

Audit and Compliance Committee Memorandum
Board of Regents, State of Iowa

Subject: Semi-annual Claims Activity Reports
Prepared by: Susan Anderson
Date Submitted: January 19, 2005

Recommended Actions:

1. Receive the Institutions' Semi-annual Claims Activity Reports for the reporting period of July 1, 2004, through December 31, 2004.
 2. Resolve, for presentation of future reports, which categories of claims activity should go: a) to the Audit and Compliance Committee only; b) to the Human Resources Committee only; or c) to both Committees.
-

Executive Summary:

The Board office staff has received and reviewed claims activity reports from each of the Regents institutions for the period of July 1, 2004, through December 31, 2004.

Each institution has prepared an executive summary of its report, including identification of strengths, areas for improvement, trends, and initiatives to address issues that have arisen during the reporting period. (**Attachments A through E**).

This first group of reports and executive summaries will serve as baseline data for analysis of future reports.

Background:

At its meeting in May 2004, the Audit and Compliance Committee added the semi-annual review of claims and pending litigation to its work plan, and the Board directed the Board Office to provide semi-annual claims activity reports from each of the five Regents institutions. The reports encompass pending litigation of tort, contract, workers' compensation, and administrative agency claims.

Executive Summary as submitted by Iowa State University:

From the creation of a legal office at Iowa State University in 1994, to 1998, the number of claims fell significantly. Since that time, the number of claims has generally remained the same. In general, recent experience in court and in administrative venues has resulted in the University's position being upheld. Several university initiatives are underway which are likely to reduce disputes. Among them are:

- Creation of a policy administrator position to assure that University policies are consistent with state law, Regents rules and policies and with other University policies.
- Efforts to revise procedures so that they are better coordinated and responsive to users.
- Enhanced training efforts for employees and administrators.

1. Litigation

Strengths. Existing grievance processes and willingness to work out issues wherever possible has reduced the number of litigated claims. In recent times, with the exception of one case, the University's results in court have been successful.

Areas for Improvement. Some litigation has arisen or been made more difficult because of organizational or policy conditions of the institution. Reorganization because of financial difficulties has been a factor. Lack of coordination between policies also has contributed. Amendments have been made or are underway to avoid litigation or improve the institution's ability to resist claims.

Trends and Reasons for Occurrence. The number of suits is generally below that of the past ten years. From 1994 through 1998, there were 12 suits pending at a time. From 1999 through 2003, the number dropped has been approximately 10. The overall trend in the last ten years has been a reduction in the amount of litigation. Remaining cases tend to occur because of fundamental disagreements of principle or differences about what is an appropriate resolution.

2. Torts and Contract Claims

Strengths and Areas of Improvement. No significant strengths or weaknesses are disclosed in the kind of pending tort and contract claims. The bulk are accidents, facilities failure (water damage) and falls due to ice or alleged defective facilities.

Trends and Reasons for Occurrence. From 1994 to the present, numbers of claims pending have stayed generally consistent excluding 1999 when a large number of claims were filed for a single incident (over 60 claims when an apparent false-positive diagnosis of rabies caused claims for wrongful inoculation). Cuts in maintenance personnel and deferred maintenance are probably the most significant barrier to lowering the number of personal injury and property loss claims.

3. Administrative Agency Complaints

Strengths. The University's grievance and investigative processes contribute to internal adjustment of claims that have a basis. Further improvements to these processes have been made. In the past ten years, no administrative agency has issued a determination of probable cause. This indicates the University's internal processes objectively assess and resolve appropriate cases.

Areas for Improvement. There appears to be room to reduce sexual harassment claims and claims by students.

Trends and Reasons for Occurrence. From 1994 through 1998, there were an average of 8 pending administrative claims. Since then, the average has been 5 claims.

4. Worker's Compensation Claims

Strengths. ISU Human Resource Services and Employee Health & Safety departments have worked closely with departmental managers to develop various strategies to educate and prevent workplace accidents, control medical expenses, and reduce associated lost time. At the same time, an active collaborative relationship with Sedgwick Claims Management Service has resulted in better case management.

Areas for Improvement. It is our plan to continue development of training designed to impact injury/accident prevention. As well, we will continue to identify and implement other strategies that will encourage more timely return-to-work opportunities for employees with temporary restrictions or limitations caused by occupational injuries.

