurance management matters, insurance pooling activities or vehicle and/or driver safety issues. Relatively little material is available that addresses risk management activities and much of that derives from conference presentations, especially state or regional conferences, and is not generally available in a published form.

The Wisconsin Bus Safety Manual (National Transit Services, 1985) is an excellent guide to managing bus related risks including driver training, vehicle design and accident investigation. The Rural Transit Vehicle Insurance Study (Advanced Risk Management, 1984) provides a good guide to insurance management topics for different types of rural service delivery methods. Savings On Bus Insurance In Wisconsin (Warren, 1982) is a fine guide to establishing a pooled insurance arrangement. These publications had national distribution.

"Public Liability Insurance and Risk Management: Risk Management and Loss Control" (Dorsett, 1985) is a set of guides regarding driver screening and selection, reduction of personal injury losses and vehicle safety. While these are quite useful, they were only available to persons attending the Alabama Transit Association Annual Meeting in October 1985. Similarly, handouts prepared by David Ellis ("Risk Management Services For Transportation Providers," Ellis, 1985) for the Brandeis University/Babson College "Workshop On Passenger Transportation In Rural Massachusetts" provides valuable information on the types of insurance coverage and insurance policy packages of interest to operators of specialized transportation services. Again, this information was only available to workshop attendees.

The December 1988 issue of Community Transportation Reporter had risk management as its cover story. However, of the several articles include in the issue, only one ("Risk Management Made Easy," Burton, 1988) addressed risk management as a topic and it was rather brief, as the format required. The other articles addressed insurance

management and insurance pooling topics (Ellis, 1988 and Adcock, 1988 respectively).

Public Transit Risk Management: A Handbook for Public Transit Executives, (Ryland, 1984) appears to be one of the few documents generally available that does take a risk management orientation. This document includes a discussion of the process of risk management and a guide to risk assessment. Other topics include claims management, loss ratios and accident reporting. While its specific orientation is towards vehicle and employee injury related losses, it does include checklists for real property as well as ones for worker's compensation and accident analysis.

A three volume publication, Risk Management Manual for the Public Transit Industry, (MacDorman, 1988) provides an exceptional step-by-step guide to the risk management process. The documents include a variety of valuable check lists as well as comparative data from system survey results. This would be a highly recommended document for any transit risk manager.

A 1989 FTA funded study of 17 urban bus transit systems, Safety, Loss Control and Risk Management (Abacus Technology, 1989), provides a valuable overview of a variety of safety and loss control programs in use by the systems studied. Many of the specifics are not applicable to Section 18 providers because of the difference in the scale of operations. However, many of the various training and loss control techniques noted in the study are transferable in concept to the relatively smaller Section 18 systems.

Several valuable sessions regarding insurance and various topics relevant to the risk management process were presented during the Ninth National Conference on Rural Public Transportation held in 1989. These presentations are available in The Ninth National Conference on Rural Public Transportation, (PTD-Texas, 1990). In particular, the presentations comprising the "Safety/Risk Management" session should be reviewed: John Balog's presentation on vehicle procurement safety specifications, Bill Henderson's presentation on mobility devices and David Ellis's presentation on self insurance and commercial insurance are must reading for all system managers. The "Insurance" session produced valuable

discussions of insurance pooling: Ed Moses' discussion of Iowa's pooling experience and Ray Merz's discussion of Kansas' experience are well worth the reading.

Another valuable discussion of the risk associated with mobility devices, especially three wheel scooters, is available from David Ellis and Robert Doria's (Ellis and Doria, 1991) presentation during the 1991 Annual Transportation Research Board. A written paper accompanied this presentation and is available from the authors. The emerging risk issue of three wheel scooters and electric and gasoline powered wheel chairs requires extended attention by the industry as a whole. This paper is an excellent beginning discussion of the scooter issue and should receive wider distribution within the transit industry.

Some insurance agents have risk management assistance programs as a support function for their insurance business. David L. Ellis Agency, Inc. of Harrisburg, PA has an active risk management office that produces a wide variety of support and technical assistance activities for the transit industry. Such short overview publications as "Fire Extinguishers: Check Them Before You Need Them," (Insurance and Risk Management Services for Transit Providers, February 1990) and "Fire Suppression Systems How Effective are They?" (July 1990) are both useful and easy to use. A more detailed document on accident investigation is also available. This document includes information on interviewing accident witnesses, checklists of human factors and mechanical systems that may or may not have contributed to the accident, how to measure skid marks and suggestions for avoiding unsupported liability claims (Risk Management Services for Transportation Providers, no date).

Information on the topic of transportation for persons with AIDS/HIV positive is available in the November 4, 1992, version of "Transporting Passengers With AIDS/HIV+," (Walther, 1992). This appears to be the only paper on the topic that specifically addresses transit concerns. This is an area that needs more attention from the transit community.

Concluding Comment

The above material provides some specific references that should be of value to the managers of small transit systems. While the discussion covers only a portion of the total amount of literature available on risk management, it does embrace much of the literature that was written especially for transit managers. Interest in the topic of transit risk management is growing and other publications are in various stages of preparation as this particular report is being completed. One of these is the RTAP Risk Management module that should be available in early 1993.

APPENDIX B: BIBLIOGRAPHY

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