WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: INSURANCE

DATE: NOVEMBER 26, 2007

COMMITTEE MEMBERS PRESENT:		OTHERS PRESENT:
SUPERVISORS	GERAGHTY	AMY CLUTE, SELF-INSURANCE ADMINISTRATOR
	GIRARD	GEORGE BRIGATI - KBM MANAGEMENT
	MERLINO	WILLIAM THOMAS, CHAIRMAN
	SOKOL	PAUL DUSEK, COUNTY ATTORNEY
		NICOLE LIVINGSTON, DEPUTY CLERK OF THE BOARD
COMMITTEE MEMBERS ABSENT:		JOANN MCKINSTRY, DEPUTY COMMISSIONER OF ADMINISTRATIVE & FISCAL SERVICES
SUPERVISORS	F. THOMAS	SUPERVISOR BENTLEY
	HASKELL	DAVID STRAINER, SUPERVISOR ELECT - TOWN OF QUEENSBURY
	GABRIELS	AMANDA ALLEN, LEGISLATIVE OFFICE SPECIALIST

Mr. Geraghty called the meeting of the Insurance Committee to order at 1:30 p.m.

Motion was made by Mr. Girard, seconded by Mr. Merlino and carried unanimously to approve the minutes from the August 17, 2007 Committee meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Amy Clute, Self-Insurance Administrator, who distributed copies of the agenda to the Committee members. *A copy of the agenda is on file with the minutes.*

Ms. Clute advised that the first agenda item referred to a review of Workers' Compensation coverage. She reminded the Committee that during the prior year George Brigati, of KBM Management, had addressed the Committee with respect to this topic, at which time the Committee had decided to issue RFP's (Request for Proposal) for a Workers' Compensation TPA (Third Party Administrator) in addition to one for Excess Workers' Compensation coverage. Ms. Clute noted that Mr. Brigati was in attendance to discuss the results of the RFP's and in an effort to assist the Committee with their decision, she had prepared a document reflecting a review of administrative costs, a copy of which was included in the agenda.

Ms. Clute stated that it was important for the Committee to keep in mind that her Department was responsible for more than just Workers' Compensation coverage and that they handled the Disability; Property & Casualty; Health and Safety programs. She noted that approximately 73% of staff time was spent on Workers' Compensation related issues with that time being split evenly between managing the program and administering claims. In order to prepare the 'Cost of In-House Administration' document included in the agenda, Ms. Clute advised that she had compiled the current salary, benefits and taxes received by her staff and then multiplied that figure by the percentage of time spent on claims administration, which equaled a cost of $37,259 to administer claims on an in-house basis. She asked that the Committee keep this figure in mind during Mr. Brigati's presentation.

Privilege of the floor was extended to Mr. Brigati, who distributed copies of his proposal to the Committee members. *A copy of the proposal is on file with the minutes.*

Mr. Brigati began by advising that during his previous presentation, he had estimated a cost for a Workers' Compensation TPA as less than it would actually be. He explained that his estimation had been inaccurate because he had assumed that they would realize significant savings in coverage costs by implementing a TPA for management of the Compensation program, rather than using a self-administered program, as normally occurred in such situations.

Excess Workers' Compensation coverage was important, Mr. Brigati stated, because although a single injury claim was not likely to cost more than the amount of the self-insured retention (*deductible*), the possibility of a multiple injury claim occurring was always present and could greatly exceed the retention level. He explained that the current retention was $750,000 and it was his recommendation that they raise this to $1million, which was the standard retention enforced by the insurance industry for Volunteer Fire coverage, while eliminating the Employer's Liability coverage, leading to a significant premium savings for the County.

