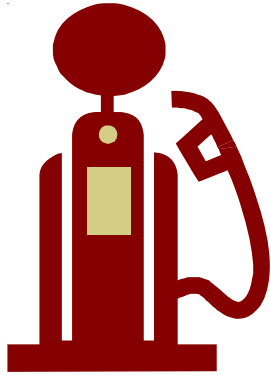


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## Director's Column

Like many tasks, driving is not what it used to be. Forty-five years ago in Minnesota, there were 2 million fewer drivers, 2.8 million fewer vehicles and 40 billion fewer miles to navigate. To keep pace with the ever-changing landscape of driving, the Minnesota Department of Transportation has developed an online training course that can help everyone be a better driver.



The five-topic course addresses important defensive driving skills such as understanding safe driving practices in unsafe circumstances, identifying risks imposed by other drivers, recognizing poor driving habits, and more.

The course is available to all state employees, free of charge, and takes about three hours to complete. If the course can't be tackled all at once, it can be taken in intervals by exiting the training and relaunching at a later time. Upon course completion, a certificate is awarded.

A link to the online training is on the Risk Management Division website, [www.mainserver.state.mn.us/risk](http://www.mainserver.state.mn.us/risk); or [www.admin.state.mn.us/def\\_driving/index.html](http://www.admin.state.mn.us/def_driving/index.html).

As winter approaches and weather conditions make driving especially hazardous, take time now to hone your defensive driving skills. After all, you're in the driver's seat!

## Dividends and How They Work

The Risk Management Division (RMD) has just paid its 13<sup>th</sup> dividend in 14 years! Eligible policyholders have received their share of a \$604,755 dividend for auto liability and general liability. That's all well and good, but how, exactly, does one calculate a dividend?

Three lines of business are eligible for dividends – property, automobile liability and general liability. Dividend declarations vary by line of insurance and the maturity, or conclusion, of claims.

**Property** losses have the shortest maturity and payment payout, so dividends are generated quickly, with a 25 percent dividend declaration just 24 months after the close of the policy year and 25 percent for each of the three following years.

**Automobile liability** losses take longer than property losses to mature and be paid; hence, dividends are declared 36 months after the close of the policy year, based on the experience of that year, and are paid out over a four-year time period (35 percent, 25 percent, 25 percent, and 15 percent, respectively).

**General liability** takes an even longer time to mature, resulting in a 48-month period before the first dividend declaration; however, the payout pattern is the same as automobile liability (35 percent, 25 percent, 25 percent, and 15 percent, respectively).

Additional guidelines also apply to the declaration of dividends, some of which are as follows:

~ Based on RMD's responsibility to maintain adequate funds to pay claims and other obligations, dividends are declared and paid at the discretion of the division following approval of the Risk Management Advisory Committee, which consists predominately of representatives from the various state agencies.

~ If any insured's pre-dividend period loss results have a negative balance in a line of business that is subject to a dividend, the payment of a dividend for that insured will be waived until such time as the insured's loss results return to a profitable position in both the pre-dividend and the dividend payout periods.

~ If an entire line of business develops unfavorably, a subsidy from another line or lines may be necessary.

For the FY08 dividend that was paid out in FY10, 41 insureds received a portion of the \$38,506 dividend for the auto liability line and 102 policyholders received shares of the \$566,249 dividend for the general liability line.

Since dividend payout is highly dependent on loss results, Risk Management Fund policyholders are in the driver's seat. In addition to all the positives that good loss control practices afford, an added bonus is additional operating funds in the form of dividends!



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## Don't be Duped at the Deposition (Part 1)

*(First of two parts. Part two will appear in the winter/spring 2010 Alert.)*



Hundreds of state employees are deposed each year regarding claims pertaining to their agencies. A deposition is simply a venue in which the law allows the opposing attorney to ask an individual questions under oath, the same as in a court of law. A court reporter will record and later transcribe everything that is said at the deposition.

