

2006-2007 Civil Grand Jury

City and County of San Francisco

RISK MANAGEMENT:

**ARE THE MANAGERS MANAGING
THE RISKS OF THE CITY?**

Report released: July 9, 2007

The Purpose of the Civil Grand Jury

The purpose of the Civil Grand Jury is to investigate the operations of the various departments, agencies, and officers of the government of the City and County of San Francisco to develop constructive recommendations for improving their operations, as required by law.

Each Civil Grand Jury has the opportunity and responsibility to determine which departments, agencies and officers it will investigate during its one-year term of office. To accomplish this task, the Civil Grand Jury divides into committees. Each committee conducts its research by visiting government facilities, meeting with public officials and reviewing appropriate documents.

The nineteen members of the Civil Grand Jury are selected at random from a pool of thirty prospective jurors. San Francisco residents are invited to apply. More information can be found at: http://www.sfgov.org/site/courts_page.asp?id=3680, or by contacting Civil Grand Jury, 400 McAllister Street, Room 008, San Francisco, CA 94102; (415) 551-3605.

State Law Requirement

Pursuant to state law, reports of the Civil Grand Jury do not identify the names or provide identifying information about individuals who spoke to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of Supervisors. For each finding of the Civil Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further, as to each recommendation made by the Civil Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was implemented; (2) the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or (4) that recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code, sections 933, 933.05).

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PURPOSE OF REPORT

A private sector business with assets, revenue, and high risk activities comparable to the City and County of San Francisco would be expected to have a sophisticated risk management program. The 2006-2007 Civil Grand Jury undertook an examination of the City's risk management program.

I. FORWARD

The City and County of San Francisco is a major enterprise with assets in excess of \$15 billion.¹ The City operates many enterprises: the Port of San Francisco, San Francisco International Airport, The Municipal Transportation Agency, Hetch Hetchy, and the Water Department. San Francisco also owns and operates healthcare facilities including San Francisco General Hospital, Laguna Honda Hospital, and neighborhood health clinics. The business of San Francisco includes the operation of entertainment and recreation facilities such as the Moscone Convention Center, the Zoo, golf courses, the Asian Art Museum, the DeYoung Museum, the Legion of Honor, and the War Memorial Complex. The City also provides the usual panoply of governmental services, including high risk activities such as police and fire protection, and the operation of the County jails.

II. PROCEDURES

The Risk Management Committee of the 2006-2007 Civil Grand Jury interviewed members of the Office of the City Attorney, the Office of the Controller, the Port of San Francisco, the San Francisco International Airport, the Asian Art Museum, the Office of Risk Management, and the San Francisco Municipal Railway. The documents and resources reviewed are listed in the Sources Consulted/Bibliography.

Terms used by the insurance industry may be unfamiliar to a lay person. A Glossary defining terms such as "loss run" and "primary policy" can be found at the end of the report.

III. RISK MANAGEMENT

The uncertainty surrounding potential losses is known as *risk*. Risk management is a process allowing enterprises to manage the risks inherent to their endeavors. The process includes recognition of the risk, developing tactics to manage it, and reducing the occurrence of the risk through management strategies. Risk management programs encompass two aspects of managing risk: allocation of the financial risk of loss (insurance program) and analysis and prevention of risk, sometimes referred to as risk management. Health and safety programs, training programs, utilization of software programs to track incidents, claims, accident factors, etc. fall under the large umbrella of the discipline known as risk management.

¹ City and County of San Francisco "Comprehensive Annual Financial Report" for the Year Ended June 30, 2006, page 8.

IV. RISK MANAGEMENT PROGRAM CITY AND COUNTY OF SAN FRANCISCO

City Office of Risk Management. City government operations are decentralized, each department is managed from within, with support from citywide departments such as the Office of the City Attorney, the Office of the Controller, and the Office of the City Administrator. The City Administrator is also the Director of the General Services Agency (GSA). This last agency is comprised of a broad array of departments, divisions, programs, and offices reporting to the City Administrator.

The Office of Risk Management for the City is within the GSA. The Office of Risk Management with a small staff, fewer than five employees, including the manager,

“provides services to City departments by assisting them in managing their risks of injury to people and property, involving employees, City property and the public at large. This program purchases insurance for City departments and acts in an advisory capacity to them with respect to workers' compensation, public liability, City property, and City contracts. Risk Management is also active in bond and insurance matters to facilitate small-business contracting with the City.”²

The Civil Grand Jury was told that the duties of the City's Office of Risk Management include:

- Creation of a contracts manual and provision of an in-service program to City departments regarding the importance of contract provisions that limit the City's liability exposure. The Office of Contract Administration is now tasked with assuring that all of the City's contracts have language shielding the City from liability.
- Verifying that insurance policies of all contractors doing business with the City have a policy endorsement naming the City as an additional named insured. Legal opinions are clear that only an endorsement to the insurance policy is proof of coverage for the additional named insured. Thus, requiring an endorsement improves past practice, when a certificate of insurance naming the City as an additional insured would suffice.
- Conducting a department-by-department review of the departments' insurance and contracts.
- Assisting departments requiring insurance by identifying brokers and inviting the submission of quotes for the insurance coverage.

² San Francisco Government Official Website. www.sfgov.org/site/risk_management_index.asp

- Member of working group that created the Owner Controlled Insurance Program (OCIP) Guidelines and Recommendations³

The Civil Grand Jury believes that the following duties are not undertaken by or within the purview of the City's Office of Risk Management:

- Maintaining a loss run.
- Tracking the claims filed against the City.
- Collaboration with the City Attorney regarding claims management.
- Utilizing risk management software to analyze the City's risks.
- Consulting with City departments regarding their risks and ways in which the risks might be reduced.
- Developing a comprehensive risk management program for the City.