Mr. Brigati advised that the first source of recovery for any employee injured on the job was the employer through their Workers' Compensation coverage. He explained that the Employer's Liability coverage, which cost approximately $22,000 annually, was used secondary to the Workers' Compensation coverage. For example, Mr. Brigati advised, if an employee was injured while using a piece of equipment missing a safety guard, that employee could potentially sue the manufacturer of the equipment, rather than the employer, based on the fact that the equipment was missing the safety guard. In this case, he added, the manufacturer could counter-sue the employer because the equipment was missing the guard, at which point the Employer's Liability coverage would be used.

Employer's Liability coverage was carried through the basic Excess Workers' Compensation coverage already, Mr. Brigati apprised, and was subject to a $2 million limit and the same $750,000 retention. He noted that retention applied only once for either an Employer's Liability or a Workers' Compensation claim. Mr. Brigati stated that in light of this fact for a significant Employer's Liability claim to occur without first affecting the Workers' Compensation coverage, meaning that there would have to be significant injuries involved before the Employer's Liability coverage would be used. He reminded the Committee that in the past they had purchased a reduction in the Employer's Liability coverage, bringing the retention down to $50,000, for a premium in the range of $22,000 as compared to the basic Workers' Compensation premium which was approximately $200,000. Mr. Brigati stated that this vast difference in premium between the two policies implied that the insurance industry felt there was not a risk of significant claims against the Employer's Liability line of coverage. In addition, he said, he would also suggest dropping the Employer's Liability coverage because in the event of a claim requiring legal defense, the costs would be relatively close to the deductible, leaving no recovery from the insurance policy.

As for his second recommendation, Mr. Brigati advised that he would suggest raising the retention on the Excess Workers' Compensation coverage from $750,000 to $1 million. He directed the Committee to a chart included in his proposal which reflected that the County had paid a deposit of $184,934 for Excess Workers' Compensation coverage in 2007. He explained that these premiums were subject to audit of the actual payroll at the end of the year, with the insuring company charging the remainder of premium over and above the deposit upon completion of the audit. Mr. Brigati stated that in order to develop a figure for the Excess Workers' Compensation RFP, he had used the known payroll figures for 2006 and increased them by 3% per year to account for inflation. He pointed out that for the same coverage, with a $750,000 retention, (*exclusive of Volunteer Fire coverage which required a retention of $1 million*), and $25 million maximum, the premium would be $162,873 for 2008, which was a reduction of approximately 25%. Mr. Brigati advised that the coverage costs could be reduced to $155,117 by reducing the coverage maximum to $10 million; however, he said, if they chose to elect a policy with a statutory limit, meaning that it had no limit, the premium would be $178,385, still slightly less than what was being paid currently. Mr. Brigati advised that by retaining the same $25 million maximum coverage but raising the retention to $1 million, the coverage price would decrease to $118,024, while electing the statutory coverage with a $1 million retention would cost $129,219, still far less than the current coverage cost. He summarized that by implementing his suggestion to increase both the retention to $1 million and the coverage limit to statutory they would save almost $100,000 annually. Mr. Brigati added that the premium savings could be used internally to implement safety programs.

Mr. Geraghty asked what factors had caused the premiums to decrease and Mr. Brigati replied that, in this case, the insuring company had reduced the coverage costs simply through the pressure of the quotation process. He explained that although they had issued ten BOR (Broker of Record) agreements for quotations, they had received only one response for 2008 and that had been from the company the County was currently insured with (*Midwest Employers Casualty Company*). Mr. Brigati added that the reason for this was because many insuring companies were deterred from accepting municipality business due to the fact that coverage was required for both firefighters and police, both of which had a higher risk of multiple injury claims.

Paul Dusek, County Attorney, asked if the increased retention suggested would be $1 million per person in a claim situation and Mr. Brigati replied that if multiple injuries occurred from one incident the retention would be $1 million total for the claim. Upon Mr. Dusek's request for further clarification, Mr. Brigati explained that under the current policy the County was responsible for the $750,000 retention, at which point the Workers' Compensation coverage would begin, covering the claim to a maximum of $25 million and leaving anything over that amount for the County to pay. He further explained that if they chose to change the coverage retention to $1 million and with a statutory limit, as per his suggestion, the County would be responsible for the $1 million retention, at which point the insurance coverage would cover the extent of the claim costs. Mr. Dusek stated that by accepting Mr. Brigati's suggestion to increase the coverage limits, the County would have better coverage in the event of a catastrophic loss.

