
HALDIMAND COUNTY

Report LSS-05-2022 Insurance Claims in Litigation - 2021

For Consideration by Council in Committee on March 29, 2022



OBJECTIVE:

To advise Council of the status of various claims in litigation as at 2021 year-end.

RECOMMENDATIONS:

1. THAT Report LSS-05-2022 Insurance Claims in Litigation 2021 be received;
2. AND THAT Memorandum LSS-M01-2022 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:

Haldimand County is obligated to notify the insurance company of claims based on dollar thresholds and stipulated insurer requirements. Typically, large financial claims for bodily injury or private property damage are administered by our insurer, given the potential of the claim to exceed the County's deductible. Claims that do not meet the deductible are handled internally through the Self Insured Program.

Staff have assumed responsibility for Small Claims Court litigations when the claim is within the County's deductible level. In 2021, the County was served with two Small Claims Court applications. The County was also served four Statement of Claims in 2021 that were handled by an external lawyer. In 2021 there were 12 claims in various stages of litigation with three of these claims resolved by year end. Although the County cannot control the number of claims received, staff continue to strive towards ongoing maintenance of infrastructure and improving documentation to keep claim and litigation costs trending downward.

BACKGROUND:

On an annual basis, staff provide Council with an update on insurance claims that have proceeded to litigation with the majority meeting the dollar threshold and criteria to be managed by the County's external insurer. The remainder are managed internally if filed through Small Claims Court. Notices of claim where no formal notification has been served to the County are managed through the County's internal or self insurance program and are not reflected in this report, as they form the subject of separate quarterly reports to Council. This report also 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-M01-2022) is included in the March 29, 2022, Closed Session Council in Committee agenda, which outlines the specific details of each insurance claim that was in litigation in 2021.

ANALYSIS:

In January 2021, there were 12 insurance claims in various stages of litigation representing a claimed loss value in excess of \$43.5 million. At the end of 2021, three claims were fully resolved at a County cost of approximately \$43,300; with nine claims still remaining open and with a remaining claimed loss exposure of just less than \$41.6 million. There are no open claims prior to 2011.

Currently, no claims have been filed for losses in 2021. The Limitations Act allows for a two year period for claims to be registered following the date that the plaintiff became aware of their loss (longer if the claim pertains to bodily injury of a minor under the age of 18); therefore, the County could, in the future, still be served for a loss event that occurred in 2021. A claimant may provide a notice of intent with the particulars of the lawsuit shortly after the date of loss, however the notice generally does not include the financial damages. Once a potential for fiscal loss is identified, a value for potential loss exposure is assigned to the claim and includes costs related to the defence of the claim – these are the values identified in Table 1, “Known/Potential Exposure on Open Claims” column.

