



King County Executive  
RON SIMS

October 13, 1999

Advanced Risk Management Techniques, Inc.  
c/o Don Eklund  
King County Auditor  
Room 420  
C O U R T H O U S E

Dear Mr. Eklund:

Thank you for sending me a copy of the draft report *Risk Management Audit*, which was conducted by Advanced Risk Management Techniques, Inc (ARMTECH).

I have reviewed this document with managers of the affected departments. We generally agree with the consultant's conclusions and recommendations. On those points with which we disagree, we have prepared a detailed response (enclosed). We are pleased the consultant found that the County is effectively managing risk.

The consultant recommended that the Risk Management Division be placed organizationally in the County Executive's Office. We do not agree with that recommendation, especially in view of the effectiveness of the present organizational relationships. We believe the benefits contemplated in the recommendation can best be achieved by strengthening communication between Risk Management and affected departments and agencies. Accordingly, we plan to adopt the consultant's recommendations as they pertain to improving communication.

We appreciate the efforts of your office and of the Consultant in the review of our risk management. If you have questions about this response, please let me know.

Sincerely,

Ron Sims  
King County Executive

Enclosure

cc: Sheryl Whitney, Director, Department of Information and Administrative Services (DIAS)  
Pat Steel, Director, Office of Budget  
Robert Derrick, Interim Director, Office of Human Resources Management (OHRM)  
Jim Anshutz, Manager, Risk Management Division, DIAS  
Katrina Zitnik, Manager, Safety & Claims, OHRM  
Michael Duggan, Deputy Prosecuting Attorney

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**King County Executive**  
**Response to the Audit of Risk Management Programs**

In preparing comments for your consideration I have noted audit conclusions and recommendations in **bold** face type.

**Conclusion: The level of risk costs at the County indicate it is effectively managing risk.**

Statistics indicate that, overall, risk management policies and procedures have been effective. The numbers also support our interview findings that risk management is well received throughout the County and there are strong working relationships in place. However, results need to be continually monitored to ensure that the County's risk management efforts remain effective.

**Response:**

We agree that the County is effectively managing risk. Risk management staff continually monitors the results of its efforts to ensure that program effectiveness is sustained.

**Recommendation: The Managers of Risk Management and Safety & Claims meet regularly to discuss common loss control exposures.**

**Response:**

We agree with the recommendation and will continue to meet jointly to discuss common exposures and loss control measures. We will also include loss control managers in the regular meetings.

**Recommendation: The Safety & Claims Manager be included as a voting member of the Risk Management Committee.**

**Response:**

The Risk Management Committee is charged with advising the Risk Manager on a variety of issues related to the County's tort/property-casualty program.

The Risk Management Committee must approve the selection of the property/casualty broker and render advise on the purchase of property/casualty insurance policies and the design of the insurance and self-funded tort program, including program financial policies and other tort program risk management policies.

Except for one relatively minor insurance policy the County purchases to cap Workers' Compensation losses, other matters have little if any relevance to the Workers' compensation program. Broker selection deals with the service needs of our property/casualty program. Committee program and financial policy oversight has primarily focused on establishing policies to guide funding of the County's catastrophic loss exposures (Workers' Compensation catastrophic loss exposures are capped by insurance coverage). Other policy matters involving employment related loss control issues are coordinated through the Employment Practices Oversight Committee. The Safety and Claims manager has agreed to participating as a committee member in a capacity considered appropriate by all of the participants.

We believe that staff working arrangements between Risk Management and Safety and Workers Compensation can ensure that other non-tort loss control concerns are appropriately coordinated.

**Recommendation: Risk Management should be made part of the County Executive Office.**

**Response:**

As noted in the audit, Risk Management Division enjoys a high regard among department directors and division managers and is to be commended for its operations. There is good communication among the program and Department/Divisions and mutual respect. We believe that the current placement of the Division is appropriate and do not plan to make a change.

**Recommendation: The Safety & Claims Manager be involved in the analysis and Decision making process regarding the purchase of excess workers' compensation policies.**

**Response:**

The Safety and Claims Manager has always been involved in the analysis and decision making process regarding the purchase of excess workers' compensation. We plan to continue this practice.

**Recommendation: A factor based on each department's loss experience should be applied to the rate used to allocate workers compensation losses when calculating loss allocations.**

**Response:**

We agree that the current allocation system does not hold an individual department accountable for its workers' compensation losses. We plan to review the allocation system during the fourth quarter of 1999 and make recommendations for change, as necessary. We will consider the use of a loss experience factor during our review.

