



MINNESOTA OFFICE OF THE STATE AUDITOR

LEGAL COSTS SURVEY

MAY 1998

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INTRODUCTION AND STATUTORY HISTORY

In 1997, the Minnesota Legislature passed a law requiring the state auditor to collect information on legal services, fees and costs incurred by counties, some cities and school districts. The 1997 law provides as follows:

(a) On or before January 1, 1998, and each year thereafter, the state auditor shall collect from all counties, cities of the first, second, and third class, and school districts with enrollment exceeding 100 students, information as to expenditure of public funds for legal services incurred to defend the entity from lawsuits and amounts paid in voluntary settlements or judgments in any lawsuit. The data must include costs incurred for any fees paid as retainers for outside counsel. Fees paid for attorneys who perform work on criminal or prosecutorial matters must be reported.

(b) The state auditor shall make and file, annually, in the state auditor's office a summary report of the information collected. Copies of the report may be made and distributed to interested persons and governmental units.

Minn. Stat. § 6.77 (1997).

The intent of the law is to gather information from the local units of government on their costs of handling legal claims, regardless of whether such claims rise to the level of a lawsuit filed in a court of law. The statute requires all the noted entities to report to the Office of the State Auditor (hereinafter referred to as "OSA") their expenditure of public dollars for purposes of defending or representing the governmental entity against any type of legal claim.

SURVEYED ENTITIES

In order to comply with the statutory language, the OSA prepared and distributed a "Local Government Expenditures For Legal Costs Survey"¹ to all appropriate local governmental entities.² In addition, the OSA requested the same information from the Minnesota Counties Insurance Trust (MCIT)³, the League of Minnesota Cities Insurance Trust (LMCIT)⁴, and the Minnesota School

¹A copy of the survey is included as part of this Report. See, Appendix, page 3.

²A list of all the entities that received a "Local Government Expenditures for Legal Costs Survey" is included in the tables as part of this Report.

³The Minnesota Counties Insurance Trust (MCIT) is a joint powers organization, sponsored by the Association of Minnesota Counties, that provides insurance coverage to 82 of the 87 Counties in Minnesota. (The counties that do not receive any insurance coverage through the MCIT include Hennepin, Anoka, Dakota, Olmstead, and St. Louis Counties. Ramsey and Itasca Counties receive only property/casualty insurance coverage.) The MCIT was formed in the

Boards Association Insurance Trust (MSBAIT)⁵, all of whom provide general liability and worker's compensation insurance to local units of government through joint powers agreements.⁶

REPORTING ENTITIES

Governmental entities affected by Minn. Stat. §6.77 (1997) were requested to report only those amounts for which they *directly* expended public funds for legal services, voluntary settlements or judgments for the time period of July 1, 1996 through June 30, 1997. These costs included amounts paid to city or county attorneys for legal representation in the handling of claims or lawsuits, amounts paid as fees or retainers to private attorneys for the handling of claims or lawsuits not covered by insurance, and amounts paid to attorneys for performing legal services for criminal or prosecutorial matters.⁷ The entities were not required to report any amounts paid on their behalf by

early 1980's when many counties chose to leave the commercial insurance market and create a nonprofit, tax-exempt public entity pool as a means to jointly self-insure various risks. Through a joint powers agreement, the MCIT provides general liability, public officials' liability, auto liability, auto physical damage and police professional liability coverages.

⁴The League of Minnesota Cities Insurance Trust (LMCIT) is a cooperative joint powers organization that provides partial or full insurance coverage to 780 out of the 855 cities in this state. The LMCIT does not provide any insurance coverage for the cities of the first class, Minneapolis, St. Paul and Duluth, as they are self-insured. The LMCIT is a self-insurance pool formed in 1980 in which the participating cities contribute premiums into a jointly-owned fund used to finance the coverage. The LMCIT offers several types of insurance coverage including worker's compensation for city employees and property/casualty insurance. The liability coverage provides the equivalent of general liability for public officials' errors and omissions, law enforcement liability, and other liability needs for cities. Additional optional coverages offered by the LMCIT include excess liability, open meeting law defense, boiler and machinery, public officials' bond, and underground tank coverage to supplement the Petrofund.

⁵The Minnesota School Board Association Insurance Trust (MSBAIT), like the MCIT and LMCIT, is a joint powers agreement. MSBAIT provides workers' compensation and property/casualty coverage to the participating school districts.

⁶In each of the three joint powers agreements, payments made by the local units of government to participate in such an arrangement are invested. The income from the premiums and investments is used to pay appropriate fees, costs, settlements, and judgments on behalf of the participating local governmental units.

⁷More particularly, the surveyed entities were required to report all actual amounts paid by them to defend or settle actions, or pay judgments, involving tax claims, pollution claims, union grievances, re-employment claims, claims involving publicly owned nursing homes, hospitals, or airports, and any third party claims not covered by insurance.

an insurance trust or private insurer.⁸ Any funds paid out on behalf of the entities by the MCIT, LMCIT, or MSBAIT were reported to the OSA by the respective insurance trust, and these amounts are identified separately in this Report.

