

# SURVEY OF LEGAL COSTS

JULY 2000 to JUNE 2001

## INTRODUCTION AND STATUTORY HISTORY

In 1997, the Minnesota Legislature passed a law requiring the Office of the State Auditor (OSA) to collect information on the costs of legal services incurred by all counties, certain cities and most school districts. This is the fifth report issued under the law. The law states that:

*(a) On or before January 1, 1998, and each year thereafter, the state auditor shall collect from all counties, cities of the first, second, and third class, and school districts with enrollment exceeding 100 students, information as to expenditure of public funds for legal services incurred to defend the entity from lawsuits and amounts paid in voluntary settlements or judgments in any lawsuit. The data must include costs incurred for any fees paid as retainers for outside counsel. Fees paid for attorneys who perform work on criminal or prosecutorial matters must be reported.*

*(b) The state auditor shall make and file, annually, in the state auditor's office a summary report of the information collected. Copies of the report may be made and distributed to interested persons and governmental units.*

Minnesota Statutes, section 6.77 (2001).

The purpose of the law is to gather information from local governments on the costs of managing legal-related matters. The statute requires the OSA to collect from local government entities information about the expenditure of public funds to obtain legal services and represent or defend that entity against a legal claim. Therefore, all kinds of legal expenditure data is sought whether or not the legal-related matters rise to the level of a lawsuit filed in a judicial court of law.

Reported expenditures are for the period between July 1, 2000, and June 30, 2001. It is important to recognize that not every county, city, or school district that reported its expenditures in the OSA survey did so uniformly. Because what constitutes a "legal" expenditure is subject to multiple interpretations, each government entity may report differently. Also, different personnel (e.g., attorneys, administrators, managers, and clerks) complete the survey in each entity. Further, the figures in this report are unaudited financial data provided to the OSA by the responding entities; therefore, the OSA makes no representation as to its accuracy. The reader should be aware of these factors when reviewing the data reported by the local government entities.

## SURVEYED ENTITIES

The OSA mailed a survey to each local government requesting the legal cost expenditure data. The complete list of counties, cities, and school districts that received a survey are listed in their respective expenditure tables beginning on page ten. The survey appears in the Appendix.

The OSA also requested legal cost expenditure information from the insurance trusts representing counties, cities, and school districts. The Minnesota Counties Insurance Trust (MCIT)<sup>1</sup>, the League of Minnesota Cities Insurance Trust (LMCIT)<sup>2</sup>, and the Minnesota School Boards Association Insurance Trust (MSBAIT)<sup>3</sup> provide general liability and workers' compensation insurance to local units of government through joint powers agreements. In each of the three joint powers agreements, payments made by the local units of government to participate are invested. The income from the premiums and investments is used to pay fees, costs, settlements, and judgments on behalf of the participating government units.

Each of the surveyed local government entities was requested to report only the amounts for which the entity expended public funds for legal services, voluntary settlements, or judgments. These costs include:

- 1) amounts paid to city or county attorneys for legal advice or representation in the handling of claims or lawsuits;

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<sup>1</sup> The Minnesota Counties Insurance Trust (MCIT) is a joint powers organization sponsored by the Association of Minnesota Counties. The MCIT was formed in the early 1980s when many counties chose to leave the commercial insurance market and create a nonprofit, tax-exempt public entity pool as a means to self-insure. Through a joint powers agreement, the MCIT provides property/casualty, public officials', auto, auto physical damage, and police professional liability coverage. The MCIT organization provides insurance coverage to 83 of Minnesota's 87 counties. Counties that do not receive insurance coverage through MCIT are Dakota, Hennepin, Olmstead, and St. Louis. Ramsey and Itasca Counties receive only property/casualty insurance coverage through the MCIT. Anoka County receives only workers' compensation through the MCIT.

<sup>2</sup> The League of Minnesota Cities Insurance Trust (LMCIT) is a cooperative joint powers organization that provides partial or full insurance coverage to 817 of Minnesota's 854 cities. The organization is a self-insurance pool formed in 1980 in which the participating cities contribute premiums into a jointly owned fund used to finance the coverage. It offers several types of insurance coverage including workers' compensation for city employees and property/casualty insurance. The liability coverage provides the equivalent of general liability for public officials' errors and omissions, law enforcement, and other liability needs. Additional optional coverage offered by LMCIT include excess liability, open meeting law defense, boiler and machinery, public officials' bond, and underground tank coverage to supplement the Petrofund. The LMCIT does not provide any insurance coverage for the self-insured cities of Minneapolis, St. Paul, and Duluth.

<sup>3</sup> The Minnesota School Board Association Insurance Trust (MSBAIT) operates as a joint powers agreement. It provides workers' compensation and property/casualty coverage to participating school districts.

- 2) amounts paid as fees or retainers to private attorneys for legal advice or representation in the handling of claims or lawsuits not covered by insurance; and,
- 3) amounts paid to outside counsel to perform legal services for criminal or prosecutorial matters.

The surveyed entities were also requested to report all public funds paid to defend or settle actions, or pay judgments, involving such things as tax claims, pollution claims, union grievances, re-employment claims, claims involving publicly owned nursing homes, hospitals, or airports, and any third party claims not covered by insurance.