**Recommendation: Risk Management should prepare an annual report for the County Executive and department managers that would include countywide cost of risk, claim frequency and loss control information**

**Response:**

We agree with this recommendation.

**Recommendation: Risk Management should use no more than the most recent five years of loss experience to calculate each department's loss allocations.**

**Response:**

We believe that while a ten-year loss history does not reward or penalize a department as quickly as a five-year history, tort program charges are highly affected by a few large losses. A shorter time frame would lead to greater instability in rates. We believe that a ten-year history is a better predictor of future loss. However, we will review this issue with County agency management.

**Recommendation: Risk Management should contract to have the actuarial report released by August 1 of each year and prepare and distribute suggested premium and loss allocations no later than September 1 of each year.**

**Response:**

We agree with this recommendation.

**Recommendation: Risk Management should convert to the new RMIS as soon as possible to enhance claims handling and risk management information capabilities.**

**Response:**

We agree with this recommendation and will begin using the new system for non-transit claims during October 1999.

**Recommendation: The County should reexamine limiting contractors' liability insurance to the extent of contractors' negligence.**

**Response:**

This recommendation suggests that we can obtain insurance coverage to protect us against our own negligence related to construction projects and that insurers are very willing to offer coverage for an owner's negligence exposure. We will explore this recommendation in more detail with our broker.

**Recommendation: Risk Management should perform periodic audits to ensure that contract insurance requirements are being met. This would properly place the burden of this responsibility on personnel with technical insurance and/or risk management backgrounds**

**Response:**

We agree with this recommendation. Risk Management's 2000 budget request includes funding to allow them to implement a periodic audit function.

**Recommendation: The County should discontinuing the practice of monitoring insurance from subcontractors.**

**Response:**

The practice of monitoring insurance from subcontractors occurs when a) a subcontractor is providing a specific type of insurance not carrier by the prime, such as an asbestos abatement subcontractor working for a general contractor and b) on large construction projects with multiple phases and a mix of contractors where we judge it is desirable to have several layers of insurance protection in place.

Our loss experience on the Kingdome has shown it to be valuable to have additional insured status on a subcontractor's insurance policy. We collected \$1 million each from three separate subcontracts. Our settlement negotiations with the general contractor were aided when a subcontractor tendered limits.

**Conclusion: The County is receiving the**

**quality and quantity of service necessary from its broker at a very reasonable cost.**

**Response:**

We agree.

**Recommendation: The loss control contingency fund should be increased to \$300,000. It should be used for both liability and workers compensation needs and jointly funded by the two programs.**

**Response:**

We agree that loss control and worker safety contingency funds should be increased. The Risk Management Division's 2000 Executive Recommended budget includes \$200,000 for loss control purposes.

Safety and Claims agrees it needs a loss control contingency fund because departments do not always have the financial capability to provide such things as ergonomic equipment. However, we are not certain that a joint fund is the appropriate solution. We will examine the issue and determine a workable solution.

**Recommendation: Safety and Claims should meet regularly with former metro safety personnel.**

**Response:**

We agree with this recommendation and Safety and Claims will assume the lead in establishing and maintaining meetings.

**Recommendation: Supervisor training on employment practices should be evaluated for compliance and strengthened.**

**Response:**

The County Executive's recommended year 2000 budget includes an initiative for accomplishing supervisory training. In addition, Risk Management's Loss Control Manager is conducting a review of employment practices in all County departments and a workgroup comprised of the Director of DIAS, ITS, OHRM training staff and our Loss Control Manager is developing a proposal for web based supervisor training on employment practices.

**Recommendation: The County should monitor compensation claim caseloads and establish October 1, 1999 as the date to ensure that all claims officers are maintaining indemnity caseloads below 175.**

**Response:**

On January 31, 1999, Safety & Claims had 1652 open workers' compensation claims for an average of 193 for each of the 7 claims officers. By May 31, 1999, open claims had dropped to 1265 for an average caseload of 122 for each officer. At August 31, 1999, the caseload average was 115 each.

We agree that claims officer's caseload should not exceed 175 and will continue working to sustain that standard.

**Recommendation: The County should develop an initial claim evaluation checklist to be completed by the claims supervisor prior to assigning a claim to an officer.**

**Response:**

We believe this is a good suggestion for assigning cases to inexperienced claims staff. Fortunately, all of our present staff members are experienced. In addition, the supervisor reviews all claims prior to assignment to staff, and the supervisor provides needed direction regarding processing of the claim. However, we will note this suggestion for use in the event that our circumstances change.

