



**Durham County Audit Department**

**Performance Audit  
Of  
Third Party Collections  
County Attorney  
Risk Management Division**

**February 19, 2015**



Richard Edwards  
Internal Audit Director  
[rcedwards@dconnc.gov](mailto:rcedwards@dconnc.gov)

Internal Audit Department  
200 E. Main Street, 4<sup>th</sup> Floor  
Durham, NC 27701  
(919) 560-0042  
FAX: (919)560-0057

Audit Committee:  
Harrison Shannon  
Brenda Howerton  
Michael Page  
Manuel Rojas  
Arnold Gordon

February 19, 2016

Mr. Wendell Davis,  
County Manager

Dear Mr. Davis:

Internal Audit has completed its review of the Risk Management's Divisions third-party collection activities. The review resulted in three recommendations. The recommendations are to (1) develop operational policies and procedures for use by departments for directing incident reporting, (2) work with the Human Resources Department to revise and clarify the Alcohol and Substance Abuse policy, and (3) work with the Office of the Sheriff and the Human Resources Department to develop policies for vehicle use and alcohol and substance abuse that allows for inclusion of the Office of the Sheriff.

The Risk Management Division and the Legal Department agrees with the recommendations and have commented accordingly. Their comments are included in the report as appendix 1.

I appreciate the cooperation and assistance of the Risk Manager and his staff, Sheriff's Office officials, and Human Resource Department personnel in advising and consulting on this report.

Sincerely,

Richard Edwards,  
Internal Audit Director

CC:

Audit Oversight Committee  
Board of County Commissioner  
George Quick, Finance Officer

## **Introduction**

---

This performance audit of Third-Party collection processes by the County Attorney's Risk Management Division (Risk Management) was conducted pursuant to the September 12, 2005, Audit Department Charter which establishes the Audit Oversight Committee and the Audit Department, and outlines the internal auditor's primary duties.

A performance audit is an engagement that provides assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.<sup>1</sup>

## **Audit Objective**

---

This audit answered the following questions:

1. Does the Risk Management Division have a program to seek restitution for accidents and other incidents in which the County has a legitimate monetary claim?
2. What is Risk Management's record of effectiveness for collecting the above claims?

## **Scope and Methodology**

---

Internal Audit conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that I plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. I believe the evidence obtained provides a reasonable basis for the findings and conclusions based upon the audit objectives. Fieldwork was conducted from September 14, 2015 to November 13, 2015.

Audit methods included:

1. Interviewing Risk Management Division representatives.
2. Interviewing various department heads and representatives including the Office of the Sheriff.
3. Reviewing incident data provided by the Risk Management Division.

---

<sup>1</sup> Comptroller General of the United States, *Government Auditing Standards*, Washington DC: U.S. Governmental Accountability Office, 2011, pp. 17

4. Reviewing County policies and procedures.
5. Gathering benchmarking data from several counties.

## **Background**

---

Risk Management is a division within the Office of the County Attorney. Its mission, according to the *Fiscal Year 2015-2016 Approved Budget*, is to purchase liability insurance as well as handle claims against the County to resolve them prior to any court action being necessary. In addition to handling claims against the County, the division also has responsibility to identify and pursue claims against other parties responsible for damages the County incurs. This report focuses on the processes to obtain restitution for damages when third parties are liable. Such collection efforts are commonly defined as subrogation and the referenced third party includes but is not limited to owners or drivers of other vehicles involved in the accident and/or their respective insurance companies.

Much of Risk Management's subrogation efforts are related to automobile accidents including auto physical damage whereby more than one vehicle was damaged and property damages whereby one vehicle may have damaged a gate, for example. During the period of January 2014 to September 2015, the Office of the Sheriff and the EMS and General Services Departments generated the majority of activity for Risk Management. Those three entities accounted for \$180,485.44 of the \$222,525.66 of the damages the County incurred during that period.