The purpose of the deposition is to learn all of the facts an individual may know about the case to help both sides to prepare for trial. The lawyers will also use the deposition to evaluate how the person being deposed will appear as a witness to the jury and to determine the settlement value of the case.

In most cases involving state employees and their agencies, the deposition will take place in a conference room. There will be no judge or jury present. An attorney from the Attorney General's Office will be present at all times and will act as the employee's attorney.

A deposition is very important and can go a long way toward assisting the state in preparing the case for trial or settlement. What **the employee does** can help or hurt, depending upon attitude, truthfulness and appearance. If the case goes to trial, a deposition can be used by the opposing attorney in cross-examination, if trial testimony differs from testimony at the deposition.

It is extremely important that the employee be aware of everything possible about the case at the time of the deposition; therefore, an attorney will review everything about the testimony at a deposition preparation meeting. It is helpful if the individual being deposed refresh his or her recollection of the subject and review any notes or other documents forwarded by the attorney, as well as answers to interrogatories, if any, and any statements given about the case.

The deposition is not a memory test. Do not memorize any statements or answers to interrogatories. It is more helpful to simply visualize what happened and answer the questions in your own words. Additionally, employees should avoid bringing any materials, such as notes, photos or records, to the deposition, unless requested by the state's attorney.

Since this may be the first meeting between the employee and the opposing attorney, it is important to make a good impression. Persons should be well groomed and wear neat and clean clothing. Formal clothing isn't necessary unless it is everyday attire. It is also important to treat all persons at the deposition with courtesy.

### Important things to remember about the deposition:

- ❖ Avoid being trapped into saying something that is not true. **Listen to each question and understand it before answering.** If you do not understand the question, state that. The opposing lawyer will rephrase the question for you. When you understand the question, answer it honestly and in a straightforward manner. If you don't know the answer, say that you do not know or that you do not recall. Never guess at an answer. No one is expected to remember every detail. However, you will remember the important things and you should give an honest answer to each question.
- ❖ It is easy for a witness to anticipate the answer to a question and then try to respond before the attorney finishes speaking. Let the attorney finish the question before you answer.
- ❖ Take your time answering the questions. Don't play "ping pong." Some lawyers will try to get you into a "ping pong" game. In "ping pong," the lawyer will ask rapid-fire questions and hope that you will answer just as quickly. The lawyer is trying to get you to answer questions without thinking first so you say things you could later regret. Often there will be a series of easy questions to which you answer "yes" and then there will be a trick question to which you should answer "no." If you have fallen into the trap of playing "ping pong," you will also answer this question "yes" when, if you thought about it, your answer would be "no." Don't be drawn into the "ping pong" trap. Give each question as much thought as necessary to understand it and decide what your answer should be before you respond.
- ❖ The opposing lawyer may ask a question that your attorney thinks is improper. If your attorney objects to the question, don't answer it unless you are told it is OK to do so.

*(continued on next page)*

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- ❖ Do not volunteer information. Make the attorney ask a specific and correct question to get the information he or she desires. During a deposition, a licensing investigator was asked whether she had visited a daycare facility on a particular date. She replied “No, I was supposed to go there during the previous week but the secretary in my office erased the appointment on my calendar by accident and I forgot about it. We had some training materials on how to use our new computer system that I was supposed to read so I looked at those the following week. Then the next week I attended some in-service training and a retirement planning conference. I didn’t get to inspect the home until two weeks later.” Subsequently, the licensing investigator’s attorney pointed out that she had given eight pieces of information when the answer to the question should have been simply “no.” Some of the information which was volunteered may well have hurt the county’s case. The opposing attorney is entitled to ask searching questions, but one of the best defenses is to provide only information which is responsive to the question. **Do not provide information which goes beyond the question asked, nor try to “help” the attorney.**
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## Getting a Grip on Slips, Trips and Falls

For many organizations, slips, trips and falls represent the leading type of workers’ compensation claim. For the State of Minnesota Workers’ Compensation Program, they represent the second leading type of injury for the past five years. The Program’s 2008 Annual Report (<http://www.risk-workerscomp.admin.state.mn.us/reports.htm>)

indicates there were 537 reported claims in that year. *At an average cost of \$6,126, that equates to over \$3 million annually in direct costs just for falls!*

According to the American Society of Safety Engineers, studies show that workplace slip, trip and fall prevention programs can significantly improve workplace injury rates over time.