Trends and Reasons for Occurrence. From Fiscal Years 2002 through 2004, medical payments have decreased by 40% since FY2002; permanent disability payments have increased by 17%; payments for time missed has decreased by 20%; settlement payments have dropped by 32%; and missed days have decreased by 12%. These trends show the results of the efforts described under strengths.

5. Internal Discrimination

Strengths. See Item 2 above.

Areas for Improvement. See Item 2 above.

Trends and Reasons for Occurrence. From 1994 through 1998, there generally was less than one internal complaint pending. Since then, there have generally been 2 pending at a given time.

6. Faculty and P&S Grievances and Disciplinary Cases

Strengths. The adoption of a new Faculty Conduct Policy in 2003 has resulted in significant growth in the number of claims against faculty. The policy was intended to assure faculty accountability while protecting faculty rights. The number of faculty and staff grievances remains small overall.

Areas for Improvement. Now that the University has experience with the new Faculty Conduct Policy, revisions are being considered. An increasing number of tenure denial appeals is causing re-examination of tenure processes.

Trends and Reasons for Occurrence. As indicated above, there are many more faculty disciplinary cases resulting from the adoption of the Faculty Conduct Policy. The other recent trend is a slight increase in the number of appeals of tenure denial. Recent economic conditions, increasing demands for excellence in some units, differences of views as to what constitutes excellence and lack of consistency in interpretation of tenure procedures all contribute to such claims.

7. Internal Grievances/Claims, Investigations of Merit Employees

Strengths. The number of grievances from merit staff has remained low in the past 8 years, with few cases requiring arbitration.

Areas for Improvement. To assure fairness to employees in different units, the University needs to work to ensure consistency in communication and response to merit issues across the campus.

Trends and Reasons for Occurrence. Prior to 1997, there were a large number of merit staff grievances. Since then, the number has remained low, with a few cases pending at any one time.

8. Other

No claims have been reported.

Executive Summary as submitted by the University of Iowa:

The Office of the General Counsel (“OGC”) was formally created at the University of Iowa in 1992. A committee appointed by President Skorton completed a comprehensive review of the office in late December of 2004. That committee’s report will be available on the web through a link on the University’s “University Administration” web page. Based on the findings of that review, several actions will be taken to maintain and improve legal services, and reduce legal and administrative claims on campus:

- Increased training and education outreach efforts by the OGC staff to members of the UI community.
- Expansion of legal information provided on the OGC web page.
- Improved coordination in the provision of legal services among administrative offices on campus.
- Continued review and revision of policies and practices intended to address all types of claims arising at the University.

1. Litigation

Strengths. The University has a variety of processes available for resolving conflicts, providing complainants access to internal University review in virtually all cases. The Office of the General Counsel, together with all other University administrative units involved in conflict resolution, encourages the use of such processes and actively explores resolution of disputes prior to litigation.

Areas for Improvement. There are no areas of immediate concern. The procedural and substantive components of all University policies dealing with performance/behavioral expectations and conflict resolution are reviewed and revised periodically. Recent examples include revisions of the sexual harassment and P & S grievance policies, proposed revisions to the violence policy, and the adoption of a general harassment policy and an administrative review policy.

Trends and Reasons for Occurrence. There are fewer than ten (10) suits pending against the University, outside the UIHC context, which is consistent with trends in recent years. A federal class-action suit challenging the University’s parental leave policy was recently dismissed on summary judgment, and is being appealed.

With respect to litigation involving UIHC activities, there are approximately twenty (20) cases involving medical malpractice-related claims currently pending. These numbers are somewhat below those of recent years. Total payout amounts over this time period are comparable with prior years. It should be noted that the amount of litigation—both in terms of number of cases and ultimate payouts—is consistently below that of peer academic medical centers.

UIHC risk management efforts are generally coordinated among the UIHC legal services office, the College of Medicine risk management office, and the UIHC Clinical Outcomes and Resource Management (“CORM”) office. These offices collaborate with clinical departments and nursing services to continuously review policies and procedures to maintain and improve quality, and investigate and review outcomes in individual cases to improve practices and minimize liability.

2. Tort Claims

Strengths and Areas for Improvement. A majority of the tort claims filed (again excluding UIHC) are for injuries and damages arising from allegations of defective design and maintenance of facilities. The University’s Facilities Services Group, Risk Management Office, and Office of the General Counsel review these claims to monitor areas for problems and recommend repair and preventive changes as needed.

