



County of Steuben

County Risk Manager's Office:

Self-Insured Workers' Compensation

Plan Administration

Report of Examination

Period Covered:

January 1, 2001 — March 31, 2005

2007M-110



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

October 2007

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished through our audits, which identify opportunities for improving operations and County Legislature governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the County of Steuben, entitled County Risk Manager's Office: Self-Insured Workers' Compensation Plan Administration. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Article 5 of the Workers' Compensation Law (WCL) was enacted for counties with self-insurance plans. Sections 64 through 72 relate specifically to the administration of the plans. Under Article 5, Section 61 of the (WCL), Steuben County (County) established a self-insurance plan (Plan) and extended coverage to its local municipalities. In 2004, the Plan's participants, in addition to the County, included 28 towns and nine villages. The 2004 aggregate premium revenue for the Plan was \$1,302,325.

The County established its Plan by adopting Local Law No. 2 of 1956. This local law was amended in 1991 by resolution and again in 1992 by the adoption of Local Law No. 3 of the year 1992. These changes modified the method by which participants could withdraw from the Plan and how the Plan would apportion costs to the participants. Although the Plan has an Administrative Committee of the County Legislature, supervision of the Plan has been delegated to a County Risk Manager. The Risk Manager's responsibilities include initiating the processing of workers' compensation claims, safety training, and apportioning the costs of the Plan to participants.

Scope and Objective

The objective of our audit was to examine the County Risk Manager's administration of the Plan during the period January 1, 2001 through March 31, 2005. Our audit addressed the following related question:

- Has the County complied with the provisions of Workers' Compensation Law and relevant local laws when apportioning costs among participants and administering the Plan?

Audit Results

The County did not comply with the provisions of WCL and relevant local laws when apportioning costs among participants and administering the Plan. The local laws adopted to administer the Plan did not provide sufficient rules and regulations to ensure the equitable distribution of costs or the efficient administration of the Plan. The lack of rules and regulations left the apportionment of the costs of the Plan to the judgment of the Risk Manager. Without adequate guidance regarding the specific methodology to follow to apportion premium costs accurately and equitably, and documentation to show that such methodology was properly used, participants have no assurance that they are paying their fair share of these costs.

In April 2007, we met with County officials per their request to address their concerns about the 2007-08 apportionment calculation. Because of the Risk Manager's incapacitation, County officials were unable to determine how to perform his apportionment calculation. Based on our discussion the County adopted Local Law No. 5 of 2007, which related to the administration and operation of the Plan to provide for the apportionment of costs and operation of the Plan. The Local Law provided for the apportionment of costs based on specific percentages of payroll, full valuation, and loss experience, as well as guidelines for the entry and withdrawal of participants. We recognize the County's effort to provide clear and concise guidance for the administration of the Plan.

Comments of Local Officials

The results of our audit and recommendations have been discussed with county officials and their comments, which appear in Appendix A, have been considered in preparing this report. County officials generally agreed with our recommendations and indicated they have initiated corrective action.

The County Legislature has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the Legislature should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Local Government Management Guide*. We encourage the Board to make this plan available for public review in the office of the Clerk of the Board.

Introduction

Background

Workers' Compensation Law (WCL) provides for workers who are injured on the job to receive both medical care and weekly cash benefits, usually until they return to work. The main goal of WCL is returning injured workers to employment without risking their health or welfare. All employers, with limited exceptions, must provide worker's compensation insurance for their employees. One method of providing this insurance is to become part of a group self-insurance plan authorized by the New York State Workers' Compensation Board.

Article 5 of the WCL was enacted for counties with self-insurance plans. Section 65 of the WCL states that the county's legislative body should adopt rules and regulations for the fair and equitable administration of the county's self-insurance plan. Section 66 of the WCL calls for the annual insurance premium cost to be apportioned among plan participants in the same proportion as the full value of each participant's taxable real property bears to the full value of all plan participants' taxable real property. WCL also allows counties to apportion plan costs on the basis of loss experience, gross payroll, or some other rational classification. However, if the county uses factors other than full valuation of taxable real property, the county must pass a local law to define classes of participants, and to explain how costs for these participants would be determined.