**Recommendation: The County should use an outside service for reporting of discrimination concerns by employees. An in-house position should also be established with responsibility for investigating such situations and working with the Committee to determine corrective action, if necessary.**

**Response:**

We believe that the use of an outside service that protects employees' privacy may prove unworkable. However, we will consider the auditor's recommendation in more detail.

Approximately 98% of the County's workforce is either represented by a union or is covered by career service processes that require that any discipline be taken for just cause. Just cause includes a due process component which is universally interpreted to include a thorough investigation, the right to receive notice of specific charges, and an

opportunity to respond to them. Thus no employee could be investigated or disciplined for sexual harassment or discrimination if their accuser remained anonymous. Moreover, as an employer, we must investigate an incident of sexual harassment or discrimination. To do so we must investigate the specifics of the complaint.

The privacy of a complaining employee could not be guaranteed if we were to comply with EEO law. Finally, knowledge gained via a hotline could still be imputed to the employer (even if we were powerless to act on it), could be subject to public disclosure, and could embroil the County in collateral disputes about disparate treatment/retaliation.

We agree with the auditor's recommendation to provide additional resources to conduct investigations. The OHRM budget will provide one additional investigative position in 2000 to assist with investigations.

### **Claim No. 92207**

**Conclusion: The claim discussed below is one that we believe was settled for an amount higher than that supported by the investigation material in either the Crawford or the Prosecuting Attorney Office file:**

**This claim involves an 81-year-old claimant who was injured when he tripped and fell on a Metro bus. The claimant incurred \$2,345 in medical bills for treatment of primarily subjective/soft tissue injuries. We do not suggest the injuries did not exist, but subjective/soft tissue injuries rarely result in permanent disability. This claim was settled for \$25,000 on 8/17/98.**

### **Response:**

The claimant, a Metro bus passenger, was injured when the bus in which he was riding started forward before he became seated. Under Washington law, a common carrier like King County owes its passengers the highest standard of care. As a result of the bus starting forward, the claimant, age 81, was thrown against a stanchion, then fell against a seat or to the bus floor, or both. The medical records in the file indicate that because of this fall, the claimant sustained a compression fracture in his back at L3.

Compression fractures are generally painful and the claimant's condition is described in the written medical record by his doctor as "chronic back pain including low back and also cervical secondary to the bus accident." The pain was characterized by the doctor as permanent. Movement and activity levels were affected.

The claim had become a lawsuit when it was resolved. The claimant, who had been deposed by a senior deputy prosecuting attorney, moved the case into Mandatory Arbitration. That system caps damages at \$35,000 and also penalizes appeals by the threat of an award of actual attorney's fees if an appellant does not improve its financial position by the appeal. Here, with the medical evidence and an 81-year-old claimant who

was going to offer impressive testimony in arbitration about chronic back pain robbing him of the enjoyment of his remaining golden years, a prospective arbitration award of \$35,000 by way of medical expenses plus general damages was a distinct possibility. We believe that the settlement of \$25,000 was not excessive under the circumstances.

**Recommendation: Due primarily to the expected cost savings resulting from the internalization of Metro claims handling, we recommend the County consider assuming this responsibility.**

**Response:**

We believe that the report may have understated open Crawford claims, and that there were approximately 450 open claims at the time of the study (including those handled by the Classic Claims subcontractor). However, during 2000, we plan to review the costs and benefits of handling Transit claims with County staff adjusters.

**Claim No. 24949**

**The claim was settled for \$75,000 on 11/30/98. Other similar entities we are familiar with settle claims of this nature for \$40,000 - \$50,000.**

**The claimant was injured when a police vehicle struck his vehicle. The claimant's injuries were minor and subjective. His medical expenses and wage loss of \$16,523 were incurred in only four months. This is excessive and unusual even considering the surgery performed on the claimant approximately one month after the accident. Material we reviewed did not confirm that the required surgery was directly attributable to this incident.**

**The claimant is a landscape architect and some correspondence in the file indicates the claimant's own attorney admits that the injury was, to some degree, pre-existing.**

**Response:**

We disagree with the above factual account and legal analysis concerning King County's resolution of this claim.

On April 28, 1998, the claimant, a professional landscape architect, was a passenger in a vehicle proceeding through a controlled intersection on a green light. Suddenly, the car in which he was riding was violently struck from the side by a King County Police vehicle traveling through a red light at 33 to 40 MPH. The collision was of such force that it spun the claimant's vehicle counterclockwise approximately 360 degrees and rendered it a total loss. A subsequent review of the accident by the King County Police Accident Review Board ruled the police officer at fault by finding that the accident was preventable.