RESPONSE TO SURVEY

The OSA sent out its survey to all of the 87 counties, the 73 first, second and third class cities, and the 372 school districts with enrollments exceeding 100 students.⁹ Responses were obtained from 60 counties (a 69% response rate), 61 cities (an 84% response rate), and 300 school districts (an 81% response rate).

In addition, the OSA received information on 82 of the 87 surveyed counties from MCIT;¹⁰ 70 of the 73 surveyed cities from LMCIT;¹¹ and 359 of the 372 surveyed school districts from MSBAIT.

The information contained in the responses from the local government units and the three insurance trusts has been included in the accompanying tables on pages 7 through 37 of this Report.

The figures contained in the following Tables under the heading “OSA Survey” were reported by the counties, cities, and school districts responding to the survey sent by the OSA. These figures are unaudited financial data. It was noted that some entities reported no expenditures for legal fees or costs associated with criminal and/or civil matters. A cursory review/examination revealed that the zero expenditure reported by certain entities is inconsistent with expenditure data contained in annual audited financial statements submitted to the OSA by these entities. As such, the OSA makes no representation as to the accuracy of the figures contained in the following Tables.

⁸While the OSA did collect data from the MCIT, LMCIT and MSBAIT as it related to the expenses incurred on behalf of the subject governmental entities, no information was obtained from any private insurers, nor was any such information included in the results of this Report, as funds expended by a private insurer would not constitute “public” funds.

⁹The OSA obtained its mailing list of school districts from the Minnesota Department of Children, Families and Learning.

¹⁰The information provided by MCIT on Itasca County and Ramsey County only included funds paid out for the property/casualty insurance coverage. Neither Itasca County nor Ramsey County obtain workers’ compensation coverage through MCIT.

¹¹The information provided by LMCIT on the city of Rochester only included funds paid out for the property/casualty insurance coverage. Rochester does not obtain workers’ compensation coverage through LMCIT.

EXPLANATION OF TABLES

The first five columns in each of the three Tables contain information gathered from the OSA Survey responses:

- ▶ The first column, entitled ***Legal Services - Civil***, represents the total amount of public funds expended by the respective governmental entity for civil legal services to represent and defend the entity in any legal claim or lawsuit, including the cost of local government staff working on civil matters, as well as retainers and fees paid to outside counsel.
- ▶ The second column, entitled ***Legal Services - Criminal***, represents the total amount of public funds expended by the respective governmental entity for legal fees in criminal or prosecutorial matters, including the cost of local government staff working on criminal matters, as well as retainers and fees paid to outside counsel.
- ▶ The third column, entitled ***Voluntary Settlements***, represents the total amount of public funds paid by the respective governmental entity as voluntary settlements in any dispute against the entity, regardless of whether a lawsuit was filed or pending.
- ▶ The fourth column, entitled ***Judgments***, represents the total amount of public funds expended by the respective entity in payment of all judgments obtained against it.
- ▶ The fifth column, entitled ***Total County Funds Expended, Total City Funds Expended, or Total School District Funds Expended***, is a total of the first four columns.

1. County Table

In addition to the responses to the OSA Survey from the individual counties, information was provided by the MCIT regarding the attorneys fees and indemnity payments for workers' compensation and property/casualty costs incurred on behalf of those counties for whom it provides such insurance coverage. This information is reported in the columns following the OSA Survey response information, and an explanation of these columns follows:

- ▶ The sixth column in the County Table, entitled ***Workers' Compensation-Legal Fees***, represents monetary amounts paid to counsel to defend assigned workers' compensation matters. It does not include costs associated with the defense of the case, such as mileage, filing fees, depositions, copies, etc.
- ▶ The seventh column, entitled ***Workers' Compensation-Indemnity Payments***, represents monetary amounts paid to injured employees for claims including lump sum settlements, lost wages, disability payments, impairment compensation, economic recovery compensation, monitoring period compensation, supplemental benefits, retraining benefits, and death/dependency benefits.
- ▶ The eighth column, entitled ***Property/Casualty-Legal Fees***, represents monetary amounts paid to counsel to defend assigned property/casualty matters. It does not include costs associated with the defense of the case, such as mileage, filing fees, depositions, copies, etc.¹²

¹²The MCIT did not provide the OSA with any information regarding the costs incurred on behalf of the counties associated with the defense of any claims. As such, these costs are not included in the table.

- ▶ The ninth column, entitled *Property/Casualty-Indemnity Payments*, represents judgments and voluntary settlements paid to a plaintiff with regard to property/casualty claims against the insured county.
- ▶ The final column, entitled *Total Reported Funds Expended*, represents the total funds expended by each county, as noted in the fifth column of the Table, plus all of the funds expended on behalf of the respective county as reported by the MCIT.