Trends and Reasons for Occurrence. There are currently twelve (12) tort claims pending against the University: Seven (7) involve vehicle damage (e.g., lawn mower accidents, parking gate arms); three (3) are slip and fall personal injuries. Nine of the twelve are claims for under \$4,000. These numbers and dollar amounts are similar to trends in recent years.

There are approximately twenty-five (25) UIHC medical malpractice-related tort claims pending. On average, about half of those may end up in litigation. Comments above in Section 1 regarding comparative numbers and risk management efforts are applicable here, as well.

3. Administrative Agency Complaints

Strengths and Areas for Improvement. As noted above in the Litigation section, internal University grievance processes allow many complaints to be resolved prior to filing as formal administrative agency complaints. There are no specific areas which appear to require immediate improvement. The Office of Equal Opportunity and Diversity (“EOD”) has been very active in presenting educational and training programs across campus, and in reviewing and revising relevant policies.

Trends and Reasons for Occurrence. A majority of administrative agency complaints against the University involve allegations of discrimination. There are currently seven (7) complaints pending against the University with the Iowa Civil Rights Commission and/or the EEOC, involving claims of discrimination based on race, gender, disability, national origin, religion, retaliation, and sexual harassment. Four matters have been administratively closed, and another resulted in a “no probable cause” finding. There is one OSHA claim pending, involving training and use of fire extinguishers.

4. Workers’ Compensation Claims

Strengths. Offices of Human Resources and Benefits continue to work with departments and supervisors to reduce workplace accidents and injuries, reduce time off, and pursue innovative return-to-work opportunities. Review and management by the third-party administrator, Sedgwick Claims Management Service, has also improved administration of claims.

Areas for Improvement. Continued efforts in education, training, medical expense control, and return-to-work programs should help reduce the number of claims, days missed, and cost of claims.

Trends. In the last six months, there were 666 workers' compensation claims—119 with time missed from work. Only four (4) of those were contested; 422 were settled. The average number of days missed per case was 6.1. Weekly benefits averaged \$1,082 per case. Medical benefits averaged \$270 per case.

5. Internal Discrimination

Strengths and Areas for Improvement. The Office of EOD investigates discrimination complaints within the University, consulting with the Offices of the Provost, General Counsel, Human Resources, Ombudsperson and other administrative offices as appropriate. The thoroughness and objectivity of investigations done by that office have allowed the University to resolve a majority of complaints internally. Continued education and training, together with periodic review of policies and procedures, should help reduce claims.

Trends. EOD investigated and issued findings in fifteen (15) cases in the last 6 months. Six (6) other cases remain pending. Twelve (12) of those 21 cases involve allegations of sexual harassment. This is the area requiring renewed efforts in prevention through education and training.

6. Faculty and P & S Grievances and Disciplinary Cases

Strengths and Areas for Improvement. The faculty grievance policies and procedures have been in place for some time at the University. They afford faculty members significant due process in grievances which they bring or which are brought against them. The P & S grievance process has been revised within the past few years, narrowing the scope and clarifying the process for grievances. A new P & S administrative review process was also adopted to address non-grievable matters. There are no areas which appear to require immediate improvement.

Trends. There are currently no grievances filed by faculty against the University, though there are generally 1-5 such cases filed a year. Careful and thorough annual reviews, promotion and tenure reviews, and reappointment policies and practices help reduce decisions that might result in grievances. There are currently three (3) ethics charges brought by the University against faculty members which are pending.

There are no P & S grievances pending at this time. There are usually no more than 1-3 such cases filed annually.

7. Internal Grievances/Claims, Investigations of Merit Employees

Strengths. There are only two (2) cases with merit employees pending.

Areas for Improvement. There are no immediate areas which are targeted for improvement.

Trends and Reasons for Occurrence. The low number of such matters is indicative of annual activity, due in large part to the concerted efforts of UI Employee and Labor Relations and AFSCME representatives on campus to communicate regularly and resolve problems early.

8. Other (University of Iowa Hospitals and Clinics)

No other claims have been reported.

Executive Summary as submitted by the University of Northern Iowa:

This University of Northern Iowa semi-annual claims activity report reflects information from a variety of sources. The information is obtained from UNI personnel in Human Resource Services, the Office of Compliance and Equity Management, the Provost's Office, the Office of Operations Auditor, risk management, and Facilities Management. Information is also obtained from certain sources outside the University, such as Sedgwick Claims Management Services (for workers' compensation information) and the State Attorney Generals Office (for some information relating to pending lawsuits and tort claims, and, as applicable, "other matters").