Mr. Brigati noted that although there was the risk for a Workers' Compensation claim to exceed the $1million retention, especially in the event of a multiple injury claim, in his experience he had never seen any compensation claim totaling an amount even close to this figure.

Discussion ensued with respect to the matter.

Mr. Girard read the following from Mr. Brigati's report:

> "*It will be unlikely that the County can recognize any significant cost reduction in the administration of this program by changing to a TPA. The program is operating at the lowest level of cost possible. The potential problem is that a slip in administration at any time can cost much more in claims costs and exposure than the dollars you would spend on external administration. Many counties across the state, including the larger ones, have converted to external administration over the years.*"

Mr. Girard asked if this statement was indicative that a TPA would eliminate any possibility of a mistake in the claims handling process and Mr. Brigati replied in the negative. He added that his statement was not intended to give such an impression, but rather to relate that a TPA was less likely to make mistakes such as these based on their extensive knowledge and experience relating to Compensation claims. For example, Mr. Brigati illustrated, one of his clients had experienced a claim wherein an 82-year old employee, and heavy smoker, involved in asbestos removal died suddenly from lung disease and a case was filed and won based on the lung disease being caused by asbestos exposure because a competent attorney team was not on board to properly handle the claim and review the possibilities of other avenues leading to the employees death.

Ms. Clute stated that her Department was running effectively; however, they had assumed all of the responsibilities they could and were now overrun. She said that in order to keep the Department running effectively and to avoid mistakes that might result from a lack of the proper amount of time to handle each case, they needed to either outsource some of the responsibilities or change things to make them more manageable. Ms. Clute distributed a document entitled 'Administration Cost Review' which outlined the current administration costs as compared to other options available to alleviate the stress being put on the Department. She detailed that Option #1 reflected the current cost of $309,493.83 as the total spent for the in-house staff, Excess Workers' Compensation coverage and Employer's Liability Insurance.

Option #2, Ms. Clute explained, illustrated the costs realized by outsourcing the claims administration to a TPA. She advised that the County would net a savings of $37,700 by eliminating the Employer's Liability Insurance and increasing the Workers' Compensation retention to $1 million, as per Mr. Brigati's suggestion, while including the costs for current in-house staff and the administrative fee for a TPA. She noted that Option #2 would allow the in-house staff to perform additional Property and Casualty Insurance and safety functions.

Ms. Clute advised that Option #3 would bring savings in the amount of $89,390.70, also by eliminating the Employer's Liability Insurance and increasing the Worker's Compensation retention to $1 million, while retaining the current in-house staff for claims administration. She noted that her Department's expertise was in the area of Worker's Compensation and the Committee might consider using the savings gained through this option to hire an in-house safety person, or risk manager, to provide property and casualty services on a part-time basis, thereby benefitting the entire program by serving as a loss control agent. At the same time, she said, this would free up staff time to appropriately address Workers' Compensation issues and claims.

Mr. Sokol noted that there seemed to be many open compensation cases and he asked who handled these and Ms. Clute replied that all Workers' Compensation cases were handled on an in-house basis. Mr. Sokol then asked if they were also in charge of investigating these cases and Ms. Clute replied affirmatively, adding that they utilized case management and investigators as needed, as well as legal staff, in addition to Mr. Dusek, and legal counsel that was dedicated for Workers' Compensation issues.

Mr. Brigati apprised that as part of his study he was required to determine the responsibilities of the program administration being provided at the Self-Insurance Department and he had found that Ms. Clute and her staff were doing a very good job. He added that the number of open compensation cases was normal and the problem with Workers' Compensation in the State of New York was that a Compensation claim really did not end until the claimant was deceased.