Obtaining restitution for claims against third parties can be a lengthy process and does not always result in a successful collection. We contacted several counties to obtain information regarding their subrogation programs. Two of the three that responded said they do not put much effort into the subrogation program because of its lengthy and time consuming nature and uncertain results.

---

## **Findings and Analysis**

---

Risk Management has an active subrogation program. Its subrogation efforts include any legal means necessary to obtain restitution in each incident. However, there is uncertainty on the part of the Risk Manager as to whether operating departments are providing timely and complete information. This audit report recommends that the Division develop written operational policies and procedures that include instructions, forms, etc., to facilitate and guide departments in their efforts to provide Risk Management with the necessary information in a timely and complete manner. The Risk Manager agrees that written policies and procedures are needed and has agreed to develop and implement them over the next several months.

Because Risk Management is responsible for processing automobile related claims without regards to whether they were caused by a County employee or a third party, we reviewed the pertinent County policies relating to automobile accidents. Those policies are the Vehicle Operations and Alcohol and Substance Abuse policies. The Vehicle Operations policy is managed by Risk Management. The Alcohol and Substance Abuse policy is managed by Human Resources. Those policies are, in part, designed to prohibit the operation of County equipment and/or vehicles by an employee who may be under the influence of a substance and/or alcohol. By establishing these policies, the County strives to eliminate the risk of public embarrassment and costly litigation caused by employees working while under the influence.

Currently, the Division's largest client, in terms of the number of auto accidents, is the Office of the Sheriff, but the Alcohol and Substance Abuse policy exempts the Office from compliance. Although the Office of the Sheriff has a system to review accidents by deputies, this report recommends that Human Resources, along with the Risk Management Division, work with the Office of the Sheriff to include them in safety and risk management related policies concerning vehicle use and the County's Alcohol and Substance abuse policies.

### **The Subrogation Program is Active and On-going.**

Risk Management's philosophy is that it will pursue each claim. Recognizing that subrogation efforts can be time consuming and yield collection results that don't match the effort, it has entered into a contract with a subrogation services vendor to assist with difficult collection cases, e.g., cases for which claims were rejected, lack of response, or other such difficulties. This enhancement to the subrogation program allows Risk Management to identify assets of third parties to determine whether they are judgement proof and it allows Risk Management to more accurately capture the full extent of the County's damages by providing third party appraisal services. The contract agreement with Fleet Response became effective July 29, 2015. Fleet Response is paid 17 percent of the amount it collects plus miscellaneous fees for such services as obtaining a vehicle report.

From the point of entry into the contract through September 2015, Risk Management referred 13 incidents of various circumstances to Fleet Response. Again, these were difficult cases to collect, however; Fleet Response collected on five cases for a sum of approximately \$2,700. It is reasonable to say that those collections, although small, would not have taken place without the aid of the contractor. Resources of the County were not used inefficiently to pursue those cases.

## Risk Management's Record of Effectiveness?

Our analysis of first party automobile physical and property damage

We could not benchmark the Division's results because other counties we contacted either did not maintain the information we sought or they did not respond to our requests for information.

subrogation claims information provided by Risk Management for the period January 15, 2014, to September 16, 2015, found that \$136,932.92 was collected through subrogation efforts. That amounted to about 62 percent of the County's incurred losses for those claims and about 87 percent of the subrogation demand. Outstanding claims are still being pursued.

The following exhibit shows the results of the subrogation efforts by category of damages during the period cited above.

### Exhibit 1 Durham County Collection Experience

	County Costs	Subrogation Demand <sup>2</sup>	Subrogation Collected
Auto Vehicles	\$172,083.18	\$169,254.56	\$111,772.90
Property Damages	\$50,442.48	\$25,442.48	\$25,160.02
Totals	\$222,525.66	\$194,697.04	\$136,932.92

Source: Information provided by the Risk Management Division.