A 1999 report from the Office of the Legislative Analyst states: "The Department of Administrative Services does maintain a two person risk management office, with some risk management functions delegated to individual departments. The Risk Manager ... serves in a largely advisory capacity, making recommendations to individual departments concerning risk management issues. ... However, departmental risk management decisions do not reside with the City Risk Manager, but are left to the discretion of the individual departments."⁴ The October 1999 report's recommended changes are identified and discussed later in this report.

Eight years have seen little, if any, change in the size of the Office of Risk Management, or in the development of citywide risk management programs. When interviewed, one department manager was surprised to learn of the existence of the City Risk Manager, had never heard the incumbent's name, and did not know the City even had an Office of Risk Management. Those departments that know of its existence contact the Office of Risk Management for assistance in acquiring insurance policy quotes for their consideration, but not as a source of risk management advice or direction.

In addition, the Civil Grand Jury believes there is tension between the Office of the City Attorney and the Office of Risk Management, a lack of mutual respect for what each might bring to the issue of risk management, and little evidence of collaboration or cooperation.

³ "An OCIP is an alternative method to provide insurance coverage where an owner, in this case the City, arranges, procures and manages the insurance program collectively for all contractors working on a construction project." San Francisco Government Website www.sfgov.org/site/risk_management_index.asp

⁴ Glynn Washington, Office of the Legislative Analyst. "Judgment and Claims Report." October 15, 1999, page 2.

In reality, the current Office of Risk Management remains an insurance department with limited duties: procuring the limited insurance the City purchases; overseeing the inclusion of indemnity clauses in City contracts; and making sure that the City is an additional named insured by endorsement, not simply through a certificate of insurance. The Office of Risk Management is clearly not an integral player in the risk management of City departments. The Civil Grand Jury does not intend that these observations should cast Office of Risk Management in a bad light. With fewer than five employees, this office cannot function at the level of sophistication the City requires and deserves, regardless of how talented or dedicated the staff.

The City's Insurance Program. The Civil Grand Jury made two requests to the Office of Risk Management for documentation of the City's insurance programs, but did not receive a response. Consequently, this report reflects only information pieced together from many sources, but does not encompass the entirety of City's insurance program.

San Francisco International Airport. Each of the airport's tenants carries a \$30 million primary policy, with an endorsement naming the airport as an additional named insured. This policy includes coverage for terrorism. The airport has a \$750 million liability insurance policy, excess of the \$30 million primary policy carried by its tenants. This policy excludes terrorism coverage and has a \$10,000 deductible. A third party administrator manages the claims and appoints defense counsel. The exception to the appointment of defense counsel is for claims involving the police. These claims are defended by the City Attorney pursuant to an agreement with the insurer. The airport staff reports that the airport averages fewer than ten claims per month.

The airport also carries a policy for off-premises liability for vehicles. The policy has a \$500 million limits with a \$100,000 deductible. Bay Area Rapid Transit (BART) carries its own insurance to cover its operations at the airport. The Office of Risk Management assists the airport in obtaining insurance quotes, a process which typically involves three quotes for the airport to evaluate and consider.

The Port of San Francisco. The Port has similar coverage as the airport. It has coverage for general liability, property, and casualty risks. The Port is also an additional named insured to any policy maintained by a Port lessee. The Port is exploring a self-insurance program for vehicle liability.

The Asian Art Museum. Museum administration told the Civil Grand Jury that its collection has an estimated value of between \$4 and \$6 billion dollars and is insured. However, Museum administration is not involved in the procurement of its insurance. The Museum only receives notice that the premium is due and the amount to be paid. The Museum does not know the policy limits, nor does it receive a copy of its policy or even the policy declaration page. Key policy terms, such as policy limits, exclusions, and key terms are found on the policy declaration page. Repeated requests by Museum administration to the Office of Risk Management for a copy of its policy have gone unanswered.

Workers' Compensation. The City has a self-insured Workers' Compensation Insurance program. An outside third party administrator (TPA) administers the plan and does produce standard loss runs.

The Moscone Convention Center, San Francisco Redevelopment Agency, and the other City-owned museums. These entities also have insurance coverage. The Redevelopment Agency through membership of the Bay Cities Joint Powers Authority and Moscone Center construction claims through an agreement between the City and the Redevelopment Agency.

The City Controller recognizes that the City is exposed to risks of losses that could be insured. However, "with certain exceptions, it is the policy of the City not to purchase commercial insurance for the risks of losses to which it is exposed. Instead, the City believes it is more economical to manage its risks internally and set aside funds as needed for estimated current claim settlements and unfavorable judgments through annual appropriations and supplemental appropriations."⁵ The Civil Grand Jury is unaware of any studies or analysis that supports the economic benefit of the City's policy of self-insurance.

The Civil Grand Jury observed that the Port and the Airport, which have insurance coverage, also appear to have a low incidence of claims. Other high risk City departments such as the Municipal Railway, the San Francisco Police Department, and the San Francisco Department of Public Works are self-insured and have a high incidence of claims. This observation is not to suggest that commercial insurance coverage results in a better loss history than does a self-insurance program; it is only one set of facts to be considered in any analysis of the City's insurance program.