Mr. Sokol stated that it was his thought that they might be able to negotiate some of these cases to close them by negotiating settlements on a lesser amount. Ms. Clute replied that they were able to negotiate some cases, allowing for them to be closed; however, she noted, they had to be careful not to negotiate them before a permanency to the injury was detected. For example, she explained, settling a shoulder injury at 90% disability at the time of the injury could be an error as when the shoulder healed it could be found that there was actually no permanent injury.

Ms. Clute cited her biggest concern with the program was that her current staff included only herself and her assistant to handle the entire Self-Insurance program. She noted that if she was to experience a serious injury, such as when she had broken her neck earlier in the year, the program would suffer through a lack of staffing. Ms. Clute advised that when she had suffered her injury she had been advised to remain out of work, but had returned after only one day because of the lack of staffing.

Mr. Brigati pointed out that although it was impossible to eliminate claims altogether, they could be somewhat controlled through safety and other measures to be sure that claims were lessened when they did occur. He noted that health care costs were rising throughout the Country and a large part of Workers' Compensation costs were medical.

Mr. Geraghty asked if there was any guarantee that the Excess Workers' Compensation coverage would remain at the lower rates quoted and Mr. Brigati replied in the negative. He explained that the quotes were for a three-year term; however, he said, if they did increase the quotation process could be used again to review the retention and coverage limits to reduce premium costs.

Returning to Ms. Clute's 'Administrative Cost Review' document, Mr. Girard asked if the $89,390.70 savings cited in Option #3 would be sufficient to cover the salary of the safety person suggested and Ms. Clute replied affirmatively. He then asked if this person would need to be employed on a full-time basis and Mr. Brigati replied that it was his opinion that this could be a part-time position, although it would be favorable to hire someone with a safety engineering background to fill the position. He added that there were many persons retired from this field and it was his opinion that the County would have little trouble finding someone to fill the position.

Ms. Clute stated that her concern was that she was a specialist in the field of Workers' Compensation and if those services were out-sourced she would be assuming only the Safety and Property and Casualty programs. She noted that she was not objective to providing these services; however, she said, they were not within her area of expertise. Ms. Clute suggested that the Committee consider out-sourcing the Property and Casualty and Safety programs to a retired safety engineer, as per Mr. Brigati's suggestion, allowing her to continue to administer the Workers' Compensation program, to get the best value for County dollars.

Mr. Geraghty stated that the only problem with Ms. Clute's suggestion was that the Safety and Workers' Compensation programs went hand in hand while Safety and Property Casualty did not. The purpose of adding a safety person, he advised, was to manage the Compensation program and monitor open cases, as well as to post information regarding accidents, in hopes of avoiding them in the future, in addition to providing workplace safety education.

Discussion ensued.

Mr. Dusek advised that the most important decision to be made by the Committee was whether or not to accept Mr. Brigati's suggestion to eliminate the Employer's Liability coverage and revise the Excess Workers' Compensation coverage limits and retention. He added that revisions to the current coverage were most important because a decision had to be made prior to January 1, 2008. As far as the decision on hiring a TPA, Mr. Dusek stated that he would suggest interviewing the TPA candidates prior to choosing one; however, he said, there was no time restriction for this process.