As stated, we could not benchmark Durham's collection results with other counties in the state. However, we do not have reason to believe that Durham's efforts are not first rate. Some claims cannot be collected for various reasons. For example, a citizen struck and damaged an EMS vehicle for which the estimated damages amounted to \$60,617. The driver was covered for \$25,000, the amount collected, however the balance of \$35, 617 was uncollectable because the individual driver was found to be judgment proof; having no assets for the County to pursue in their individual capacity.

#### **All Incidents and Costs May not be Reported to Risk Management.**

The Risk Manager voiced concerns that because Risk Management is not financially responsible for the County's first party property damage claims that all incidents may not be reported and some are not reported timely. To illustrate the concern, the Risk Manager provided documents in which several incidents were reported more than a week after they occurred, while the preferred timing is within twenty-four hours of the incident. The Risk Manager also expressed concerns that incident reports may not include all losses that occur. For example, the Risk Manager believes some damages are going

<sup>2</sup> Subrogation demand and the County's costs differ because of factors such as negotiated settlement, assessor strategies, lawsuits or potential lawsuits, insurance coverages, and contractual agreements.

unreported such as towing costs, or equipment inside or attached to the vehicle. Unreported or incomplete reports put the County at financial risk by undermining Risk Management's mission to... "handle claims against the County to resolve them prior to any court action being necessary." Because information is sometimes incomplete, it undermines the ability to develop programs to potentially limit accidents. Also, the lack of complete and timely reporting hinders the ability to provide reliable information for actuarial studies, insurance carrier reporting, or could hinder the processing necessary to obtain benefits such as worker's compensation.

Internal Audit discussed this issue with representatives of the General Services Department and the Office of the Sheriff, two of the entities with the greater number of incidents. The two representatives said they believe they do a good job of collecting and providing information to Risk Management. However, upon further questioning regarding costs beyond vehicle repair costs, one representative said he had not thought about such costs. One representative responded that he thought he did a good job of reporting all costs and related an instance in which a piece of equipment inside the vehicle was damaged. Neither of the representatives said they reported towing costs when preparing incident reports. Both representatives said they are willing to provide Risk Management with the needed data and would welcome further instructions from Risk Management.

In order to improve departmental reporting efforts for timely and complete incident reporting, this report recommends that Risk Management develop policies and procedures providing the necessary instructions to facilitate obtaining the data it needs to better manage Risk Management programs. Best practices state that policies and procedures:

- serve as a basic communications tool,
- is an excellent training resource,
- serves as written documentation, and
- saves time.

**Current policy needs clarity.** Although written policies have not been developed exclusively for Risk Management operations, the County has written policies that address vehicle use and alcohol and substance abuse. The Vehicle Operations policy, a Risk Management policy, states that all high risk drivers are required to undergo post-accident drug testing.<sup>3</sup> The Alcohol and Substance Abuse policy, a Human Resources policy, mandates an alcohol or drug test after a work related accident where it is determined that the employee is at fault for causing the accident. In both policies, the time-line established for taking a test is unclear; citing "reasonable time" as the timeliness criteria. Additionally, the alcohol and substance abuse policy states that testing is to be done when it is determined that the employee is at fault. The County has used the police report from the accident to determine who is at fault as the determining factor used for post-screen tests, however; such a determination is not always made. Timeliness is critical to alcohol and

---

<sup>3</sup> Taken from the Vehicle Operations Policy: "Examples of high risk positions include, but are not limited to (1) Fire Marshal and Emergency Management Personnel, (2) Emergency Medical Services Personnel, (3) Youth Detention Counselors, (4) Animal Control Officers, (5) Social Workers, and (6) other services where personnel regularly transport clients."

substance abuse testing, therefore; the policy needs to be more specific regarding timeliness of drug testing and determination of fault.

The Alcohol and Substance Abuse policy is a designed to eliminate the risk of continued incidents involved with substance and alcohol use. Internal Audit believes all departments and County affiliated entities should operate under the same policy umbrella because the Risk Management function serves all County entities. The Sheriff is amenable to adhering to the County's Alcohol and Substance Abuse policies pending modifications.

