

# Town of Whitby

## Staff Report

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### Report Title: Annual Insured Claims Report

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**Report to:** Committee of the Whole

**Date of meeting:** June 12, 2023

**Report Number:** FS 18-24

**Department(s) Responsible:**

Financial Services Department

**Submitted by:**

Fuwing Wong, Commissioner Financial Services and Treasurer

**Acknowledged by M. Gaskell, Chief Administrative Officer**

**For additional information, contact:**

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### 1. Recommendation:

1. That report FS 18-24 regarding Annual Insured Claims be received as information.

### 2. Highlights:

- In accordance with the Town's Claims Handling Policy and Insurance Reserve Fund policy the purpose of this report is to provide Council with a summary of the insured claims activity for 2023, the status of open claims and the year end balance of the Insurance Reserve Fund.
- This report provides Council with an update on the Durham Municipal Insurance Pool (DMIP) and the Town's insurance and risk management program.
- The Town continues to benefit from being a member of the DMIP by continuing to receive protection against significant rising insurance costs.

### 3. Background:

The Town is a member of the Durham Municipal Insurance Pool ("DMIP") which consists of seven of the other Area Municipalities and the Region of Durham in an

integrated insurance program to achieve greater control over the insurance coverage and costs.

The DMIP administers the insured claims for all members. The Town is responsible for claims within its local deductible of \$10,000 per claim and shares in the pool claims that are beyond the local deductible of pool members and within the pool's deductible of \$500,000. Claims beyond \$500,000 are insured by Intact Public Entities (IPE). By agreeing to share the claims and expenses of the integrated insurance program, pool members achieve a more stable supply of insurance coverage to meet the unique requirements of the municipal marketplace.

#### **4. Discussion:**

##### **Insured Claims**

The Town of Whitby receives claims from individuals most generally as a result of damage to private property or bodily or personal injury. A claim is submitted when the individual who suffered the loss or the injury believes that the loss was a result of some negligence on behalf of the Town or its employees.

The Town carries insurance through the DMIP to protect its employees, volunteers, and officers from such claims in addition to insuring Town-owned property. The types of insured claims include:

- Motor Vehicle Accident – includes claims relating to winter road maintenance, pothole claims, road debris
- Operations Action/Inaction – includes claims relating to damage to property in the course of performing work e.g., utility cable/wires during construction, projectiles from work equipment, trees falling
- Falls – includes claims for trips and falls or slips and falls on municipal property e.g., sidewalks, parking lots, trails, inside facilities and at playgrounds
- Professional Error – claims for financial losses due to error, misstatement or omission e.g., negligence in building inspection, zoning, planning, passing by-laws, failing to enforce by-laws
- Automobile – includes claims from third parties relating to property/bodily injury and property coverage for Town-owned vehicle damage
- Property – claims for damage to Town-owned insured property e.g., facilities

The insurance coverage includes costs incurred in responding to a claim including investigation and defence and in instances where it is determined the Town is liable for damages, any third-party awards/settlements.

### Claims with Costs Incurred within Deductible

The Town is responsible for the first \$10,000 on each claim. Currently in the calendar year of 2023, the Town has incurred costs totaling approximately \$129,000 in deductible expenses related to insurance claims that occurred in the calendar year of 2023. As liability claims can carry a long tail, actual costs are not necessarily fully realized in the same year the claims occur and this number will grow as claims develop to settlement. Oftentimes there is a lengthy delay from the date of the incident until the claim is ultimately settled, and its full cost is realized. To illustrate this delay, in 2023 out of 126 claims closed 98 (77%) of them did not occur in 2023, and one claim closed this year had an incident date in the year 2010.

In addition to settlement costs, deductible expenses also include external legal and external adjuster fees, investigation charges and other. Any claim that is reported has a cost to the Town whether it is liable or not as every claim must be investigated and/or defended which incurs cost. The Town has budgeted \$180,000 for insurance expenses in 2023 and 2023 expenditures of \$129,000 (outlined above) are within budget.

### Open Claims at Year-End 2023

There were 51 open claims at the beginning of 2023 and 58 at the end of 2023. Claim activity during the year is as follows:

- 51 Insurance claims open at the beginning of 2023
- 120 new claims were received as Whitby claims during the year
- (113) claims were closed in 2023
- 58 Insurance claims open at the end of the year

The number of claims received in 2023 was higher than the previous year. In 2022, there were a total of 91 new claims received (excluding the 31 claims related to the unexpected Derecho storm). This means in 2023 there was an increase of 32% (= 120/91) of claims reported. An increase in frequency of reported claims is often correlated with the increased chance that a claim of higher severity may occur. DMIP has reported both an increase in frequency and severity of claims overall, which is in line with what the Town has been experiencing. Claims severity and frequency are higher in general and reflect a growing population, higher award settlements and an increasingly litigious society. There have been several precedent-setting cases this year that the Town must be cognizant of when assessing and managing its risk. An example being the decision of the Court of Appeal in R. v. Greater Sudbury (City) which places substantial legal risk on municipalities as both owners and employers in construction projects even where no common law employment relationship exists.

