

Bridging the Gap between Liability Loss Control and Prevention and Occupational Safety and Health Management Practices in Addressing Liability-Related Losses

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Introduction

In a large and diverse organization the challenge of managing the various aspects of the loss control and prevention process can be tremendous. The County of Los Angeles (County) is faced with multiple challenges ranging from cultural issues within our 39 departments to the complexity of the types of losses that our 94,000 employees and 60 million county inhabitants and visitors experience. In an organization whose exposures include law enforcement, road construction, hazmat response, fire fighting, corrections, medical care, transportation, children's services, recreation, facility construction and maintenance, administration and beach safety, the types of losses that can occur are far reaching and can be substantial. The liability loss types range from general liability (slips/falls, wrongful death, employment-related issues, building design and construction, errors and omissions, director and officers, civil rights violations, etc.), vehicle liability (automobiles, motorcycles, armored personnel carriers, etc.), property damage and medical malpractice-related losses. Each of the losses has a unique set of causes and requires event-specific loss control approaches to abate the root cause and to prevent recurrence.

Although liability-related losses may differ from traditional loss exposures managed by safety and health professionals (i.e. workplace injuries), the principles and practices utilized in safety and health management can be applied to liability related loss exposures. The County manages liability loss exposures through loss control and prevention efforts by utilizing time tested safety management practices to assist management in analyzing losses, determining appropriate corrective actions and implementing fixes that address the root causes of the losses. In the safety and health universe many programs are driven by regulatory compliance, near-miss reporting and/or compliance audit programs. In the liability arena, many efforts are directed as a result of litigation activity or other post-accident management activity and result after an event or loss has occurred. Many safety and health professionals are uncomfortable when managing liability-related losses, since the losses can be broad and complex and there is not a solid preventative infrastructure in

place when dealing with these types of losses. This is a common misconception, which needs to be refuted. Liability loss control and prevention can and should be treated like any other loss exposure. Proactive management systems and processes can be developed to assist in the management of liability related loss exposures.

Defining Liability Losses

Liability is a legal term that describes the condition of being actually or potentially subject to a legal obligation. A liability is a situation in which a person (or organization) is liable, such as in situations of tort concerning property or reputation, and responsible to pay compensation for any damage incurred. Liability may be civil or criminal. Liability losses may result from a claim for damages being filed or the filing of a lawsuit. There are major differences between liability losses and traditional losses that occur to employees in the workplace. Traditional occupational safety and health efforts focus on injuries to employees or damage to company-owned property and/or equipment. In most cases, both employees and property are within the managerial control of the organization and in a relatively confined environment (i.e manufacturing facility or office), while liability losses affect the general public, vendors and third parties, normally not under the managerial control of the organization. In addition, liability-related losses could also impact employees for issues such as employment practices, neglect, and dangerous conditions in the workplace. In the County, the major areas of liability loss include general liability, vehicle liability and medical malpractices. Table 1 outlines the types of losses that occur in each general category.

Table 1. Liability loss exposures

Type of claim	Description
General Liability	<ul style="list-style-type: none"> • Slips and falls • Dangerous conditions • Employment practices • Civil rights • Small claims • Property damage • Breach of contract • Professional liability • Errors and omissions • Inverse condemnation • Hospital liability • Child/elder abuse
Vehicle Liability	<ul style="list-style-type: none"> • 3rd party claims • Permit driver claims • 1st party claims
Medical Malpractice	<ul style="list-style-type: none"> • All medical malpractice (hospitals, clinics, jail

	medical operations, paramedics, lifeguards, and coroner operations)
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For many safety and health professionals, the losses that they encounter involve the investigation of an employee injury or damage to company property. These loss events are normally straightforward with an employee being injured or the property actually being damaged. In the world of liability loss control, the significant events that led or contributed to the loss event are not as easily identified and may no longer be present when the actual notification and/or investigation occur. In some cases, actual liability may be disputed and the liability loss control professional may have no actual tangible material to review in their investigation of the root causes of the alleged event. In addition, the degree of liability and the damages may also be questionable (as a matter of law), and the initial root cause investigation may be initiated by nothing more than a disputed allegation of loss. In many liability-related losses, the actual facts related to the exposure and root causes may not be discovered until the loss is in litigation and the attorneys involved ascertain the information through discovery efforts months or years after the initial loss event occurred. In addition, for certain liability losses, such as employment practices (harassment, discrimination, wrongful termination, etc.) or professional malpractice, the actual loss may be intangible (i.e. no physical damage) and the root causes of the loss are difficult to determine and shrouded in legal interpretations that make developing a loss control solution nearly impossible. If the factors noted do not complicate liability loss prevention efforts, a jury may find the organization liable for a loss, even though the experts found no actual fault (or cause).