V. CLAIMS MANAGEMENT

A. Claims Management by Insurance Companies. Insurance companies have established policies and procedures for processing claims made against their insureds. In the simplest scenario, the main participants are the insurer acting through the claims adjuster, the insured and appointed defense counsel. The adjuster analyzes the claim and sets a reserve (financial exposure) and may set a reserve for costs of defense. If the claim cannot be resolved prior to the filing of a lawsuit, the adjuster assigns defense counsel to represent the insured.

Insurance companies require timely status reports from defense counsel, tracking and reporting of claims by the adjuster, procedures for adjusting reserves, and multiple layers of review for claims with serious exposure. Based upon the data accrued through claims management, the insurer is able to produce a loss run for the insured. A typical loss run identifies the claimant, the nature of the loss (property, personal injury), the

⁵ City and County of San Francisco Comprehensive Annual Financial Report for the Year Ended June 30, 2006, pages 124-125.

injury, the damage claimed, the reserves for indemnity and defense, and the expenditures for indemnity and defense. The loss run is not a static document, but is adjusted over time to indicate developments in the claim.

On one hand the insurer, the insured and defense counsel are united in their goal of resolving the claim as quickly and economically as possible. Policy terms, statutes, and case law impose obligations on all of the parties to deal fairly with each other. Nonetheless, each party has individual interests they seek to protect. Of paramount interest to the insured is first to avoid having any claims, and in the event of a claim, to have it resolved for the lowest possible amount. The insured's incentive in this regard is that its loss history can have a negative impact at renewal, with increased premiums and more onerous terms. Insurers, in the interest of avoiding claims, often offer consultants and programs to their insureds to assist in managing risks.

B. The City's Claims Management Program. San Francisco Administrative Code, Chapter 10, Article II, SETTLEMENT OF CLAIMS FOR AND AGAINST THE CITY AND COUNTY. This is the City's statutory framework for claims management. Pursuant to California law all claims against the City must be initiated by the filing of a claim satisfying statutory requirements.⁶ The claim is filed at the Controller's Office, where it is entered into the claim register, then forwarded to the City Attorney.

The City's claim management unit is within the Office of the City Attorney, where it is managed by a deputy city attorney. The unit has an investigation staff that often responds to an incident, such as a pedestrian-bus accident, and undertakes an initial investigation. A matter unresolved at the claim stage goes into litigation. The City is defended by the trial unit of the City Attorney. City trial counsel represent the City, the department, and any individual City employee named in the suit. The claims management unit and trial counsel work closely together.

Chapter 10, Article II of the Administrative Code also outlines the structure for obtaining settlement approval. In general, any settlement in excess of \$25,000 is subject to the approval of the Board of Supervisors, as well as the involved department head. The Code authorizes the Port Commission to perform all the functions of the Board of Supervisors relative to all claims arising out of or in connection with any property under its jurisdiction. Under the Code, the Airport Commission and the City Attorney are authorized to resolve litigated and non-litigated claims that do not exceed \$100,000. The Code also authorizes the Human Resources Director to settle any individual or class action grievance filed pursuant to a valid memorandum of understanding, if the settlement does not exceed \$50,000, has the approval of the City Attorney, and has the certification of available funds by the Controller.

In general, and in the absence of insurance, all settlements and judgments are funded through the General Fund. In the event that a very large judgment is entered against it, the City issues settlement obligation bonds to cover the loss. For example, in 2003 the Board of Supervisors passed "Resolution 0679-03 -- Authorizing the

⁶ California Government Code §935. The Claims form and process are available online at www.sfgov.org

issuance/sale of bond refunding the City and County of San Francisco Settlement Obligation Bonds, Series 2001 (Business Tax Judgment).” Resolution 0679-03 involved funding the City’s obligations, which arose out of a judgment in a trial concerning recovery of excess business taxes. The Civil Grand Jury’s understanding is the interest on settlement obligation bonds is paid out of the General Fund.

Unlike the claims process of insurance companies, all of the parties involved in resolving the City’s claims work for the City. The claims manager is a deputy city attorney, as is defense counsel. The defendant is a City department. The members of the Board of Supervisors provide oversight by reviewing significant losses and interviewing the head of the involved department and trial counsel, before approving settlements in excess of \$25,000. The financial resolution of a claim is funded from the City’s General Fund. At no time during the resolution of a claim does the process involve anyone or any entity external to the City.

It is very difficult to obtain data from the Office of the City Attorney, which data is essential for an external analysis of the City’s risks and liability exposure. The City Attorney has a system titled “City Law,” which is a data management and calendaring system. Inquiries from the Civil Grand Jury seeking to obtain a copy of the City Law format were never satisfied. The Civil Grand Jury was advised that the requests would violate the Attorney Client and Attorney Work Product privileges. Although a loss run was never produced, the Office of the City Attorney assured the Civil Grand Jury that a loss run could be generated from City Law data.

Under these circumstances, there is little opportunity for public scrutiny of the effectiveness of the City’s “insurance and claims management” programs. The Civil Grand Jury is not aware of any studies confirming the Controller’s assertion that the City’s policy of self-insurance is the most effective and economically sound option or that commercial insurance such as excess insurance or the insurance programs established through the California State Association of Counties⁷ would not complement the City’s insurance program.

The Civil Grand Jury, while fully respecting legitimate assertions of privilege, believes that the City should be able to produce a non-privileged document outlining the current status of claims/litigation pending against the City and settlements/judgments against the City. The document should be detailed enough so the reader can determine the cause of the claim, the involved department, and the costs of settlement and defense. The City Attorney’s Office should also be able to produce a standard loss run and claims history.