---

## **Conclusions and Recommendations**

---

Risk Management's subrogation efforts are vigorous and the Risk Manager has taken steps to make collection efforts reasonable by assuring the potential payoff is in line with the resources expended. As such, the Division has contracted with a third-party collection agent to pursue difficult claims. Although, collection efforts are vigorous, the program's overall effectiveness has the potential to be limited by the lack of policies regarding complete and timely reporting by departments. Also, issues related to risk management such as the vehicle use and alcohol and substance abuse policies need to be revised for clarification and administrative purposes.

To improve the program, Internal Audit recommends the following:

1. Risk Management should develop operational policies and procedures for use by departments for directing incident reporting. These policies and procedures should include updated forms required to itemize losses and set requirements for timely reporting.
2. Work with the Human Resources department to revise the Alcohol and Substance Abuse policy where it addresses the circumstances for and timeliness of alcohol or substance testing.
3. Work with the Office of the Sheriff and the Human Resources Department to develop policies for vehicle use and alcohol and substance abuse that allows for inclusion of the Office of the Sheriff.



## Appendix: Attorney Comments



County Attorney

02/17/2016

To: Richard Edwards, Internal Audit Director

From: David English, Risk Manager  
Lowell Siler, County Attorney

Re: Audit of Durham County's Third-Party Collection Program

The County Attorney's Risk Management Division has carefully reviewed your final Performance Audit Report regarding our Third-Party Collection Program. We thank you for your favorable conclusions and welcome the recommendations you have made to improve our subrogation efforts.

The Risk Management Division's subrogation program has yielded over \$136,000 in collections for claims occurring within the review period (January 15, 2014 to September 16, 2015) and since the conclusion of this study we have recovered an additional \$13,000. We've also recently enhanced the program by utilizing a subrogation vendor to assist in collections and to appropriately capture the County's full damages. Collections made thus far in FY2016 make this year our most successful year ever.

Our responses to your recommendations are below:

1. Risk Management should develop operational policies and procedures for use by departments for directing incident reporting. These policies and procedures should include updated forms to itemize losses and set requirements for timely reporting.

We concur. Risk Management agrees that claims policies and procedures, that include information on the subrogation process, are needed and is working to develop a Claims Manual by October 2016.

2. Work with the Human Resources department to revise the Alcohol and Substance Abuse policy where it addresses the circumstances for and timeliness of alcohol or substance testing.

We concur. Risk Management will work with Human Resources to review the Alcohol and Substance Abuse policy to address ambiguous items.

ADMINISTRATIVE BUILDING | P.O. BOX 3508, DURHAM, NC 27702  
(919) 560- 0717 | Fax (919) 560- 0714 | [WWW.DCONC.GOV](http://WWW.DCONC.GOV)  
Equal Employment/Affirmative Action Employer



## County Attorney

3. Work with the Office of the Sheriff and the Human Resources Department to develop policies for vehicle use and alcohol and substance abuse that allows for inclusion of the Office of the Sheriff.

We concur with reservations. It is Risk Management's understanding that the County cannot impose policy on the County's Sheriff Department. The County's Vehicle Operations Policy (Revised September 10, 2001) establishes guidelines and requirements for the operations of *all* County vehicles. However, it is our understanding, that the Sheriff's Department has not adopted this policy. Risk Management plans on updating and enhancing the Vehicle Operations Policy in 2016 and will strive to work with the Sheriff's Department Staff to develop a policy they will support and adhere to.

Human Resources' Alcohol and Substance Abuse policy specifically excludes the Sheriff's Department. Risk Management will support efforts to include the Sheriff's Department in the County's Alcohol and Substance Abuse policy.

Sincerely,

*David English*

David A. English  
Risk Manager  
(919) 560-0045  
denglish@dconc.gov