The liability loss control professional also has to deal with the issue of confidentiality, since there is a very high potential that the resolution of the liability loss may be determined through litigation. The information gathered during the loss control investigation and subsequent corrective action efforts may prove problematic during litigation, if obtained through discovery by the plaintiff's legal counsel. The liability loss control program has to address many issues that may not be a factor in injury and property damage investigations. In order to address the complexity of the liability loss control arena, the County has developed a liability loss control process built on a traditional safety management platform, which is based on six distinctive areas:

- Data reporting, review, analysis and communication;
- Liability loss event/incident investigation and analysis;
- Root cause analysis/hazard abatement;
- Corrective action plan development;
- Liability loss control and prevention procedures and training programs; and,
- Third party administrator/claims adjusting communication and management practices.

Data reporting, review, analysis and communication

The first major element of a liability loss control program is establishing a mechanism or infrastructure to gain access to relevant information for initiation of liability loss control efforts and trending liability losses for exposure significance. Due to the scope of the potential liability exposure within the County, such as law enforcement operations, road design and maintenance, professional liability (medical malpractice, professional malpractice, etc.) and premise liability within the thousands of county facilities and properties, efficient and accurate collection of liability loss-related information is essential. The development of a risk management information system

with report writing functions is the first step an organization should take in attempting to gain an understanding of the liability loss event frequency and severity data. In the County, an average of 4,000 new liability claims are filed each year, with approximately 400 claims in active litigation on any given day.

Once a mechanism has been developed to accumulate and report liability-related information, trained staff should be assigned to review and analyze the information to establish loss control and prevention priorities. The development of standard management reports, including a comprehensive annual risk management performance report, will aid the loss control and prevention organization in communicating critical information and gaining support for liability loss control efforts. The information generated is used in various meetings between the liability claims adjusting staff, loss control and prevention personnel and organizational management, such as periodic claim reviews, litigation roundtables, specific corrective action intervention meetings and other information-sharing opportunities used to educate management and move the liability loss control effort along.

Another critical function that the generation and review of data will provide the team is the early identification of liability-related losses that require management attention. The development of remedial loss control plans, comprehensive corrective action plans or other loss control options are contingent upon event notification. The development of these communicative tools are an essential component of the liability loss control effort and should include the required reporting of significant liability losses, similar to traditional occupational safety and health near misses, employee injury or property damage reports.

Liability loss event/incident investigation and analysis

The next element of the liability loss control process is the investigation and analysis of events. This is one of the areas in which the safety and health professional should be comfortable when evaluating liability losses. The methods and techniques utilized to address traditional safety exposures can be used to ascertain the immediate causes of liability loss exposures. Methods that include traditional accident investigation (review of the scene, interview witnesses, etc.), reconstruction and root cause analysis can be utilized to identify the causes of liability loss events. Standardized procedures, forms and investigative tools, which are used to investigate employee injuries and property damage, can be slightly modified and implemented to assist the liability loss control professional in gaining a comprehensive understanding of the factors that lead to the liability loss event.

Although the tools used to conduct the investigation may be similar to those used in traditional safety management, the types and complexity of the liability losses require additional training and may involve the use of technical experts. In addition, many of the liability related losses require the support of multiple resources in determining the root cause, system-wide exposures and factors involved in the development of the liability loss control options.