The University of Northern Iowa continues to have a relatively low number of internal and external claims filed with or against the University. In addition, the University has generally been successful in relation to the claims, complaints, and lawsuits that have been filed externally, for example, in court or with administrative agencies. The availability and use of proactive approaches and various resources and procedures within the University to help resolve issues for students, faculty, staff, and third parties before a claim or complaint is filed seem to be valuable in minimizing the number and dollar amount of claims.

The University may need to consider further emphasis on proactive approaches such as additional/supplemental education and training of University personnel, and greater use of informal resolution techniques. These strategies could improve University efficiencies in relation to claims. Many University program areas and departments are doing a great job in all respects but there may be a need for greater consistency throughout the University, which additional training/education could support. Reduced funding and budgets have made it difficult for the University to fully implement these types of strategies in the last few years.

1. Litigation

Strengths. The current number of cases in litigation involving the University of Northern Iowa is low, and this has been the history/experience at UNI. With the exception of the UNI-Dome roof cases a few years ago, the cases have been fairly modest. The University's results in court have generally been successful. The willingness and ability of University personnel to try to appropriately resolve issues of students, faculty, staff, and third parties seems to keep the amount of litigation to a minimum.

Areas for Improvement. Continued review and changes, as necessary, of University policies and procedures may be useful in limiting future litigation. Additional means of disseminating information regarding University policies and procedures to UNI students, faculty and staff, e.g., more educational programs or training on campus, might also be beneficial.

Trends and Reasons for Occurrence. Due to the low number of cases filed in court, there are no apparent trends.

2. Torts and Contract Claims

Strengths. There continues to be a relatively low number of tort claims filed relating to the University. Over the last ten years, the number of claims has averaged between 9 to 11 claims per year.

Areas for Improvement. Except for the budget realities of recent years that have caused limitations in the number of personnel and maintenance across campus, no other areas for improvement are noted.

Trends and Reasons for Occurrence. Due to the low number of claims and the great variety of issues presented by the claims, there do not appear to be any trends for these types of claims relating to the University. Within the past year, the University has received two claims that are larger than prior claims. However, since these two claims are unlike each other and any other University-related claims (past or present), this does not seem to be a trend but a very unique situation.

3. Administrative Agency Complaints

Strengths. The number of claims going outside of the University continues to be minimal. The Iowa Civil Rights Commission and the Equal Employment Opportunity Commission have both ruled in the University's favor on all recent complaints. The availability of internal resources and procedures for resolution for students, faculty, and staff continues to be instrumental in allowing issues to be resolved within the University.

Areas for Improvement. Resources are being realigned to provide for more efficient response to investigation needs. The University is also utilizing more informal resolution techniques in order to minimize the number of formal complaints. Emphasis will be placed on proactive strategies, informal resolution techniques, and educating our workforce.

Trends and Reasons for Occurrence. Many of the formal claims made thus far this fiscal year are a result of changes occurring in one particular program area. That program area will continue to be in transition throughout the next year due to changes in leadership.

4. Workers' Compensation Claims

Strengths. The primary strength is the efforts of the University Safety Manager and the Physical Plant Safety Coordinator. These two people are very proactive in programs on campus aimed at preventing injuries. We expect to continue this programming.

Areas for Improvement. UNI may need to have a more active program in returning employees to light duty work. While many departments are very good about accommodating temporary restrictions, some departments are not as good at considering a return to work until an employee is without restrictions. All of the University seems to be more aware of the value of accommodating light duty work.

Trends and Reasons for Occurrence. Claims costs seem to be escalating. UNI made an attempt to hold costs down by changing providers. The primary reason for this change in providers was that the new provider has an agreement with Sedgwick to provide services at a contracted rate. However, we found that the new provider had certain procedures that tended to increase claim costs. UNI is working with Sedgwick to use a more reasonable process.

5. Internal Discrimination Complaints

Strengths. See Item 3 above.

Areas for Improvement. See Item 3 above.

Trends and Reasons for Occurrence. See Item 3 above.