⁷ The California State Association of Counties (CSAC) formed the Excess Insurance Authority (EIA) as a Joint Powers Agency in 1979 to serve the insurance and risk management needs of California counties. CSAC believes that the EIA program has greatly reduced the cost of excess insurance for participating counties. CSAC website: www.csac.counties.org

VI. AN HISTORICAL PERSPECTIVE

A. “Judgment and Claims Report.” Office of the Legislative Analyst, October 15, 1999. At the request of the Board of Supervisors, the Office of the Legislative Analysis reviewed other jurisdictions to explore best practices for reducing the amount of claims’ awards paid in the City and County of San Francisco.⁸ The introduction to the report notes the following:

1. Basic risk management responsibility in the City is diffuse.
2. Risk management decisions are made at the department level, not centralized under a single risk management office.
3. Damage claims are paid directly out of the City General Fund – not out of individual department budgets.
4. Special fund departments such as the Port and the Airport pay there own claims awards, largely by enrolling in insurance plans.
5. The City employs no fiscal incentives encouraging individual departments toward greater risk management efforts.
6. Departmental risk management decisions do not reside with the City Risk Manager, but are left to the discretion of the individual departments.

For the purpose of the Judgment and Claims Report, the Risk Manager for San Bernardino County was interviewed. The San Bernardino County risk management program includes increased investigation of various accident sites by a squad of investigators arriving at the accident scene as soon as possible.⁹ Two aspects of San Bernardino’s program are noteworthy for San Francisco, (1) department heads and high level managers across departments meet regularly and exert a high level of focus on minimizing tort exposure, (2) basic risk management functions are concentrated in the Office of Risk Management which is empowered to shut down departments once a determination is made that public risk exposure rises to unacceptable levels.

The Judgment and Claims Report also noted that the City of Oakland and the City of Los Angeles recently instituted programs to “charge back” damage claims to individual departments.

⁸ “Judgment and Claims Report” Office of Legislative Analyst (OLA #025-99), October 15, 1999. The recommendations are direct quotes from the report.

⁹ The claim management unit of the San Francisco Office of the City Attorney also does this.

The recommendations of "Judgment and Claims Report" October 15, 1999 are reprinted in full below:¹⁰

1. Standardized claims tracking procedure. San Francisco could follow the example of other jurisdictions and place a renewed emphasis on claims information gathering and processing. Even if the total amount of damages attributed against a department is presented, this information may be of little use unless accompanied with a breakdown of how and why certain events occur. Many departments remain unaware of existing claims tracking software that can generate reports identifying problem patterns. Increased education concerning use of claims tracking software as a tool may assist departments in highlighting problems and reducing claims exposure.
2. Design a program charging department budgets for claims expenditures. San Francisco could implement a program deducting some portion of damage awards directly from individual department budgets. Such a program would have the effect of internalizing judgment awards and encouraging department focus on risk management issues.
3. Institute a Centralized Vehicle/Driver Management System. A city the size of San Francisco should be able to benefit from the economy of scale inherent in a centralized vehicle/driver management system. Drivers who pose an obvious risk for serious liability should be identified and assisted in upgrading their skills before accidents occur. The City could also expand its participation in the DMV's "Pull Notice" program and enact programs to assist problem drivers before accidents happen.
4. Institute a formalized interdepartmental risk management working group. Implementation of a plan to reduce San Francisco's risk exposure will require a cooperative effort among all departments. Once incentives, such as a charge-back program, are enacted tying department budgets to risk management efforts, department heads and high level department managers could meet to coordinate risk management strategy with the City Risk Manager.
5. Concentrate risk management functions. Currently, basic risk management decisions are at the whim of particular departments. Some departments have incorporated risk management efforts, while others have not. Departments should be required to engage in regular operational risk assessments. Formalizing expert risk management input for City operations could reduce the City's risk exposure, particularly for departments with the most claims.

¹⁰ Office of Legislative Analyst (OLA #025-99), October 15, 1999. Judgment and Claims Report, page 2.

6. Increased Department Head Accountability. The City could institute a program whereby department heads appear before the Board of Supervisors to explain any claims over a certain amount and explain steps being taken to reduce such claims.

B. Review of Claims, Settlements, and Litigation Data for City Departments, Board of Supervisors Budget Analyst, March 2001. In 2001, the Board of Supervisors directed the Budget Analyst to prepare a report on the City's civil judgment and settlement experience, which included the frequency of claims filed against the City by department and by cause, and the cost of these claims, including the expenses incurred by the Office of the City Attorney. The report chose to focus on the four City departments with the most frequent claims, litigation cases, and highest settlement costs: Municipal Railway, Department of Parking and Traffic, Department of Public Works, and the San Francisco Police Department.¹¹

Claims for Four General Fund Departments FY 1996-1997 through FY 1998-1999

Dept.	Claims	Paid	Payments	Expenses	Total
DPT	1,322	370 (28%)	\$ 680,694	\$ 16,103	\$ 696,727
DPW	1,847	1,047 (57%)	\$ 2,627,911	\$ 665,040	\$ 3,292,951
MUNI*	5,424	1,109 (20%)	\$ 3,286,739	\$ 1,811,552	\$ 5,098,291
SFPD	1,126	09 (27%)	\$ 643,534	\$ 54,737	\$ 698,271

*The figures for MUNI represent only two years – FY 1997-1998 through FY 1998 through 1999.