Steuben County Local Law No. 2 of 1956, as amended,¹ provides for the Legislature to appoint an administrator for the Steuben County Self-Insurance Workers' Compensation Plan (Plan). This administrator is the County Risk Manager. The Risk Manager's responsibilities include initiating the processing of workers' compensation claims, safety training, and apportioning the costs of the Plan to participants. The Legislature approved Local Law No. 3 of 1992 to adopt rules and regulations for the fair and equitable administration and operation of the Plan, and in particular for the apportionment of Plan costs. According to this law, costs would be apportioned to Plan participants to reflect the full valuation of property, as a portion of total costs, loss experience and gross payroll.

¹ On December 23, 1991, the Legislature adopted a resolution which provided a method of withdrawal for the Plan's participants. Local Law #3 of 1992 adopted on August 24, 1992, adopted rules for the apportionment of costs among the participants.

Membership in the Plan is open to all municipalities located in the County. Transactions of the Plan are accounted for in the County's self-insurance fund. In 2004, in addition to the County, the Plan's participants included 28 towns and nine villages. The 2004 aggregate premium for the Plan was \$1,302,000.

Objective

The objective of our audit was to examine the County Risk Manager's administration of the Plan. Our audit addressed the following related question:

- Has the County complied with the provisions of Workers' Compensation Law and relevant local laws when apportioning costs among participants and administering the Plan?

Scope and Methodology

We examined the County's administration of its self-insured workers compensation plan for the period January 1, 2001 to March 31, 2005.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix A, have been considered in preparing this report. County officials generally agreed with our recommendations and indicated they have initiated corrective action.

The County Legislature has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, the County Legislature should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days. For guidance in preparing your plan of action, you may refer to applicable sections in the publication issued by the Office of the State Comptroller entitled *Local Government Management Guide*. We encourage the County Legislature to make this plan available for public review in the Clerk of the Board's office.

Plan Administration

The intent of Section 65 of the WCL is to ensure that a county, in administering its self-insurance plan, uses methods to apportion the plan's premium costs in an objective, supported and transparent manner to provide for the "fair and equitable administration" of the plan for the benefit of all participants. However, we found that the Risk Manager, who administered the County's Plan, did not use objective measures to arrive at cost estimates, such as actuarial projections, and often lacked information, such as current payroll data, needed to calculate the estimates. Further, the Risk Manager did not document what methodology he used to apportion costs to participants, or provide participants with an explanation of how premium costs were calculated. Because the County Legislature had not developed a specific set of procedures for the Risk Manager to follow in apportioning Plan costs, he used his complete discretion in administering the Plan and apportioning Plan costs. As a result, Plan participants have no assurance they were charged their fair share of the Plan's premium costs during our audit period.

Workers' Compensation Billings

In July of each year, the Risk Manager provides the Legislature with a Table of Apportionment (Table) for approval. The Table provides participants with their share of the Plan's estimated premium. Upon approval, the Risk Manager sends a certified copy of the resolution filing and adopting the Table of Apportionment relative to the shares of the participating members of the Plan. Included is a letter that advises participants that they may include their share in their annual budget and be billed by the Risk Manager's office in January by voucher, or that they may have their share levied against the taxable real property within their municipality through the Steuben County Real Property Tax Service Agency. A participant must notify the Risk Manager's office by October 1st of their decision. For all participants that do not respond by this date, their shares are automatically levied against taxable real property.

Pursuant to Local Law No. 3 of 1992, the County is obligated to apportion the total premium cost to the participants on the basis of all the following factors:

- proportion that a participant's full value taxable real property bears to the total full value taxable real property of all participants
- loss experience
- gross payroll.