6. Faculty and P&S Grievances and Disciplinary Cases

Strengths. The number of grievances by faculty and P&S employees is generally low at UNI and the current number of cases is consistent with that experience. University administrative personnel and supervisors generally try to work with employee groups and individual employees relating to workplace issues on a proactive basis, which has tended to keep the number of grievances to a minimum.

Areas for Improvement. The University continues to try to work with faculty and staff to alleviate unnecessary workplace issues.

Trends and Reasons for Occurrence. The low number of grievances has created insufficient information or issues to identify any trends.

7. Internal Grievances/Claims/Investigations of Merit Employees

Strengths. There is strong employee and labor relations experience to proactively handle internal grievance and claims. We feel that this proactive approach reduces the likelihood of numerous grievances being filed.

Areas for Improvement. Most of the grievances currently reported pertain to students who AFSCME feels are doing the work of their members. The number of grievances at UNI is typically low so there are no current plans for changing current methodology.

Trends and Reasons for Occurrence. The only significant event (not a trend) is the filing of multiple grievances by AFSCME regarding student workers on campus. The overall number of grievances is typically low at UNI.

8. Other

Few claims, complaints, or cases are brought or filed involving the University which do not fit within one of the other seven categories above. In general, any such cases are brought to the attention of the Board of Regents, State of Iowa Office and, if necessary, the State Attorney Generals Office. No trends in this category are evident.

Executive Summary as submitted by the Iowa Braille School:

IBS strengths

In six of the eight categories, the response from the Iowa Braille School is “none”. The climate and culture established at the school is one of trust and mutual respect. This is evidenced in the responses of “none”.

Improvement areas / actions

Twenty-four of 125 employees reported work related injuries in the last six months. This is a high rate when we consider the safety of students to be our highest priority and the second highest priority is safety for employees. The number of injuries as a result of student behaviors has dropped significantly over the last 10 years as we initiated a system of non-aggressive physical intervention. Actions to assist in limiting employee injuries include more frequent training in proper lifting techniques to a wider group of employees.

Trends

16 of 24 injuries were incurred by staff who work directly with students. Students actions are often unpredictable in terms of a student’s physical ability to assist during any lift or transfer. We encourage students to be as independent as possible in all activities including assisting themselves with lifts and transfers. This does result in injury to staff, but is an appropriate response in terms of equipping students to attain mobility.

Background:

In the last 18 years, the Iowa Braille School has had one labor dispute adjudicated resulting in a loss of approximately \$35,000. The school also had one out of court settlement during this lengthy time period. A family contested the school’s actions under FAPE resulting in a loss in the amount of \$70,000.

Everyone knows everyone on a first name basis at the Iowa Braille School. As a small institution, centralized implementation of work policies and procedures, including the AFSCME collective bargaining agreement and the Regent Merit rules, allows for consistency. The consistency across the board creates a work environment where nearly all employees feel that they receive fair and equal treatment.

As a school, for the benefit of students, employees model positive social interaction skills daily. The courtesy demonstrated here also creates a work environment where employees sense they are respected and receive fair and equal treatment.

Under great outside stress during the last two decades (fear of relocation, closure, and repeated budget cuts) employees have consistently performed their duties without feeling a need to litigate to improve their individual situations.

Executive Summary as submitted by the Iowa School for the Deaf:

Strengths

In six of the eight categories, the response from the Iowa School for the Deaf is “none”. Claims against Iowa School for the Deaf are few and occur infrequently.

Improvement areas/actions

Iowa School for the Deaf continues to work to ensure safety requirements are met, proper procedures are followed, appropriate equipment is available, and staff are trained to interact safely and appropriately with students.

Trends

Workers’ Compensation Claims: Only two workers’ compensation claims occurred during the last six months. This is an exceptionally low number for Iowa School for the Deaf. Occurrences of workplace injuries are so few that trend analysis is difficult to conduct. Injuries as a result of slip and falls on ice/snow and injuries as the result of student behaviors are the most common injuries sustained at Iowa School for the Deaf. The two injuries that occurred during July – December 2004 did not fall into these categories. Mild weather conditions during this period account for the lack of injuries from slip and falls on ice/snow.

Internal Grievances: During July – December 2004, Iowa School for the Deaf has five internal grievances related to the AFSCME employee group. This is a high number of grievances for Iowa School for the Deaf. Historically, the number of grievances seems to go through cycles; sometimes having extended periods of no grievances and then having a period of several. Of note, three of the five grievances during this reporting period were withdrawn. The other two are still being processed.