Litigation Cases Filed and Paid for All Four Departments -- FY 1996-1997 through FY 1998-1999

Dept.	Filed	Paid	Payments	Expenses	Total
DPT	41	13 (32%)	\$ 135,150	\$ 531,275	\$ 666,425
DPW	199	22 (11%)	\$ 698,212	\$ 922,846	\$ 1,621,058
MUNI	344	195 (27%)	\$ 14,073,870	\$ 5,238,612	\$ 19,312,482
SFPD	104	39 (37%)	\$ 802,324	\$ 1,874,922	\$ 2,677,246

¹¹“Review of Claims, Settlements, and Litigation Data for City Departments” Board of Supervisors Budget Analyst, March 2001, page 12

The findings of the report Review of Claims, Settlements, and Litigation Data for City Departments are directly quoted as follows:

1. The City Attorney's Office computer data system will soon have the capacity to provide monthly reports summarizing the claims and litigation experience of each City General Fund and General Fund supported department by the cause or type of claim or litigation case.
2. Claims and litigation cases involving City-owned vehicles were the most frequent and costliest of all claims and litigation cases for the three-year period. (7/01/96-6/30/99)
3. Currently, the City does not have a citywide program to track and analyze City vehicle related claims and litigation claims.
4. The four departments reviewed in this report approach the risk management of claims and litigation claims in different ways. Only the SFPD has a designated risk manager, although the other departments had positions with the department responsible for safety and prevention programs.
5. The City pays claims and litigation cases from the General Fund and General Fund supported departments from the General Fund Litigation Reserve. ... However, individual departments are not responsible for budgeting for the settlement costs of claims and litigation costs. Therefore, individual departments do not have a financial incentive to reduce the costs of claims and litigation costs.

The Budget Analyst's 2001 report made five recommendations:

1. The City Attorney's Office should submit monthly reports to the Board of Supervisors summarizing the claims and litigation experience of City General Fund and General Fund supported departments, by cause code and by department, for the month and cumulatively for the year.
2. The City should implement citywide policies to reduce the number and cost of claims and litigation cases resulting from City vehicle-related incidents, coordinated by the City Risk Manager.
3. The City should develop a system to track City vehicle-related claims citywide, coordinated by the City Risk Manager, and to assist City departments in tracking department-specific claims on a departmental level.

4. City Departments should designate an existing position within the department to be responsible for risk management functions, including tracking and analyzing claims, developing and implementing departmental policies to reduce claims and litigation cases costs, and implementing citywide policies.

5. The City should undertake an evaluation of its current policy of funding Departments' safety programs from departmental budgets and funding Departments' claims and litigation costs from the General Fund Litigation Reserve. As part of this evaluation, the City should determine if restructuring financial incentives and increasing funding for safety and prevention programs would reduce the number and costs of claims and litigation cases.

VII. CLAIMS MANAGEMENT ISSUES IN ONE DEPARTMENT

The Civil Grand Jury decided to review risk management at the San Francisco Municipal Railway, in part because this Department has such a high incidence of claims. Several issues were identified at Municipal Railway as impeding risk management functions.

Within the Office of the City Attorney, the City's claim management unit works closely with the City's trial counsel. This undoubtedly results in some efficiency, as the results of investigations are immediately available to trial counsel. Because litigation is an adversarial process, during which trial counsel seeks to prevent the disclosure of information to opposing counsel, the City's trial counsel seeks to protect this information through the assertion of privileges. Assertions of Attorney Client and Attorney Work Product privileges are the recognized legal means to protect certain information. Additionally, information collected for or prepared in anticipation of litigation is, with some limits, also protected from disclosure.

To preserve the subject of the privileges, the protected material must not be disclosed to anyone other than the client. In claims involving an entity such as the City, the "client" is more diffuse than when the "client" is an individual. Furthermore, control of the dissemination of information is problematic in the sprawling City structure. Hence the City's trial counsel is very reluctant to share information gained in the course of its investigation. While this may be appropriate litigation strategy, it impedes the involved department's ability to perform post accident analysis, a critical step in any risk management program.

While the Municipal Railway works with the City Attorney regarding its claims, it also maintains Transit Safe, a data management system. The City Attorney's data management system "City Law" is not compatible with the Municipal Railway's system. Putting aside the privilege arguments, there is no easy or systematic way for the Municipal Railway to track the data related to its own claims and litigation. This is a major concern, since the Municipal Railway has approximately 600 to 700 blind claims a

year, i.e. claims filed through the City's claims process, but not appropriately reported to Municipal Railway management. The Municipal Railway's employees are required to report any and all incidents or accidents. Failure to do so is a disciplinary offense. However, the lag time for reconciling the City's claims data with the Municipal Railway's is often too great to allow the Municipal Railway to conduct its own investigation and/or to discipline the involved employee.

An American Public Transportation Association panel made the following recommendations regarding the San Francisco Municipal Transportation Agency's (SFMTA)¹² Post Accident Investigations, specifically the need for balancing risk management with liability issues:

1. The focus on liability and claims diverts attention from identifying and eliminating 'cause factors' and prioritizes management action to both deal with the aftermath of the accident and trying to mitigate corresponding consequences. The panel sees a need to bring a balanced approach to hazard identification and prevention, along with loss control and liability mitigation.
2. SFMTA does not have a risk management function within the agency. This function may still be served by the City of San Francisco, but is not intimately involved with SFMTA issues. The panel suggests [that] having a viable risk management function may be a key to closing the communication gap between the need to collect and retain factual evidence to protect agency assets for liability purposes and the need to share information with management who can apply resources to correct hazards and find ways to continually improve safety and security performance.
3. The panel further believes SFMTA would benefit from establishing a casualty management committee process that formalizes a relationship between operations, safety, risk, human resources, claims, and legal issues of liability and third-party settlement methodology, loss control, and risk acceptance, as well as develops an organizational response to the cost of failure to manage.