William Montante (Marsh USA, Inc.) discussed the factors that lead to slips, trips and falls, and strategies to prevent them, at the state’s 2009 Safety and Loss Control Conference. One of the first steps to effectively control slips, trips and falls is to “mind your data.” Data analysis of incidents and injuries will aid in identifying contributing factors that help focus loss control efforts. (While this type of analysis is beneficial, keep in mind that slips, trips and falls are notoriously underreported.)

### Contributing Factors

- Conditions of the walkway surface
- Surface contaminants
- Footwear
- Gait dynamics (i.e., how we all move)

### Effective Loss Control Elements

- Installing entryway floor mats to adequately dry the feet (10 feet of floor mat minimum)
- Implementing cleaning procedures to remove contaminants
- Wearing slip resistant footwear
- Applying appropriate cleaning products for the type of flooring surface
- Maintaining walking and working surfaces, both indoor and outdoor, in good repair
- Using floor treatments that are suitable for the type of flooring
- Inspecting/auditing regularly the walking and working surfaces

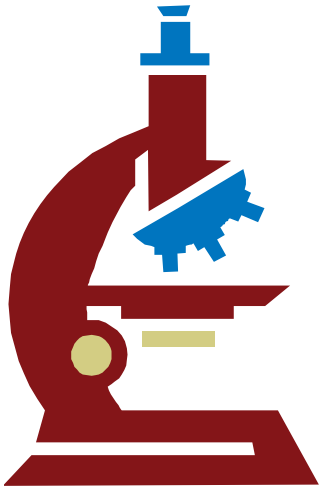
Understanding the factors that contribute to slips, trips and falls and then implementing strategies to control them can go a long way in reducing the \$3 million in annual direct costs related to falls.

For more information, contact Luke Waller by phone at 651-201-3011 or email at [luke.waller@state.mn.us](mailto:luke.waller@state.mn.us).

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## MnSCU's Student Intern Medical Professional Liability Policy Receives a New Limit



Effective July 1, 2009, the MnSCU Student Intern Medical Professional Liability policy limit for each claim was increased from \$1 million to \$2 million. (The \$5 million annual aggregate limit remained the same.)

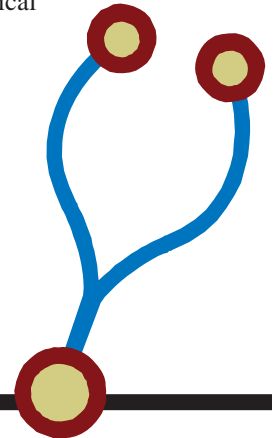
The increase in the tort cap, which also took place on July 1, 2009, was the stimulus for the per claim policy limit increase. Although the tort cap increased to \$1.5 million per occurrence, the professional liability policy's per claim limit was increased to \$2 million, since insurance policies are typically sold in \$1 million increments.

The professional liability policy covers MnSCU student interns, who are actively participating in medical related courses of study, for errors and omissions arising out of medical incidents while rendering professional services. It also covers the training, advising or supervising of student interns by faculty or advisors.

A Memorandum of Insurance, which includes the new limit and other policy information, can be found at the following website: [www.marsh.com/moi?client=3489](http://www.marsh.com/moi?client=3489)

MnSCU schools and clinical host sites can access this website to view and copy the Memorandum of Insurance.

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<http://www.mainserver.state.mn.us/risk>*



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