Under these facts, there was absolutely no reduction to the value of this claim that could be asserted based upon a liability analysis. Therefore, resolution of the claim was strictly limited to a damages analysis and in that regard, contrary to the assertion of the Audit, the claimant’s injuries were not “minor and subjective.”

Indeed, a prior 1994 MRI indicated that the claimant suffered from a slight disc bulge on the right at L5-S1. Medical records revealed that any resulting pain was adequately controlled through conservative and occasional chiropractic care and massage therapy. Immediately after the accident, the claimant experienced severe back pain and for the first time, it radiated down into his left leg. As before, he sought chiropractic and massage therapy but now, this type of therapy did not relieve the pain.

Another MRI was therefore scheduled. That x-ray study objectively revealed a new medium sized left posterolateral disc herniation with extruded disc fragment extending from the disc to the left lateral aspect of the spinal canal at S1. A little more than one month after the accident, the claimant was forced to undergo corrective discectomy surgery which revealed a full blown herniated disc that was “completely sequestered.” Under these circumstances, neither the amount nor the four month timing of the incurred \$16,523.00 in medical expenses and wage loss was “excessive and unusual.” Moreover, there was competent medical testimony contained in the claim file offered by Dr. John F. Burns, an orthopedic surgeon with the Polyclinic, that the automobile accident was a contributing factor, ultimately herniating the disc, on a more probable than not basis.

Finally, the settlement amount of \$75,000 paid to resolve this claim was proper. Prior to settlement, the file was independently reviewed by an outstanding private defense trial lawyer with decades of experience in similar cases. He placed the fair settlement value of the claim up to \$100,000 even in view of the pre-existing back condition. Furthermore, a review of similar reported cases in this state reveals the following values:

<b>DATE / NO.</b>	<b>INJURY/ COUNTY</b>	<b>PRE-EXISTING BACK PROBLEMS</b>	<b>WAGE LOSS AND MEDICAL EXPENSE</b>	<b>RESOLUTION AMOUNT</b>
<b>01/10/94 92-2-03615-4</b>	<b>Discectomy Clark County</b>	<b>No</b>	<b>\$24,650</b>	<b>\$171,677</b>
<b>01/18/94 92-2-01990-8</b>	<b>Discectomy Kitsap County</b>	<b>Yes</b>	<b>\$47,000</b>	<b>\$190,000</b>
<b>08/18/94 94-2-013547</b>	<b>Discectomy Yakima County</b>	<b>Yes</b>	<b>\$26,000</b>	<b>\$105,154</b>
<b>01/23/95 93-2-17207-9</b>	<b>Discectomy King County</b>	<b>No</b>	<b>\$23,000</b>	<b>\$130,000</b>
<b>06/05/95 C94-632JKA</b>	<b>Discectomy King County</b>	<b>No</b>	<b>\$31,000</b>	<b>\$315,000</b>
<b>10/31/95 Arbitration</b>	<b>Discectomy Cowlitz County</b>	<b>Yes</b>	<b>\$31,000</b>	<b>\$87,787</b>
<b>11/04/96 95-2-04292-9</b>	<b>Discectomy King County</b>	<b>No</b>	<b>\$23,313</b>	<b>\$118,000</b>
<b>01/03/97 95-2-23806-8</b>	<b>Discectomy King County</b>	<b>Yes</b>	<b>\$16,649</b>	<b>\$90,000</b>

DATE / NO.	INJURY/ COUNTY	PRE-EXISTING BACK PROBLEMS	WAGE LOSS AND MEDICAL EXPENSE	RESOLUTION AMOUNT
01/09/98 97-2-00294-9	Discectomy Yakima County	Yes	\$32,000	\$65,000
07/15/98 97-2-0542-0	Discectomy King County	No	\$18,200	\$75,000

Contrary to the implied if not stated assertion of the Audit Report, resolution of claim number 24949 prior to litigation and at the amount of \$75,000 was good work on behalf of King County.

**Recommendation: The County should adopt the standard of contacting claimants within 24 hours after notice of loss is received and include it as a written procedure in the claims procedure manual.**

**Response:**

We discussed with the auditor that claims identified as having litigation potential are often reviewed with the Prosecutor's Office prior to assignment. This delays the process. However we agree with the Auditors recommendation of timely contact and believe that our new RMIS system integrated with scanning equipment will help us meet a more timely contact and for most claims. We will incorporate timely contact procedures within a claims procedure manual.

Regarding workers compensation claims, Safety & Claims adopted claims management standards effective July 1, 1999. These standards, based on industry best practices, provide staff with expectations pertaining to all aspects of claims management. We have a 48-hour standard for contacts with employees, medical providers, and supervisors. While we recognize contact within 24 hours is the best practices standard, we want to maintain a standard that is sustainable within our available resources. Our goal is to achieve a 24-hour standard by March 2000.