Section Three 3 of the Local Law established classes based on a participant's actuarially-projected loss experience, payroll and total full value taxable assessment. The Local Law lists eight classes to reflect a participant's loss experience and two additional classes for payroll and assessment.² Finally, the Local Law provides that a percentage of real property valuation be applied to the apportionment in order to obtain a cost to each participant, taking into consideration the commercial rate charged by commercial carriers doing business in New York State. The Local Law also requires the Administration Committee of the Legislature to review and adjust the apportionment of costs to each participant before final review and adoption by the full Legislature.

In practice, the Risk Manager's method of determining participants' costs was largely based on gross payroll, which he then modified by assigning each participant to a loss experience class, based on his subjective assessment, and then applying premium discounts as he believed appropriate. However, this method of apportioning Plan costs did not satisfy the WCL requirement for fair and equitable administration of the Plan because the Risk Manager used his own judgment rather than objective data in making decisions, and did not document how he made those decisions.

The primary cause of this problem in deriving and fairly apportioning Plan costs is the vagueness of Local Law No. 3 itself, and a lack of related procedures to provide a set methodology for calculating Plan costs. For example, the Local Law does not assign specific weights to each component (loss experience, payroll and the full value of taxable real property) for determining the impact each would have on the individual participant's premium cost. Since the County Legislature did not develop procedures for assigning weights, the Risk Manager used his own judgment in deciding how much weight each factor should have.

In addition, the Risk Manager used his discretion, instead of actuarial loss ratios, to assign participants to classes for loss experience. We also found, as detailed below, that the Risk Manager often lacked complete and up-to-date payroll data for participants. Therefore, participants may not have been properly classified for loss experience or for total cost exposure – both factors that can significantly affect a participant's share of Plan premiums. Because of the lack of guidance

² Classes I through VIII relate to the Participant's loss ratio, with Class I being the smallest and Class VIII the largest. Payroll: Class "A" over \$1,000,000; Class "B" over \$5,000,000. Full Value: Class "C" over \$95,000,000; Class "D" over \$150,000,000

in Local Law No. 3 and the lack of documentation to show how the Risk Manager calculated participants' premium costs, we could not calculate what individual participants' premiums should be. However, based on the results of our audit, we can say that the County and Plan participants have no assurance that participants paid their equitable share of Plan premium costs during our audit period.

Gross Payroll – The Local Law provides for participants to be classified into two classes based on the total amount of gross payroll incurred. The Risk Manager calculated this portion of the workers' compensation premium for each participant by multiplying the gross payroll, according to job description, by the workers' compensation rate (as stated in the New York Workers Compensation and Employers Liability Manual) for that job description. The Risk Manager relied on gross payroll information from participants as a factor to consider in calculating premiums. This information, however, was incomplete. According to the Risk Manager, he requested payroll information from participants only every other year. He reported that some participants did not comply with his biennial requests for this information. When this happened, the Risk Manager stated that he estimated salary costs for the missing years. For example, in reviewing the 2004 apportionment data, we noted that eight of the 37 (22 percent) participants did not submit their 2003 payroll information to the Risk Manager. The Risk Manager stated that because he cannot force participants to send their payroll information he used the 2001 payroll information for those participants who did not submit their 2003 payroll information and increased it by 8.6 percent. He had no documentation to explain how he calculated the 8.6 percent increase. We also found that, payroll data, when it was provided, was incomplete, since it did not include information on overtime pay, or salary data for certain employees, such as attorneys and lifeguards.

Fire and Ambulance – The Local Law did not make specific provision for calculating the premium for participants with components, such as fire and ambulance departments, that rely on volunteer personnel. To account for these personnel, the Risk Manager used the October 1, 2002 workers' compensation rates from the New York Workers Compensation and Employers Liability Manual to determine the premium.

Withdrawal from Plan – In 1991, the Legislature adopted a resolution establishing a method by which a participant could withdraw from the Plan. The resolution stated that “any member desiring to withdraw shall be responsible for their share of all claims occurring during the time they participated in the Plan; that share of a reserved amount will be determined using the formula provided for determining a participant's share of the current budget.”

