
HALDIMAND COUNTY

Report LSS-08-2021 Insurance Claims in Litigation – 2020

For Consideration by Council in Committee on April 20, 2021



OBJECTIVE:

To advise Council of the status of various claims in litigation as at the end of the year 2020.

RECOMMENDATIONS:

1. THAT Report LSS-08-2021 Insurance Claims in Litigation 2020 be received;
2. AND THAT Memorandum LSS-M03-2021 be received and remain confidential.

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Reviewed by: Lori Friesen, Manager, Legal & Support Services

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Insurance claims reported to and ultimately administered through the external insurer, in recent years, are below the average of the early 2000's, due to the County's higher deductible levels that were instituted in 2011. As a result, more claims are administered and settled internally through the County's program. Large financial claims, typically due to bodily injury or private property damage, are administered by our insurer given their potential to exceed the County's deductible. During 2020, there were fourteen such claims in various stages of civil litigation, representing a claimed loss value in excess of \$23 million; although claims, in most cases are awarded or settled for significantly less values or in some cases no award is made. By year-end, two of these claims were resolved at a total cost to the County of approximately \$524,000. Continued improvement of County infrastructure, documentation of maintenance activities and attention to risk management strategies should keep costs related to insurance claims that proceed to litigation trending downward due to a strong defense in most situations, despite the volume of claims made against the County being uncontrollable, to some degree.

BACKGROUND:

On an annual basis, staff provide Council with an update on insurance claims that have proceeded to litigation through our external insurer.

The claims that form the basis of this report are those which have met the threshold and criteria to be managed by the County's external insurer. Claims that are managed through the County's internal or self insurance program are not reflected in this report, as they form the subject of separate quarterly reports to Council. As well, this report excludes litigation related to uninsurable events, for example: civil lawsuits involving non-insurable actions; policy-related claims (procurement issues, property disputes, etc.) and employment-related matters (including grievances, arbitrations, etc.) These types

of legal actions are handled separately through the General Manager, Corporate & Social Services, with advice from the County solicitor.

A confidential addendum (Memorandum LSS-M03-2021), included in the April 20, 2021 Closed Session Council in Committee agenda, outlines the specific details of each insurance claim that was in litigation in 2020.

ANALYSIS:

During 2020, there were 14 insurance claims in various stages of litigation and from various years, representing a claimed loss value in excess of \$23 million. Of the outstanding claims, seven claims were resolved in 2020, at a cost to the County of \$489,000. This left seven claims, at a claimed loss exposure of just less than \$6 million, still outstanding as at the end of last year.

The table below outlines the total number of outstanding insurance claims submitted to the external insurer (as at the end of 2020), by policy year, for the past 16 years. A claim is shown in the related year of loss, rather than the date it was received by the County and submitted to the external insurer. The column identifying the potential exposure of the outstanding claims is based on known information available from the lawsuit.

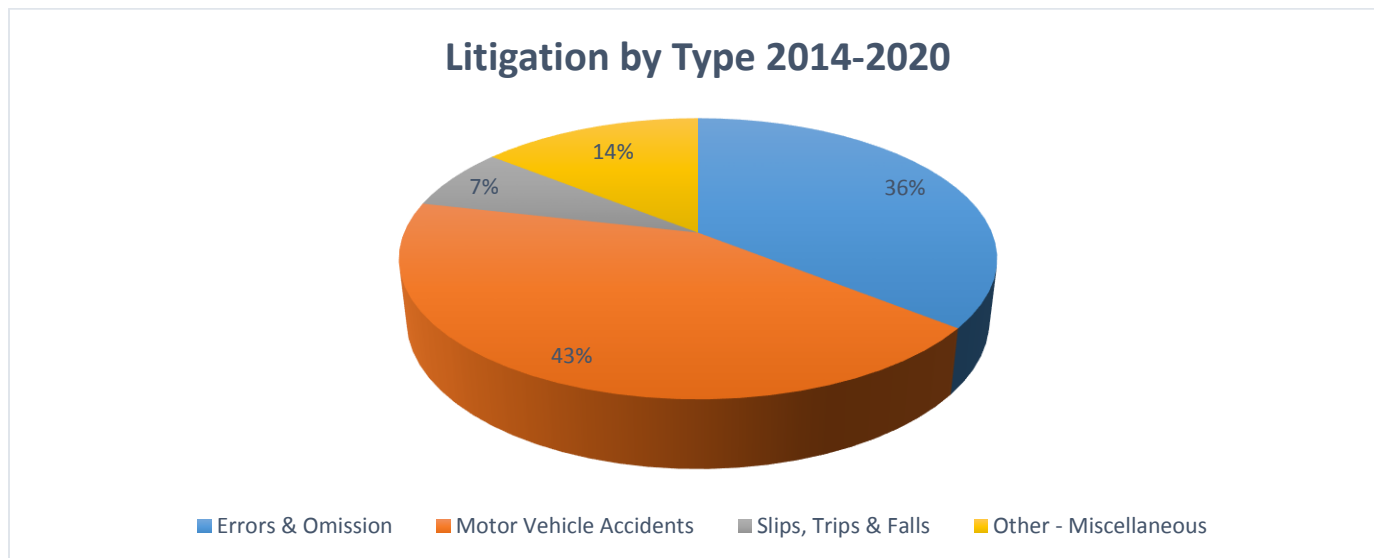
Policy Year	Claims Submitted to External Insurer by Date of Loss #	Claims Remaining Open at 12/31/20 #	Known Potential Exposure on Open Claims at 12/31/20 \$
2005	17	0	0
2006	13	0	0
2007	15	0	0
2008	15	0	0
2009	16	0	0
2010	7	0	0
2011	1	0	0
2012	3	0	0
2013	3	0	0
2014	7	1	1,400,000
2015	9	2	2,000,000
2016	7	0	0
2017	2	1	50,000
2018	2	2	250,000
2019	1	0	0
2020	2	2	2,000,500
Total	120	7	\$5,700,500

The previous chart, at first glance, indicates a significant improvement from the early 2000's, when claims submitted to the insurer often numbered much higher. The higher number of claims from 2005 to 2010 were due to the County's significantly lower deductibles, meaning that more claims were administered externally. The reduction can also likely be credited to a greater emphasis on risk and claims management, thereby reducing the overall risk exposure. It needs to be acknowledged, however, that the municipality is also being affected by an increasingly litigious society.