The 58 open claims at the end of 2023 relate to policy years 2020 to 2023 and are categorized by type in Table 1.

**Table 1**

<b>Total # of Open Claims</b>	<b>Motor Vehicle Accidents</b>	<b>Operations Action/Inaction</b>	<b>Falls</b>	<b>Professional Error</b>	<b>Property</b>	<b>Automobile Owned</b>
<b>58</b>	<b>7</b>	<b>21</b>	<b>21</b>	<b>1</b>	<b>5</b>	<b>3</b>

**Risk Management Strategies**

The Town of Whitby is continuing to work with the DMIP on mitigating the Town’s insurance related risks as follows:

- Ensuring procedures, training, documentation including the use of AVL/GPS technology complies with Minimum Maintenance Standards (MMS);
- The Town has an annual sidewalk inspection program;
- The DMIP conducts annual inspections of a number of Town facilities to identify building and property hazards. A written risk control inspection report including recommendations is provided and staff follow up on completing recommendations;
- Review agreements, certificates of insurance, programs, and procedures i.e., include insurance and indemnity clauses to transfer risk and potential future liability from the Town to the appropriate party;
- The DMIP and Intact Public Entities provide proactive/preventative risk management seminars to educate staff on mitigating risk to the Town.
- Procuring additional insurance coverages, as required, including volunteer accident benefit coverage;
- The Town has a facility user liability program. The facility user liability insurance program minimizes risk to the facility rental user and the municipality by providing an option to purchase insurance for the facility rental for those who do not have the required insurance;
- Obtaining insurance coverage for specific programs and events including the Town’s Adult Hockey League Program and various amateur performers at Town events.

**Renewal of Insurance Contract for 2024/2025**

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At the time of writing this report, the DMIP has not yet received renewal quotation information from IPE. However, IPE did meet with the DMIP Board earlier in the year and advised that the upcoming renewals were challenging in terms of increasing premium costs due to the continuing hard market.

It is anticipated that renewal information will be provided at the beginning of June and the timing of the placement of insurance by the DMIP Board will be later in June. The Town's 2024 budget assumed an overall 8% increase for corporate insurance premium/levy and deductible costs. If the renewal exceeds the budget estimate the pressure will be reflected in the quarterly projection report scheduled for September. If there is no 2024 year-end surplus, then the Insurance Reserve Fund will be used to offset any insurance related cost pressure.

**Insurance Reserve Fund**

The Town's insurance reserve fund, as per policy (F160), may be used to fund expenditures beyond the budgeted deductible and premium amounts, claims payments in excess of insurance coverage, payments required under the Town's indemnification by-law and additional insurance/risk management related expenditures/studies.

Industry experts anticipate that the trend is for municipal insurance premiums to continue to rise and experience upward pressures on rates through the remainder of 2024 due to the hard market. There is a cycle of hard and soft markets in the insurance industry. A soft market allows for more competition in the marketplace, lower rates, and more favourable terms whereas a hard market results in less competition, higher rates, and more restrictive terms. The DMIP met with the pool's insurer and was advised the hard market will continue and that the trend is for municipal insurance premiums to continue to rise. They advised the hard market is reflective of the following factors:

- increasing costs of claims due to increase in judicial awards and increasing litigious nature of society
- significant property loss claims related to weather events and climate change including wildfires, fires, flooding, ice storms

At the end of 2024 the balance of the Insurance Reserve Fund adjusted for budgetary commitments is \$1,608,483 (unaudited).

**5. Financial Considerations:**

The corporate insurance program is funded from the annual operating budget (Corporate Revenue and Expense section of the budget) at \$1,624,067 (2023 budget).

In addition, the 2023 budget for the estimated annual cost of claims within the local deductible is \$180,000. As noted above, the Town has incurred costs, in 2023, totaling \$129,000 in deductible expenses related to processing insurance claims, including expenses related to external legal and external adjuster fees, investigation charges, and third party settlement costs within the \$10,000 deductible (per claim).

**6. Communication and Public Engagement:**

An electronic claims intake form was launched March 1, 2022 on the Town's website, where residents/other claimants receive automatic notification of receipt of a claim. The DMIP and Town staff are immediately notified and can begin the claims investigation process.

**7. Input from Departments/Sources:**

Claims and in particular those going through the litigation process require considerable staff resources. Staff resources from across the organization are involved in the investigation of claims, preparing and participating in the claims litigation process and identifying and implementing lessons learned. Further, staff work together to mitigate the Town's risks by establishing/updating policies and procedures and keeping records that demonstrate such and ensuring appropriate transfer of risk when procuring goods and services and permitting Town facilities and special events.

**8. Strategic Priorities:**

N/A

**9. Attachments:**

N/A