The Town of Erwin withdrew from the Plan in 2003 at a cost of \$18,328 and the Town of Corning withdrew from the Plan in 2004 at no cost, even though the Town of Corning had more claims (19) at a higher cost (\$109,000) during the five year period, 2000-2004, than did the Town of Erwin (10 claims at a total cost of \$69,000). These withdrawal costs do not appear to be reasonable or equitable. However, due to the problems with the entire apportionment process, we could not determine the amount of the Plan's reserve attributable to a participant who withdraws.

In April 2007, we met with County officials per their request to address their concerns about the 2007-08 apportionment calculation. Because of the Risk Manager's incapacitation, County officials were unable to determine how to perform his apportionment calculation. Based on our discussion the County adopted Local Law No. 5 of 2007, which related to the administration and operation of the Plan to provide for the apportionment of costs and operation of the Plan. The Local Law provided for the apportionment of costs based on specific percentages of payroll, full valuation, and loss experience, as well as guidelines for the entry and withdrawal of participants. We recognize the County's effort to provide clear and concise guidance for the administration of the Plan.

Recommendations

1. The Legislature should determine how to apportion Plan costs to participants and amend the Local Law to provide a clear and concise methodology for apportioning costs.
2. The Risk Manager should provide Participants with detailed information on the apportionment calculation.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.

**COUNTY OF STEUBEN
OFFICE OF THE
COUNTY ADMINISTRATOR**

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County Administrator

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September 18, 2007

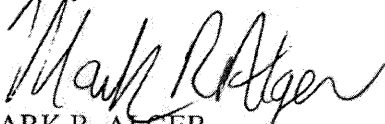
Office of the State Comptroller
[REDACTED]
Chief Examiner of Local Government
Services & School Accountability
16 West Main Street, Suite 522
Rochester, NY 14614

Dear [REDACTED]:

In response to the Comptroller's audit of the County's Self-Insured Workers' Compensation Program, the County is submitting the attached. I would note, since the commencement of the audit and identification of the methodology concerns, the County has revised the plan distribution methodology by adopting an amendment to local law for the plan.

We appreciate the Comptroller's assistance and will continue to make improvements in our program.

Sincerely,


MARK R. ALGER
COUNTY ADMINISTRATOR

Enclosure

MRA/yme

RESPONSE FROM LOCAL OFFICIALS

The following plan of action has been formulated to correct the deficiencies noted during the audit and to establish policy and procedures to prevent recurrence:

- The county has drafted local law, tentatively #5, 2007 which provides methodology to apportion workers' compensation premium shares to participants of the plan. A copy of the law is enclosed for your review.
- Each participant will be provided a copy of the County law and afforded an opportunity to discuss their apportionment with the Risk Manager at scheduled meetings.
- The County has initiated action to identify and contract a consulting firm to conduct actuarial services in support of our plan.
- Methodology is being formulated for equitable apportionment of premiums for volunteer firefighter and ambulance service providers.

**COUNTY OF STEUBEN
LOCAL LAW TENTATIVELY NO. FIVE OF THE YEAR 2007**

A local law, relative to the administration and operation of the Steuben County Workers' Compensation Self-Insurance Plan, to provide for the apportionment of costs and operation of the Steuben County Self-Insurance Plan, and repealing Local Law No. Three for the Year 1992.

Be it enacted by the Legislature of the County of Steuben as follows:

SECTION 1: LEGISLATIVE INTENT

It is the intent of the within legislation to repeal Local Law No. Three for the Year 1992 and to provide for the apportionment of costs to the participants in and the maintenance and operation of the Steuben County Self-Insurance Plan through the enactment of these Rules & Regulations.

Said apportionment shall be a combination of past claims history, assessed full valuation and payroll costs.