The commitment of high level management to active risk management programs is critical. Indeed, the report of the California Public Utilities Commission, "2002 On-Site Safety Audit of the Municipal Railway," stated that the commitment of the executive director to support the system's safety program "may be the single most significant factor in its ability to succeed." The California Public Utilities Commission also noted that the Executive Director (in 2002) had consistent and selected direct participation in the Municipal Railway's safety program. The Deputy Executive Director was even more directly and regularly involved in all aspects of the safety program.

¹²San Francisco Municipal Transportation Agency was created through combining two departments – San Francisco Municipal Railway and the Department of Traffic and Parking.

The Civil Grand Jury is concerned that the executive commitment noted in 2002 may not be the same in June 2007. The Municipal Railway's safety committee structure consists of the Executive Director Safety Committee, from which flow the Safety Review Committee and its four subcommittees. The Civil Grand Jury learned from Municipal Railway personnel that the current Executive Director does not regularly lead the monthly Executive Director Safety Committee meeting.

Staff also cited the pressures created by the voters' mandate for on-time Muni performance and the high number of vacancies, which often trump safety concerns, especially if it involves pulling,¹³ suspending or firing a driver or maintenance worker. A recent study indicated that 80% of the Municipal Railway accidents were caused by less than 20% of the drivers. To date, the Municipal Railway does not have effective programs in place to retrain, discipline, or terminate its high risk drivers, nor does the Municipal Railway appear to be actively pursuing a Safety First program.

Absent strong leadership coming from the Mayor to the Executive Management of the MTA, the Civil Grand Jury is not optimistic that a strong risk management program can trump the political hot potato of the Municipal Railway's lack of on-time performance.

VIII. FINDINGS AND RECOMMENDATIONS

Finding 1: The City and County of San Francisco, with assets in excess of \$15 billion, is a major enterprise which engages in numerous and major undertakings, many involving risks with significant loss exposure.

Finding 2: The City should have a sophisticated risk management program comparable to what would be found in a private sector business with similar assets, revenue, and risk exposure.

- **Recommendation 1:** The City should create a risk management program that conforms to best business practices, is highly developed, embraces technology-based risk management tools, and is applicable to all City departments.

Responses required from	The Office of the Mayor The Office of the Controller The Office of Risk Management The City Administrator (60 days) The Board of Supervisors (90 days)
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¹³ "Pulling" refers to removing the driver from his driving assignment.

Finding 3: The Office of Risk Management, with its inadequate staffing and apparent limited status within City government, is performing as well as it is able under the current circumstances.

Finding 4: The Office of Risk Management, as it is now configured, is so inadequate that it cannot begin to provide the level of risk management leadership needed by the departments.

Finding 5: If it is to take the lead in developing and implementing a citywide risk management program, The Office of Risk Management must have a highly skilled and well qualified staff.

- **Recommendation 2:** The creation of a risk management program must include an assessment of current risk management staff and a determination of what else is needed for the successful launch of a citywide risk management program.

Responses required from	The City Administrator The Office of Risk Management (60 days)
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Finding 6: City operations are decentralized, which means that risk management programs are not citywide and not centralized within the Office of Risk Management.

- **Recommendation 3:** The Office of Risk Management must have the authority necessary to implement a citywide risk management program.

Responses required from	The Office of the Mayor The City Administrator (60 days) The Board of Supervisors (90 days)
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Finding 7: There is tension and lack of cooperation between the Office of the City Attorney and the Office of Risk Management. The current state is counter-productive to the promotion of risk management at the department level. The continuance of a “silo mentality” will inhibit the success of future efforts to create a centralized, citywide risk management program.

- **Recommendation 4:** The Mayor and the City Attorney should exercise their authority and leadership to insure cooperation between the staff of the Office of the City Attorney and the Office of Risk Management.

Responses required from	The Office of the Mayor The City Administrator The Office of the City Attorney (60 days)
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Finding 8: With rare exception, it is the policy of the City to be self-insured, to neither purchase excess insurance nor participate in insurance pooling programs such as those sponsored by the California State Association of Counties.

Finding 9: The Civil Grand Jury is unaware of any analysis supporting the financial soundness of the City's policy regarding its insurance program.

Finding 10: There is insufficient data to determine whether the City's policy of self-insurance is economically sound.

- **Recommendation 5:** The Office of the City Attorney should produce a standard loss run detailing the City's loss history which is acceptable to insurance company underwriters.

Responses required from	The Office of the City Attorney The Office of Risk Management (60 days)
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- **Recommendation 6:** The City should engage a consultant to review its current insurance program to determine whether the current plan of self insurance remains the most cost-effective plan of insurance, whether the City would benefit from the inclusion of other insurance such as excess insurance or insurance polices with a high self insured retention.

Responses required from	The Office of the Controller The Office of Risk Management The City Administrator (60 days) The Board of Supervisors (90 days)
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- **Recommendation 7:** The Office of Risk Management should be directed to request insurance quotes for standard commercial coverage for the City.

Responses required from	The City Administrator The Office of Risk Management (60 days)
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Finding 11: The most frequent and costly claims involve City-owned vehicles, with the highest incidence of occurrence in the San Francisco Police Department, the Department of Public Works, and SFMTA (the Municipal Railway and Parking and Traffic).

Finding 12: Although two reports have addressed claims arising out of City-owned vehicles, the recommendations contained in the reports have been largely ignored and not implemented.

- **Recommendation 8:** The October 15, 1999, "*Judgment and Claims Report*" from the Office of the Legislative Analyst, and the March 2001 "*Review of Claims, Settlements, and Litigation Data for City Departments*" from the Budget Analyst for the Board of Supervisors

should be reviewed and the recommendations contained therein implemented.