The entities were asked not to report any amounts paid on their behalf by an insurance trust organization or private insurer.<sup>4</sup> Funds paid on behalf of the entities by MCIT, LMCIT, or MSBAIT were reported to the OSA by the respective insurance trust organization, and these amounts are identified separately in this report.

## **RESPONSE TO SURVEY**

The OSA sent the survey to all 87 counties, the 82 first, second, and third class cities, and 369 school districts with enrollments exceeding 100 students.<sup>5</sup> Responses were obtained from 71 counties, 76 cities, and 345 school districts. The figures obtained from the survey are contained in the expenditure tables under the heading “OSA Survey.” Again, these figures represent unaudited financial data. Also, some entities reported no legal cost expenditures associated with civil matters. The OSA notes that the zero expenditure figure reported by some entities may be inconsistent with expenditure data contained in annual audited financial statements submitted to the OSA. As such, the OSA makes no representation as to the accuracy of the figures contained in the tables.

In addition, the OSA received information on 83 counties from MCIT<sup>6</sup>; 76 of the 82 surveyed cities from LMCIT<sup>7</sup>; and 342 of the 369 surveyed school districts from MSBAIT.

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<sup>4</sup> No information was obtained from private insurers, because funds expended by a private insurer would not constitute public funds.

<sup>5</sup> The OSA obtained a mailing list of school districts from the Minnesota Department of Children, Families, and Learning.

<sup>6</sup> The MCIT information for Itasca County only included funds paid out for property/casualty insurance coverage. Ramsey County, although a MCIT member, has only limited coverage. The MCIT data for Anoka County only included funds paid out for workers’ compensation. Dakota, Hennepin, Olmsted, and St. Louis counties are not members of the MCIT.

<sup>7</sup> The cities of Duluth, Edina, Minneapolis, and St. Paul are self-insured and not included in the LMCIT information. The LMCIT information for Faribault and Rochester only included funds paid for property/casualty insurance coverage. These cities do not obtain workers’ compensation coverage through LMCIT. The LMCIT information for Chanhassen, Columbia Heights, St. Cloud, and Vadnais Heights only included funds paid out for workers’ compensation coverage. These cities do not obtain property/casualty insurance coverage through LMCIT.

## EXPLANATION OF EXPENDITURE TABLES

### OSA Survey Responses

The first five columns in each table contain the information the local government entities provided in response to the OSA survey. An explanation of these columns is as follows:

- **Legal Services -- Civil** represents the total amount of public funds expended by the governmental entity for civil legal services to represent and defend the entity in any legal claim or lawsuit, or for legal advice. It also includes the cost of local government staff working on civil matters, and retainers and fees paid to outside counsel.
- **Legal Services -- Criminal** represents the amount of public funds expended by counties or cities for outside counsel legal costs in criminal or prosecutorial matters. The survey instructions made it clear that entities were not to include or attempt to estimate the county or city attorney budget or any pro rata portion of the entity's budget expended for criminal or prosecutorial costs. Rather, the entities were only to report direct expenditures for outside legal counsel who handle criminal or prosecutorial matters
- **Voluntary Settlements** represents the total amount of public funds paid by the governmental entity as voluntary settlements in any dispute against the entity, regardless of whether a lawsuit was filed or pending.
- **Judgments** are the total amount of public funds expended by the entity in payment of all judgments obtained against it.
- **Total County Funds Expended, Total City Funds Expended, and Total School District Funds Expended** represents the total of the first four columns.

### County Table

Information was provided by MCIT regarding attorney fees and indemnity payments for workers' compensation and property/casualty claims incurred on behalf of the counties for which it provides insurance coverage.<sup>8</sup> This information is reported in the columns following the OSA survey response information. An explanation of these columns is as follows:

- **Workers' Compensation -- Legal Fees** represents amounts paid to counsel to defend assigned workers' compensation matters. It does not include costs associated with the defense of the case, such as mileage, filing fees, depositions, copies, etc.
- **Workers' Compensation -- Indemnity Payments** represents amounts paid to injured employees for claims including lump sum settlements, lost wages, disability payments,

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<sup>8</sup> The MCIT did not provide the OSA with information regarding expenses incurred on behalf of the counties associated with the defense of any claims.

impairment compensation, economic recovery compensation, monitoring period compensation, supplemental benefits, retraining benefits, and death/dependency benefits.

- ***Property/Casualty -- Legal Fees*** represents amounts paid to counsel to defend assigned property/casualty matters. It does not include expenses associated with the defense of the case, such as mileage, filing fees, depositions, copies, etc.
- ***Property/Casualty -- Indemnity Payments*** represents judgments and voluntary settlements paid to a plaintiff with regard to property/casualty claims against the insured county.
- ***Total Reported Funds Expended*** represents the total funds expended by each county, as noted in the fifth column of the Table, plus all of the funds expended on behalf of the respective county as reported by MCIT.