Given the higher deductibles (primarily on General Liability claims that have moved from a \$25,000 per claim deductible in the early 2000's to \$250,000 in 2011 and subsequent years), the previous table excludes a substantial number of insurance claims that are administered internally each year and are the subject of a regular quarterly report to Council. Those claims are not submitted to the insurer as the dollar value of the loss did not exceed the deductible on the particular policy or they did not meet the threshold criteria of a reportable claim to the external insurer (i.e. personal injury).

It must also be noted that the Limitations Act allows a two year period for claims to be issued following the date that the plaintiff becomes aware of their loss (longer if the claim pertains to bodily injury of a minor under the age of 18). In order not to exceed the limitation period noted above, plaintiffs often file a “notice” of claim with the particulars of the lawsuit, with financial damages being sought subsequently revealed. Due to the fact that many legal actions are commenced just prior to the limitations deadline, it is probable that most of these lawsuits will be resolved for less than the amount being sought by the plaintiff; however, the County will incur the time and costs related to the defense of the claim, up to the \$250,000 deductible level for each claim.

Given the significant change in self-insured risks (due to higher deductibles) over the period, it is relevant to compare the underlying reason for recent years' claims. The chart below depicts trends of the years that have at least one remaining active claim and spans from 2014 to 2020. Of the 30 claims reported by the County to the insurer during this time period, 43% arose from motor vehicle accidents that are alleged to have occurred due to deficiencies on the County's roadways; 7% are attributed to allegations of deficiencies related to the County's sidewalks; 36% are errors & omissions claims, and the remaining 14% categorized as “Other-Miscellaneous”.



The County has taken great strides to mitigate risk in the more claims-prone areas. A continuous improvement in awareness by staff, more emphasis on risk management practices within the public service and reasonableness in court-awarded judgements will assist in decreasing the frequency and severity of future claims. Adequate investments in maintaining the County's infrastructure, including diligent winter control and roads maintenance operations (where the majority of claims arise), will assist in mitigating the risk exposure from claims which proceed to litigation.

Even with the above-noted proactive activities, there are areas of exposure which are beyond the County's control – being that we are currently in a more litigious society and the application of Joint and Several Liability rule in litigation awards.

FINANCIAL/LEGAL IMPLICATIONS:

Not all of the County's share of the cost of resolving insurance claims may become due in the year filed, as many of the claims in litigation continue over several years.

As of December 31, 2020, there are seven outstanding insurance claims in litigation being administered by the County's external insurers. The County has incurred expenses to date of approximately \$8,420 in below deductible costs for these seven outstanding claims. Based on deductibles in place as at the date of each alleged loss, the County's further potential exposure for these outstanding claims is approximately \$1 million. Any costs, in excess of the County's deductibles, to settle these claims would be borne by the external insurer. As explained previously, the cost of claims being administered internally (through the higher deductible that commenced in 2011) are not reflected in the figures above, as these claims did not meet the threshold for being transferred to the external insurer.

The County's insurance claims costs, whether administered internally or through the applicable deductible if administered by the external insurer, are funded by the Insurance Reserve. This reserve has a balance of \$1.29 million as at the end of 2020. This balance includes an accrual for outstanding external claims.

On an annual basis, as part of the annual operating budget preparation and the year-end financial analysis, staff re-evaluate the required contributions to the Insurance Reserve in light of current claims experience (both internal and external). Any adjustments to the self-insured contributions would be recommended to Council through the budget approval process and/or insurance policy renewal report. Request for Proposal CS-SS-23-2016 Award of General Insurance Program identified annual savings in the external insurance premiums of approximately \$250,000. As approved by Council, these savings were reallocated as a contribution to the internal self-insurance program, which brought the annual contributions to the Insurance Reserve to \$500,000, starting in 2017. This continued contribution for 2020 and future years will help maintain an adequate reserve balance in association with the larger deductibles that the County has selected over the past few years.

Based on the number of claims and the related exposure, it is necessary that the Insurance Reserve maintains an adequate balance in order to finance the County's share of claims costs. It should be recognized that having larger deductibles on the various insurance policies means self-financing these risk exposures. The advantage of such action is that considerably lower external insurance premiums are realized, meaning the County keeps those funds rather than paying for policy coverage, which is non-refundable if not realized. The caveat, however, is that adequate internal funding must be maintained to finance the risk exposure in a stable, yet flexible, manner so as not to negatively impact the County taxpayers in a given year.

STAKEHOLDER IMPACTS:

Insurance litigation impacts all departments within the County, whether it is the actual staff time investigating and preparing to defend against claims or in subsequent increases to the insurance premiums resulting from a poor loss experience. Risk management strategies, including loss exposure identification, loss prevention measures and risk transfer approaches are integral to the operations of all departments. The trend of a more litigious society drives the need for more diligent acknowledgement, documentation and enforcement of preventative measures by County staff. By taking a proactive approach to managing risks, the County's exposure to potentially costly insurance litigation and the related diversion of financial resources will be reduced.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. None.