Root cause analysis/hazard abatement

There are many different reasons to investigate a liability incident or event. They may be for insurance purposes, litigation preparation or for loss control and prevention activity. Whatever the motivation for investigation, the primary reason is to gain an understanding of the root causes that

lead to the event (Bird and Germain, 1996). The first question normally asked once a problem is detected is “What happened?” The answer will help determine the nature of the liability loss. It may even provide enough information to execute a remedial action plan. But, it is only the first step in gaining an understanding of the causes and events that led up to the liability loss event. A comprehensive root or basic cause analysis must be conducted to fully understand all of the factors that may have contributed to the liability loss exposure. This is another area with similarity to traditional safety management, where root cause analysis techniques are used to determine the issues that led to the loss. Without a thorough understanding of the root causes, the hazard abatement and/or mitigation alternative may not be effective.

In many cases, the hazard abatement or mitigation alternatives utilized are the same administrative, engineering, work methods or personal protective equipment options used to address worker safety issues. The development of comprehensive liability loss control options entails the same time-tested safety and health solutions. Once the root causes are identified, in most cases the traditional solutions, if properly implemented, will address the causes identified. In order to complete a comprehensive investigation and root cause determination, additional resources or analytical approaches may be needed to support the investigative process. Depending on the severity and complexity of the liability loss occurrence, numerous technical professionals and/or technical analyses may be needed in hazard recognition. These include, but are not limited to:

- Accident reconstruction;
- Engineering design review;
- Industrial hygiene assessments;
- Ergonomic/human factors assessments;
- Medical evaluations;
- Legal analysis;
- Task, job or process analysis;
- Inspections (property, process or procedures);
- Accident imaging;
- New equipment/process reviews;
- Accident deconstruction; and,
- Loss control and prevention evaluations.

Corrective action plan development

At the County, all significant liability losses are abated by utilizing a well-defined Corrective Action Plan (CAP) process. The County’s Liability Loss Control CAP effort is coordinated through the Office of the Risk Management Inspector General (RMIG). The RMIG has developed a comprehensive management system to facilitate the development, evaluation and management of the County’s CAP program for all liability-related losses with a settlement value of \$100,000. For liability-related losses that do not exceed the \$100,000 trigger, departmental loss control and prevention staff develop loss control and prevention plans to address many liability related issues (these plans are similar to plans drafted to address workers’ compensation losses). For formal liability CAPs (excess of \$100,000), once the initial investigation and subsequent root cause analysis have been conducted, the hazard abatement activity is coordinated through a formal CAP process. The investigative process may have been complex, time-consuming and difficult, but it is only half of the journey. Now that the items to fix have been identified, a fix will need to be

implemented that will, in fact, address the root causes and underlying management system issues and be sustainable. The CAP is the tool used to accomplish the tasks of resolving the underlying problems permanently (Robitaille, 2001). Like the investigative process, the CAP development process may involve numerous resources, be complex, and time-consuming. Often the more catastrophic the loss, the more complex a solution is needed. Once the CAP research has been conducted, all relevant facts are understood, and the loss control options have been validated, the next phase is the actual generation of the CAP. The actual CAP's size and scope depend on many factors, including significance of the loss/event, complexity of the root causes, political ramifications, impact the loss had on department/community, etc. There are many issues that drive the scope of the CAP, and the determination of how lengthy and complex the CAP needs to be is a decision made by the affected organization's management team. The CAP identifies items such as what steps will be implemented to abate the identified root causes, who will be responsible for the step, and when it will be completed.

As described above, the CAP document is a tool used to manage the liability loss change process, which are the steps taken by the organization to eliminate the root causes of the loss, but the CAP process is much more. The CAP process is the administrative process used to monitor and manage the liability loss control program. The development and subsequent management of the liability loss CAPs are the administrative mechanisms used to assure the root causes are addressed and the implemented solutions are effective in actually eliminating the initial root causes of the liability loss event. A well-defined and managed CAP program will assure the specific CAPs generated are developed and implemented and that the information is communicated effectively to the organization.

Liability loss control and prevention procedures and training programs

Another area where there are multiple similarities between tradition safety management and liability loss control is in the development of standard liability loss control and prevention procedures and training programs. As with safety management programs, liability loss control options need to be written and communicated to the entire organization. The development of standards, practices, procedures manuals and communicative programs is essential in the successful implementation of a liability loss control effort. Documentation, which defines the scope of the program, roles and responsibilities and the mission and/or objectives of the liability loss control efforts, will solidify the functions within the organizational infrastructure and assist in the development of appreciation for the subsequent efforts that will be required of the organization.