SECTION 2: APPORTIONMENT OF COSTS TO PLAN PARTICIPANTS

Following the preparation of the annual estimate of projected amounts necessary for the ensuing calendar year, pursuant to Workers' Compensation Law §67, the share of the amounts chargeable to each participant shall be made in the following manner: 42.5% of such projected cost share shall be apportioned based on the proportion that the full aggregate valuation of the taxable real property of the participant bears to the aggregate full valuation of all participants; 42.5% shall be apportioned based on the proportion that the full aggregate payroll of the participant bears to the full aggregate payroll of all participants; and, the final 15.0% shall be apportioned among the participants based on the proportion of the full value of claims paid over the preceding three (3) years of each participant bears in proportion to the full aggregate value of all claims paid by all participants over that same period of time.

SECTION 3: PREPARATION OF THE APPORTIONMENT OF COSTS

Annually, the Administration Committee of the Steuben County Legislature shall review and adjust the apportionment of costs to each participant based on percentage of full valuation, experience and payroll. Said review and adjustment shall then be presented to the County Legislature for final adoption by resolution filing and approving the table of apportionment.

SECTION 4: ENTRY AND WITHDRAWAL OF PARTICIPANTS

Entry into the Plan by an eligible municipality shall be made by service upon the Administrator of a certified copy of the local resolution or legalizing act authorizing same on or before March 31st of each calendar year for the ensuing calendar year. Withdrawal by an eligible municipality from the Plan shall be made by service of a certified copy of the local resolution or legalizing act withdrawing from the Plan on or before March 31st of each calendar year for the ensuing calendar year. Any withdrawal from the Plan shall require payment of the withdrawing municipality's equitable share of the outstanding liabilities of the Plan as of the date of the withdrawal. Payment of said sum shall be made in a lump sum or periodic payments as determined by the Administrator of the Plan upon the advice and consent of the Administrative Committee of the Steuben County Legislature.

SECTION 5. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of this title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation

LOCAL LAW #5

Workers Compensation Apportionment

In accordance with Steuben County Local Law #5, May 29, 2007, costs apportioned to participants of the County workers compensation self-insurance plan are calculated based on a combination of the following numerical data:

Assessed full valuation of property
Payroll costs
Past claims history

Calculation: Use the following formula to calculate the apportionment:

Established annual projected costs: \$ _____

- 1) $42.5\% \times \frac{\text{valuation of individual member's real property}}{\text{valuation of property of all members}} = \text{real property factor}$
- 2) $42.5\% \times \frac{\text{full aggregate payroll of the member}}{\text{aggregate payroll of all members}} = \text{payroll factor}$
- 3) $15\% \times \frac{\text{value of member's claims paid (preceding 3yrs.)}}{\text{total value of claims paid by all members}} = \text{claims factor}$
- 4) Determine dollar amounts factored from the annual projected costs
- 5) Obtain percentages of the factored shares and total them to arrive at the municipality portion of the projected total cost.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To accomplish our objectives, we reviewed the operations of the Steuben County Risk Manager's office for the administration of the self-insured workers' compensation plan from January 1, 2001 through March 31, 2005. Our procedures included the following to obtain valid audit evidence:

- We met with County officials and the County Risk Manager to gain an understanding of the process used to bill workers' compensation premiums to plan members and to determine the existence of written policies and procedures related to the administration of the plan.
- We examined accounting records maintained by the County Risk Manager pertaining to the 2001, 2002, 2003, 2004, and 2005 apportionment of workers' compensation premiums to plan participants. These records included the assessment rolls, Participant payroll information, 2000 U.S. Census data and the County fire protection maps.
- We reviewed the Participant's gross payroll data and recalculated the Risk Manager's premium calculation.
- We reviewed and recalculated the Risk Manager's fire and ambulance premium calculation.

We based our performance criteria for this audit on good management practices related to billings, Workers' Compensation Law, Local Law No. 3 of 1992, actual workers' compensation premiums billed by the County Risk Manager and the generally accepted principle that government managers are responsible for ensuring that resources are used efficiently and that assets are safeguarded.

We conducted this performance audit in accordance with generally accepted government auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C

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