**Recommendation: The County should aggressively pursue subrogation opportunities whenever it is appropriate to do so.**

**Response:**

We agree with this recommendation. The Claim Management Standards require the claim officer to identify subrogation opportunities and document the investigation within 14 days of a claim. We also require that opportunity for subrogation be noted in our claim management system.

We pursue subrogation whenever it is legal to so and, in fact have collected more than \$22.3 million from Risk Management insurance and subrogation collection efforts over the past three years.

**Recommendation: The County should initiate procedures whereby all claim file material is secured to the file jacket and in chronological order. We could identify no negative fiscal impact resulting from this documentation deficiency.**

**Response:**

We agree with the auditor's recommendations concerning file organization. The new RMIS system that integrates scanning will facilitate good file management.

**Recommendation: The County should consider the creation of a manual which will instruct claims handling technicians on day-to-day claims handling activity from initial receipt of loss notice to final resolution.**

**Response:**

The Risk Management claims manual contains instructions on the standard procedures for handling certain types of claim made against a public entity, as well as contact and closure guidelines. It has served as a very useful tool for new claims staff. However, we agree with the auditor's recommendation to make our manual more comprehensive and cover the claim handling areas recommended by the auditor.

Safety & Claims management also agrees to the need for a claims processing manual and the claims supervisor is researching materials for inclusion in a such a manual. A manual will be prepared and maintained as soon as possible.

**Recommendation: The County should use an actuarial estimate of outstanding losses, discounted for investment income, for financial statement and funding purposes for liability and workers compensation programs**

**Response:**

We agree with this recommendation. Risk Management credits interest earnings against agency charges, so the have not ask that the actuary present net present value estimates for limited loss projections (limited to \$1 million per occurrence). We asked the actuary to provide net present value calculations of outstanding reserve estimates for catastrophic loss financing and these were provided in the 1999 study. We agree to ask the actuary to provide net present value calculations for Workers Compensation Financing.”

**Recommendation: The County should direct its actuary to calculate the net present value of outstanding loss reserves.**

**Response:**

We credit interest earnings against agency charges and, therefore, we have not asked that the actuary provide net present value estimates for limited loss projections (limited to \$1 million per occurrence). We have asked the actuary to provide net present value calculations of outstanding reserve estimates for catastrophic loss account and these were provided in the actuary's 1999 study.

**Recommendation: The County should employ the more traditional method, frequency times severity, instead of the average loss and percent change method, and a Bornhuetter-Ferguson method instead of the loss per exposure percent change method.**

**Response:**

We will discuss the auditor's recommendations with our actuary and ask that the most appropriate techniques be used in future studies.

**Conclusion: The recent deterioration in County liability loss experience threatens the small (\$600,000) equity balance in the primary liability fund.**

**Incidents with potentially catastrophic results could well exceed the current \$2 million surplus in the Catastrophe fund.**

**Response:**

We agree that there is a potential for losses to exceed reserves, and we continually examine the provisions we make for losses.

**Recommendation: The County should ask the actuary to include an amount for outstanding ULAE.**

**Response:**

We will ask the actuary to develop these projections.

**Recommendation: The County should obtain an updated actuarial estimate of funds needed for catastrophic losses and accrue the money necessary to meet future obligations.**

**Response:**

We will continue to annually obtain updated actuarial estimates of catastrophic loss reserves and have in place a plan to reserve monies necessary to meet future obligations.

**Recommendation: The County should streamline its program document by amending the insuring agreement to cover all liability for damages cause by an occurrence.**

**Response:**

The County's program document was developed to be similar to commercial insurance policies common in the insurance industry. This format was intended to ease underwriters concerns with coverage language.

We have always been interested in improving coverage and we will ask our coverage legal council for their opinion of this recommendation and if they do not have substantive concerns, we will ask our broker to incorporate this recommendation in marketing the renewal of our reinsurance program.

**Recommendation: The County should continue to annually review the availability and pricing of pollution coverage to determine if and when it might be a viable product to purchase.**

**Response:**

We agree with this recommendation.

**Recommendation: The County should obtain additional information on these and any similar programs and obtain formal proposals where warranted.**

**Response:**

We will ask our broker to explore these options in marketing the renewal of our reinsurance program.

### **General Comments**

We noted instances in which data presented in some report tables did not match similar data in other tables. However, we do not believe the presentations materially impact the auditor's overall conclusions and recommendations.