Responses required from	The Office of the Mayor The Office of Risk Management The City Administrator (60 days) The Board of Supervisors (90 days)
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- **Recommendation 9:** In insuring against the liability risks of City-owned vehicles, the City should explore and compare the financial advantages of an insurance program consisting of (1) a commercial insurance package (2) self-insurance, or (3) a combination of self and commercial insurance.

Responses required from	The City Administrator The Office of Risk Management The Office of the Controller (60 days) The Board of Supervisors (90 days)
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Finding 13: The City’s policy is to fund settlements and judgments from the General Fund. This means that funds which could be spent on other programs are used to settle liabilities incurred as the result of the alleged negligence or wrongdoing of City departments.

Finding 14: The 1999 and 2001 reports each recommended that the City consider holding departments financially accountable for their losses. As of the date of this report, settlements do not have a negative impact on a department’s operating budget or the career status of department heads. With the lack of consequences at the department level, the current system is virtually a “Get Out of Jail Free” card for department heads.

- **Recommendation 10:** The City should hold Heads of departments accountable for losses arising out of their respective departments.

Responses required from	The Office of the Mayor San Francisco Municipal Transportation Agency San Francisco Police Department San Francisco Department of Public Works (60 days) The Board of Supervisors (90 days)
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Finding 15: The City Attorney manages the City’s claims and defends the City in litigated cases. Citing strategic considerations, the City Attorney withholds information the departments need to conduct critical incident analysis.

Responses required from	The Office of the City Attorney (60 days)
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Finding 16: Citing legal privileges, the City Attorney has not provided a detailed accounting of the City's loss history for the purpose of evaluating the City's insurance and risk management programs.

- **Recommendation 11:** The City Attorney should produce a standard loss run constituting the City's history of loss and should make it available to the Office of Risk Management.

Responses required from	The Office of the City Attorney The Office of Risk Management The City Administrator (60 days)
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Finding 17: The City's self-insurance program combined with the total dominance of the City Attorney in the management of claims and litigation and the City's internal structure for both the approval and funding of settlements creates an incestuous system, not subject to best business practices of accountability, outside public scrutiny or evaluation.

Responses required from	The Office of the City Attorney The Office of the Controller The City Administrator (60 days) The Board of Supervisors (90 days)
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Finding 18: The administration of the Asian Art Museum is not an active participant in the process of obtaining insurance coverage for its collection and has no way of evaluating the adequacy of its coverage.

- **Recommendation 12:** The Risk Management Office should consult with Museum administration during the renewal process, provide the Museum with a copy of its policy, and explain key policy terms.

Responses required from	The Risk Management Office The Asian Art Museum (60 days)
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IX. CHART OF REQUIRED RESPONSES

RECOMMENDATIONS:	1	2	3	4	5	6	7	8	9	10	11	12
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Requires Response within 90 days:

Board of Supervisors	X		X			X		X	X	X		
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Requires Response within 60 days:

The Mayor	X		X	X				X		X		
City Administrator	X	X	X	X		X	X	X	X		X	
Office of Risk Management	X	X			X	X	X	X	X		X	X
City Attorney				X	X						X	
Office of the Controller	X					X			X			
Department of Public Works										X		
Municipal Transportation Agency										X		
Police Department										X		
Asian Art Museum												X

X. GLOSSARY

Adjuster¹⁴ - A representative of the insurer who seeks to determine the extent of the insurer's liability for loss when a claim is submitted.

Aggregate Limit - Usually refers to liability insurance and indicates the amount of coverage that the insured has under the contract for a specific period of time, usually the contract period, no matter how many separate accidents might occur.

Broker - Insurance salesperson that searches the marketplace in the interest of clients, not insurance companies.

Casualty - Liability or loss resulting from an accident.

Casualty Insurance - That type of insurance that is primarily concerned with losses caused by injuries to persons and legal liability imposed upon the insured for such injury or for damage to property of others. It also includes such diverse forms as plate glass, insurance against crime, such as robbery, burglary and forgery, boiler and machinery insurance and Aviation insurance. Many casualty companies also write surety business.

CSAC-EIA: The California State Association of Counties (CSAC)¹⁵ formed the Excess Insurance Authority (EIA) as a Joint Powers Agency in 1979 to serve the insurance and risk management needs of California counties.¹⁶ CSAC believes that the EIA program has greatly reduced the cost of excess insurance for participating counties.

CSAC Excess Insurance Authority offers several insurance programs to California Counties. Of interest in the liability area are: excess liability for large counties with SIR of \$1 million or greater and limits of \$10 million; excess workers' compensation; and, medical malpractice for county hospitals, county mental health and public health. EIA also offers all risk property damage programs, including earthquake coverage and excess workers' compensation.

¹⁴ Terms in **bold** are quoted from the Best Insurance Resources
<http://www.ambest.com/resource/glossary.html#E>

¹⁴The primary purpose of CSAC is to represent county government before the California Legislature, administrative agencies and the federal government. CSAC places a strong emphasis on educating the public about the value and need for county programs and services. CSAC website: www.csac.counties.org

¹⁶ Membership in the EIA is open to all CSAC member counties. Most of the counties in California are members of the EIA. The EIA has dramatically reduced member county excess insurance costs by using the combined purchasing power created by the group. Non-member counties have also benefited from the competitive role that the EIA has assumed in the public sector insurance marketplace. The EIA is governed by a board of directors comprised of one representative from each member county. The EIA is accredited by the California Association of Joint Powers Authorities and recognized as a highly successful and effective organization. CSAC website: www.csac.counties.org

X. GLOSSARY

Deductible - Amount of loss that the insured pays before the insurance kicks in.