Mr. Merlino asked if the County was responsible for paying for the Excess Workers' Compensation coverage for the Volunteer Fire Departments and Mr. Brigati replied in the negative, explaining that each Fire Department paid a premium to the Self-Insurance Department who administered the coverage. Mr. Merlino then asked Ms. Clute for her opinion on Mr. Brigati's proposal. Ms. Clute replied that as a taxpayer it was her feeling that they should consider whatever options saved County dollars. She added that although it would be easiest for her to outsource the work required of her Department and assume the position of managing the office, her expertise was in the area of Worker's Compensation and this was where she felt most comfortable. Ms. Clute stated that while she could certainly proceed with the Safety and Property and Casualty aspects of the Department if the Committee chose to hire a TPA for the Workers' Compensation program, it was her feeling that the County would get the best value for its dollars by allowing her to continue to administer the Compensation programs and hire additional part-time staff to handle the Safety and Property and Casualty programs. In addition, she noted, the County would benefit from the addition of personnel intended to improve safety measures, as most Counties had already done. Ms. Clute apprised that she had performed a study of surrounding Counties and had found that although the addition of a TPA was intended to reduce costs, those Municipalities working with a TPA were actually realizing higher budget increases than those without.

Mr. Sokol asked if an attempt was being made to bring those injured employees previously involved in heavy duty work back on a light duty basis and Ms. Clute replied affirmatively. She explained that in every Compensation case the attempt was made to return the employee to work on a transitional basis, thus allowing them to perform light duty work. Ms. Clute added that the ability to do this varied by Department and by Town, as some were willing to work out arrangements to meet this end while others were not. She said that the County might consider implementing more formal programs to improve results in this area.

Discussion ensued.

Motion was made by Mr. Girard, seconded by Mr. Sokol and carried unanimously to accept Mr. Brigati's proposal to increase the self-insured retention of the Excess Workers' Compensation coverage to $1 million and also to change the limit of the coverage to statutory, and the necessary resolution was authorized for the December 21st Board meeting. *A copy of the resolution request form is on file with the minutes.*

Motion was made by Mr. Girard, seconded by Mr. Merlino and carried unanimously to accept Mr. Brigati's proposal to eliminate the Employer's Liability coverage, and the necessary resolution was authorized for the December 21st Board meeting. *A copy of the resolution request form is on file with the minutes.*

Motion was made by Mr. Sokol, seconded by Mr. Merlino and carried unanimously that executive session be declared in order to discuss matters leading to the employment of a particular person, pursuant to Section 105(f) of the Public Officers Law.

Executive session was declared from 2:24 p.m. to 2:45 p.m.

Upon reconvening, motion was made by Mr. Sokol, seconded by Mr. Girard and carried unanimously to table discussion regarding the decision to hire a TPA.

Motion was made by Mr. Girard, seconded by Mr. Sokol and carried unanimously to authorize an RFP to institute a safety program within the County.

Ms. Clute reminded the Committee that each year a resolution was passed allowing her to transfer any leftover funds within her Budget to the reserve fund and she advised that the agenda included a resolution request to this affect.

Mr. Geraghty asked what the amount of the transfer would be and Ms. Clute replied that she was unsure as not all of the invoices requiring payment for 2007 had been received; however, she advised, it appeared that there would be funds leftover. Ms. Clute noted that this resolution was passed each year without a specific figure for transfer, it simply allowed her to transfer any remaining funds.

Motion was made by Mr. Merlino, seconded by Mr. Sokol and carried unanimously to approve the request to transfer unencumbered monies from the Self-Insurance Fund to the Contributory Reserve and the necessary resolution was authorized for the December 21st Board meeting. *A copy of the request is on file with the minutes.*

Ms. Clute apprised that her final order of business was to inform the Committee that Cool Insuring Agency, the current Property Insurance broker, required a meeting for presentation of coverage specifics prior to the December 21st Board meeting. She noted that they had requested a meeting on December 20th, the day prior to the Board meeting, and she asked if the Committee was in agreement with this date.

Although Mr. Girard stated that he would be unavailable for the meeting, it was the consensus of the Committee that the meeting would be scheduled for 9:30 a.m. on December 20th.

As there was no further business to come before the Insurance Committee, on motion made by Mr. Merlino and seconded by Mr. Girard, Mr. Geraghty adjourned the meeting at 2:49 p.m.

Respectfully submitted,
Amanda Allen, Legislative Office Specialist