2. City Table

In addition to the responses to the OSA Survey from the individual cities of the first, second and third class, information was provided by the LMCIT regarding workers' compensation and property/casualty costs incurred on behalf of those cities for whom it provides such insurance coverage. This information is reported in the columns following the OSA Survey response information, and an explanation of these columns follows:

- ▶ The sixth column in the City Table, entitled *Workers' Compensation-Medical/Rehab Payments*, represents benefits paid on behalf of or to injured employees for medical and rehabilitation expenses with regard to worker's compensation claims.
- ▶ The seventh column, entitled *Workers' Compensation-Indemnity Benefit Payments*, represents monetary amounts paid to employees for workers' compensation claims, including disability payments, dependency benefits, funeral allowances, impairment compensation and economic recovery compensation. This amount does not include judgments, awards or stipulations.
- ▶ The eighth column, entitled *Workers' Compensation-Legal Fees, Costs & Expenses*, represents the legal fees, costs and expenses incurred in defending the workers' compensation matters. The figure includes attorneys' fees, paralegal fees, expert witness fees, as well as costs and expenses directly attributable to legal defense of the claims.
- ▶ The ninth column, entitled *Workers' Compensation-Judgments & Settlements*, represents monetary amounts paid to injured employee claimants as judgments, awards and stipulations on workers' compensation claims.
- ▶ The tenth column, entitled *Property/Casualty-Legal Fees, Costs & Expenses*, represents the monetary amounts paid for expenses incurred with regard to property/casualty claims, including all expense items such as attorneys' fees, expert witness fees, independent medical examination fees, witness fees, travel expenses, court reporter fees, transcript fees, and all other fees, costs or expenses associated with the investigation, negotiation, settlement or defense of any property/casualty claim or for the collection of any subrogation claims.
- ▶ The eleventh column, entitled *Property/Casualty-Judgments & Settlements*, represents the monetary amounts paid to LMCIT members with regard to property/casualty coverage for first party claims involving loss to their covered property (such as buildings, contents of buildings, vehicles, equipment, etc.) and to third parties for the settlement of their claims for damages (such as property damage, bodily injury, etc.) for which the trust members were arguable legally liable.
- ▶ The final column, entitled *Total Reported Funds Expended*, represents the total funds expended by each city, as noted in the fifth column of the Table, plus all of the funds expended on behalf of the respective city as reported by the LMCIT.

3. School District Table

In addition to the responses to the OSA Survey from the individual school districts with enrollment exceeding 100 students, information was provided by the MSBAIT regarding workers' compensation and property/casualty costs incurred on behalf of those school districts for whom it provides such insurance coverage. This information is reported in the columns following the OSA Survey response information, and an explanation of these columns follows:

- ▶ The sixth column in the School District Table, entitled ***Workers' Compensation-Medical/Rehab Payments***, represents benefits paid on behalf of or to injured employees for medical and rehabilitation expenses with regard to workers' compensation claims.
- ▶ The seventh column, entitled ***Workers' Compensation-Indemnity Benefit Payments***, represents monetary amounts paid to injured employees for workers' compensation claims, including disability payments, dependency benefits, funeral allowances, impairment compensation, and economic recovery compensation. This amount does not include judgments, awards or stipulations.
- ▶ The eighth column, entitled ***Workers' Compensation-Legal Fees, Costs & Expenses***, represents the legal fees, costs and expenses incurred in defending the workers' compensation matters. The figure includes attorneys' fees, paralegal fees, expert witness fees, as well as costs and expenses directly attributable to legal defense of the claims.
- ▶ The ninth column, entitled ***Workers' Compensation-Judgments & Settlements***, represents monetary amounts paid to injured employee claimants as judgments, awards and stipulations for workers' compensation claims.
- ▶ The tenth column, entitled ***Property/Casualty-Legal Fees, Costs & Expenses***, represents the monetary amounts paid for expenses incurred with regard to property/casualty claims, including legal fees, paralegal fees, expert witness fees, travel expenses, court reporter fees, transcript fees, and miscellaneous litigation related costs associated with the investigation, negotiation, settlement or defense of any property/casualty claim.
- ▶ The eleventh column, entitled ***Property/Casualty-Judgments & Settlements***, represents the monetary amounts paid to MSBAIT members with regard to property/casualty coverage for first party claims, as well as damages paid to third party claimants for which the trust members were arguably legally liable.
- ▶ The twelfth column, entitled ***Property/Casualty-Recovered Losses & Costs***, represents the monetary amounts recovered by MSBAIT in the form of payments and recoveries, deductibles, restitution, contribution and reinsurance on behalf of or from the school district trust member.
- ▶ The final column, entitled ***Total Reported Funds Expended***, represents the total funds expended by each school district, as noted in the fifth column of the Table, plus the total funds expended on behalf of the respective school district as reported by the MSBAIT, less any recovered losses and costs obtained by MSBAIT as noted in the twelfth column.