Excess insurance - As the name implies, this insurance policy is excess of the underlying insurance. An excess policy is not exposed until the limits of the underlying insurance are exhausted or depleted. Businesses or other entities with risks that create a large financial exposure often purchase excess insurance.

General Liability Insurance - Insurance designed to protect business owners and operators from a wide variety of liability exposures. Exposures could include liability arising from accidents resulting from the insured's premises or operations, products sold by the insured, operations completed by the insured, and contractual liability.

Hazard - A circumstance that increases the likelihood or probable severity of a loss. For example, the storing of explosives in a home basement is a hazard that increases the probability of an explosion.

Indemnity - Restoration to the victim of a loss by payment, repair or replacement.

Liability - Broadly, any legally enforceable obligation. The term is most commonly used in a pecuniary sense.

Liability Insurance - Insurance that pays and renders service on behalf of an insured for loss arising out of his responsibility, due to negligence, to others imposed by law or assumed by contract.

Loss Control - All methods taken to reduce the frequency and/or severity of losses including exposure avoidance, loss prevention, loss reduction, segregation of exposure units and non-insurance transfer of risk. A combination of risk control techniques with risk financing techniques forms the nucleus of a risk management program. The use of appropriate insurance, avoidance of risk, loss control, risk retention, self insuring, and other techniques that minimize the risks of a business, individual, or organization.

Loss run - This document details the insured's history regarding a specific risk, i.e. vehicle liability, property damage, general liability. The loss run typically lists the type of loss, the claimant, whether litigated, reserves, claimed cost of injuries, legal expenses, and, cost of resolution (settlement/verdict). Underwriters examine a potential insured's loss run to assess the degree of risk the insured poses to the insurer. Loss runs are regularly updated.

Occurrence - An event that results in an insured loss. In some lines of business, such as liability, an occurrence is distinguished from accident in that the loss doesn't have to be sudden and fortuitous and can result from continuous or repeated exposure which results in bodily injury or property damage neither expected nor intended by the insured.

X. GLOSSARY

Policy - the written contract effecting insurance or the certificate thereof, by whatever name called, and including all clause, riders, endorsements, and papers attached thereto and made a part thereof.

Primary Policy - A written contract, wherein the insurer agrees to cover the damages incurred by the insured for losses arising out of designated risks, i.e. real property, personal injury, vehicles. The policy limit is the dollar amount for which the insurer is responsible. The policy limits may be set for each claim and for the total amount of money (aggregate limit) the insurer will pay out during the policy period. Primary policies typically have a deductible. This is a stated amount which the insured must pay (satisfy) for each claim. Once the insured has satisfied the deductible, the insurer covers the remaining loss, up to the policy limit. Primary policies frequently provide for the defense of the insured. The cost of this defense may or may not reduce the amount of insurance available to satisfy the claim.

Reinsurance - In effect, insurance that an insurance company buys for its own protection. The risk of loss is spread so a disproportionately large loss under a single policy doesn't fall on one company. Reinsurance enables an insurance company to expand its capacity; stabilize its underwriting results; finance its expanding volume; secure catastrophe protection against shock losses; withdraw from a line of business or a geographical area within a specified time period.

Reserve - An amount representing actual or potential liabilities kept by an insurer to cover debts to policyholders. A reserve is usually treated as a liability.

Reserves must be maintained by insurers; an insured with a SIR or self-insurance program should also maintain reserves.

Self Insured Retention (SIR) - The insured and insurer agree that whenever there is a claim, the insured will be responsible for the loss within an agreed upon amount. This defined amount is the self insured retention (SIR). When and if the SIR is exhausted, the insurer is then responsible for losses in excess of the SIR and within the policy limits. The cost of defending a claim may or may not erode (diminish) the SIR. The SIR is advantageous for the insured as it enables the insured to purchase greater limits at a lower rate. The insured has the authority to adjust smaller claims on its own. With a SIR the insured is often able retain defense counsel of its choosing.

Self Insurance - The entity does not have insurance coverage through an insurance program. It assumes the risk of covering its losses with its own funds.

Umbrella Policy - Coverage for losses above the limit of an underlying policy or policies such as homeowners and auto insurance. While it applies to losses over the dollar amount in the underlying policies, terms of coverage are sometimes broader than those of underlying policies.

XI. SOURCES CONSULTED/BIBLIOGRAPHY

THE CITY AND COUNTY OF SAN FRANCISCO

Departments Consulted

- The Asian Art Museum
- The Port of San Francisco
- The Office of the Controller
- The Office of the City Attorney
- The Office of Risk Management
- The San Francisco Municipal Railway
- The San Francisco International Airport

Sources Reviewed

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- The Administrative Code for the City and County of San Francisco
- City & County of San Francisco Comprehensive Annual Financial Report for the Year Ended June 30, 2006.
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- "Judgment and Claims Report." Office of the Legislative Analyst, October 15, 1999.
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- California Government Code
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- 2002 On-Site Safety Audit of the San Francisco Municipal Railway Rail Transit Safety Program. Public Utilities Commission for the State of California July 2, 2003
- 2005 On-Site Safety Audit of the San Francisco Municipal Railway Rail Transit Safety Program. Public Utilities Commission for the State of California August 24, 2006
- California State Association of Counties (CSAC) website: www.csac.counties.org

OTHER SOURCES

- www.ambest.com/resource/glossary.html#I Best Insurance Resources, Glossary of Insurance Terms