### **City Table**

Information was provided by LMCIT regarding costs of workers' compensation and property/casualty claims incurred on behalf of those cities for which it provides insurance coverage. This information is reported in the columns following the OSA survey response information. An explanation of these columns is as follows:

- ***Workers' Compensation -- Medical/Rehab Payments*** represents benefits paid on behalf of or to injured employees for medical and rehabilitation expenses with regard to workers' compensation claims.
- ***Workers' Compensation -- Indemnity Benefit Payments*** represents amounts paid to employees for workers' compensation claims, including disability payments, dependency benefits, funeral allowances, impairment compensation, and economic recovery compensation. This amount does not include judgments, awards, or stipulations.
- ***Workers' Compensation -- Legal Fees, Costs & Expenses*** represents the legal fees, costs, and expenses incurred in defending the workers' compensation matters. The figure includes attorneys' fees, paralegal fees, expert witness fees, as well as costs and expenses directly attributable to legal defense of the claims.
- ***Workers' Compensation -- Judgments & Settlements*** represents amounts paid to injured employee claimants as judgments, awards, and stipulations on workers' compensation claims.
- ***Property/Casualty -- Legal Fees, Costs & Expenses*** represents the amounts paid for expenses incurred with regard to property/casualty claims. This category includes all expense items such as attorneys' fees, expert witness fees, independent medical examination fees, witness fees, travel expenses, court reporter fees, transcript fees, and all other fees, costs, or expenses associated with the investigation, negotiation, settlement, or defense of any property/casualty claim or for the collection of any subrogation claims.

- ***Property/Casualty -- Judgments & Settlements*** represents the amounts paid to LMCIT members with regard to property/casualty coverage. This category includes first party claims involving losses to covered property (i.e., buildings, contents of buildings, vehicles, and equipment) and to third parties for the settlement of their claims for damages (i.e., property damage and bodily injury) made against the LMCIT member.
- ***Total Reported Funds Expended*** represents the total funds expended by each city, as noted in the fifth column of the table, plus all of the funds expended on behalf of the respective city as reported by LMCIT.

## School District Table

Information was provided by MSBAIT regarding the cost of workers' compensation and property/casualty claims incurred on behalf of the school districts for which it provides insurance coverage. This information is reported in the columns following the OSA survey response information. An explanation of these columns is as follows:

- ***Workers' Compensation -- Medical/Rehab Payments*** represents benefits paid on behalf of or to injured employees for medical and rehabilitation expenses with regard to workers' compensation claims.
- ***Workers' Compensation -- Indemnity Benefit Payments*** represents amounts paid to injured employees for workers' compensation claims, including disability payments, dependency benefits, funeral allowances, impairment compensation, and economic recovery compensation. This amount does not include judgments, awards, or stipulations.
- ***Workers' Compensation -- Legal Fees, Costs & Expenses***, represents the legal fees, costs, and expenses incurred in defending the workers' compensation matters. The figure includes attorneys' fees, paralegal fees, expert witness fees, as well as costs and expenses directly attributable to legal defense of the claims.
- ***Workers' Compensation -- Judgments & Settlements*** represents amounts paid to injured employee claimants as judgments, awards, and stipulations for workers' compensation claims.
- ***Property/Casualty -- Legal Fees, Costs & Expenses*** represents the amounts paid for expenses incurred with regard to property/casualty claims. This category includes all expense items such as attorneys' fees, expert witness fees, independent medical examination fees, witness fees, travel expenses, court reporter fees, transcript fees, and all other fees, costs, or expenses associated with the investigation, negotiation, settlement, or defense of any property/casualty claim or for the collection of any subrogation claims.
- ***Property/Casualty -- Judgments & Settlements*** represents the amounts paid to LMCIT members with regard to property/casualty coverage. This category includes first party claims involving losses to covered property (i.e., buildings, contents of buildings, vehicles, and equipment) and to third parties for the settlement of their claims for damages (i.e., property damage and bodily injury) made against the LMCIT member.

- ***Total Reported Funds Expended***, represents the total funds expended by each school district, as noted in column five, plus the total funds expended on behalf of the respective school district as reported by MSBAIT, less any recovered losses and costs obtained by MSBAIT as noted in column twelve.

## CONCLUSION

This report was prepared by the Office of the State Auditor (OSA) in compliance with Minnesota Statutes, section 6.77, for the purpose of gathering legal expenditure information from counties, cities of the first, second, and third class, and school districts with enrollment exceeding 100 students. The figures provided in the tables represent all legal and legal-related fees and costs incurred by, or on behalf of, these local government units for the time period of July 1, 2000, through June 30, 2001. All figures reported are unaudited financial data provided by the surveyed entities or their respective insurance trust organizations; therefore, the OSA makes no representation as to its accuracy.

While this report is one source of information for local government entity legal expenditure data, it should be noted that no specific information is provided regarding the number of claims made by or against each local government unit, the size of the claims, or the nature of the claims. For information about the underlying claims or purposes for the expenditures that were the basis for the data in the tables, the government entity and insurance trust should be contacted directly. Further, when reviewing the data in this report, the reader should recognize that there are many demographic and geographic differences among the entities surveyed that may affect the legal costs incurred such as the size, location, and population or enrollment of the entity.