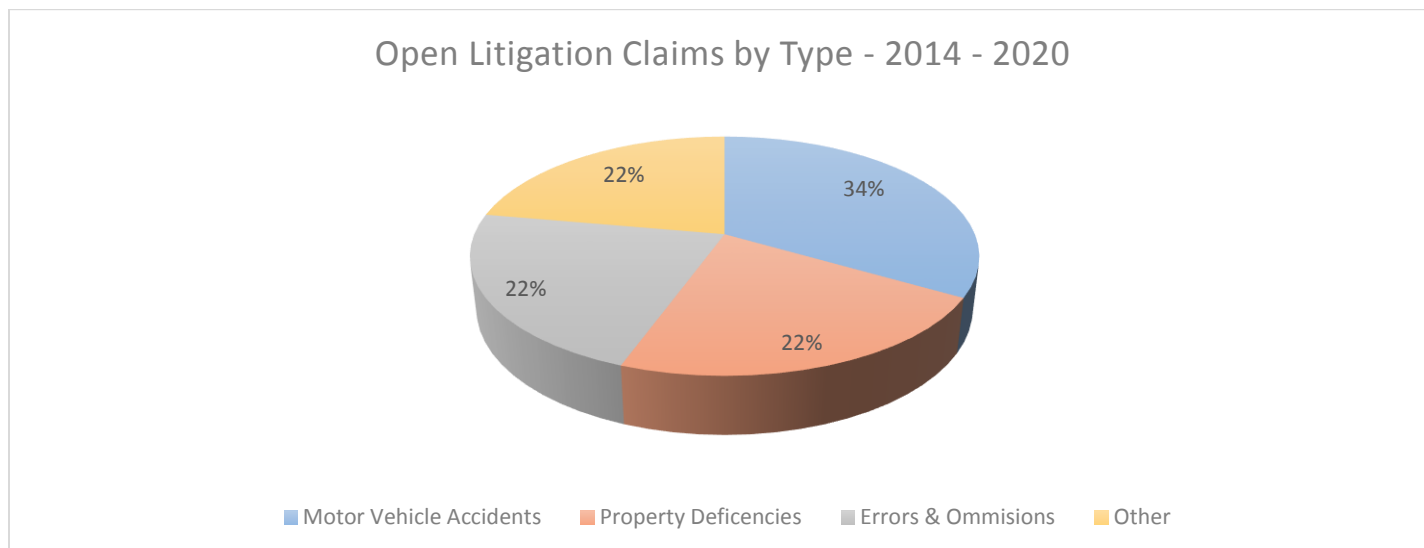
Table 1

Policy Year	Claims in Litigation by Date of Loss #	Claims Remaining Open at 12/31/21 #	Known Potential Exposure on Open Claims
2011	1	0	\$0.00
2012	3	0	\$0.00
2013	3	0	\$0.00
2014	7	1	\$1,400,000
2015	9	1	\$2,000,000
2016	7	0	\$0.00
2017	2	1	\$50,000
2018	2	0	\$0.00
2019	4	3	\$2,300,000
2020	4	3	\$35,900,000
2021	0	0	\$0.00
Total	41	9	\$41,650,000

Table 1 does not include insurance claims that are administered internally through the self insured program, unless an internal defense was provided for in Small Claims Court. Internally administered claims are not submitted to the external insurer as the dollar value of the loss did not exceed the deductible or did not meet the dollar threshold criteria of a reportable claim to the external insurer (i.e. personal injury).

As identified in Table 1 at the end of December 2021, the County currently had claims open for the years 2014 to 2020, noting that no claims regarding a loss in 2021 have been received at this time. The chart below depicts open litigation claims by type for 2014 – 2020. Of the nine open claims that are currently in litigation, 34% arose from motor vehicle accidents that are alleged to have occurred due to

deficiencies on the County's roadways; 22% are attributed to allegations of deficiencies related to the County's sidewalks or property; 22% are errors & omissions claims, and the remaining 22% are categorized as "Other-Miscellaneous" which are further explained in the confidential Memorandum LSS-M01-2022 attachment.



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, records management 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 due to 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, 2021, there are nine outstanding insurance claims in litigation being administered by the County's external insurers with the County incurring approximately \$12,417 in expenses. Based on deductibles in place as at the date of each alleged loss, the County's maximum potential exposure for these outstanding claims is approximately \$1,843,922. Any costs in excess of the County's deductibles to settle these claims would be borne by the external insurer. This maximum exposure would be a worst case scenario. Typically it would be unusual for every claim to exceed the County's deductible, however, actual outcomes are determined based on the individual merits of each claim.

The County's insurance claims costs, whether administered internally or through the applicable deductible if administered by the external insurer, are funded by the Self Insurance Reserve. This reserve has a projected balance of \$1.15 million at the end of 2021. This balance includes an accrual for outstanding external claims.

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. Each year, \$500,000 in contributions are made to the Self Insurance Reserve, funded by the base levy. Historically, this has been seen as a sufficient reserve level with the understanding that if necessary, the County could draw upon additional reserve sources should exposure occur that is higher than the SIR balance, preventing a significant impact to the levy. Staff will be reviewing the Self Insurance Reserve status again as part of 2023 operating budget to ensure that the reserve funding continues to align with the County's fiscal principles in maintaining sustainability and mitigating vulnerability - in order to finance the County's share of claims costs in association with the County's deductibles.

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 or a hard insurance market. 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