The development of standard training programs and communicative media (web page, user's guides, etc.) will provide a foundation for the liability loss control professional to educate the organization and raise awareness for liability loss control opportunities. A formal and structured liability loss control program will need to be drafted, supported by executive management and be set up like other organizational efforts (i.e. environmental, property loss control, safety, return-to-work, etc.) in order to be successful and sustainable. The County has developed a formal structured measurable liability CAP program, which serves as our initial platform for liability loss control management activity. The plan has been communicated to the departments and line management has an appreciation for the efforts' scope and the management expectations related to their participation in the program. The County has made liability loss control a viable and executable

function within the organization, similar to many organizations's approach to safety management activity.

Third party administrator/claims adjusting communication and management practices

Liability losses often have an additional dynamic that affects the liability loss control effort, which is the addition of a liability claims adjuster (either an in-house adjuster or a third party administrator). The liability claim or lawsuit is often coordinated through a specialist who is assigned responsibility to coordinate the denial, settlement or litigation of liability loss events. The successful management and communication with the liability claims adjuster has a significant impact on the liability loss control effort. Often the adjuster is required to conduct the comprehensive investigation and/or coordinate the litigation discovery effort through counsel. The information gathered during the adjuster investigation may be quite comprehensive and often much more detailed than the initial accident investigation conducted by the supervisor or safety officer (if one was conducted at all). Often the only information the liability loss control professional has is information provided by the claim adjuster. This is a stark difference between the workers' compensation claim adjusters who base much of their investigation on the activity of the supervisor or site safety representative when determining workers' compensation exposure. In addition, the liability loss control representatives' first notification of a potential loss often comes from the adjuster, as a result of a claim or lawsuit being filed against the organization.

The County has developed a comprehensive program requiring notification, investigation and assistance in CAP development by the liability claims adjuster. There is an expectation that the County liability claim adjusters are expected to assist in the development of liability loss control options, when applicable. County liability claims adjusters receive training on liability loss control techniques and are instructed to notify County loss control and prevention personnel at specific times during the liability claim life cycle (i.e. when indemnity reserves exceed \$100,000). In addition, as part of the liability claim adjuster's performance assessment process, specific liability loss control requirements are audited and factored into their overall performance evaluation. The contracts that the County has with the liability third party claims administrators have specific contractual text related to their involvement in the liability loss control program.

Benefits of liability loss control process

The immediate benefit of the liability loss control process is correcting a known problem, including provisions to prevent recurrence. The early notification and comprehensive evaluation of liability loss root causes assist the County's management in assuring that liability loss frequency and severity is reduced. The development of the liability loss corrective action process pervades all other functions. It reinforces awareness of the links inherent in a good quality process. The concepts of cooperation, partnership, and community are intrinsic to corrective action initiatives. If successfully implemented, the liability loss control process can alter the internal culture of a department so individuals are committed to the idea that everyone is accountable for quality, cost avoidance, and liability minimization.

Conclusion

Liability loss control is a fundamental risk management tool vital to continuous improvement efforts. Effective resolution of issues requires a formal process to ensure concerns are identified and captured, then evaluated for scope and significance. The liability loss control CAP is developed, implemented and tracked to prevent recurrence. A well-established liability loss control process incorporates many aspects of traditional risk management, such as safety management, utilization of risk management information systems and an understanding of the various exposures and loss types. Traditional safety management practices, procedures and programs can be utilized to manage liability loss exposures.

Organizational staff trained in traditional safety management can be a valuable resource in initiating an organization-wide liability loss control process. Although it may not be apparent, every organization has liability loss exposures which may be significant (i.e. vehicle liability and general liability, which includes employment practices and/or product or service liability). Most organizations do not have the volume or public exposure like the County and have to rely on specialists trained in traditional safety management philosophies to coordinate their liability loss control processes. A comprehensive management system related to liability loss control, if implemented properly, would provide an organization's safety and health resources with the tools needed to adequately manage exposures that originate from liability losses.

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