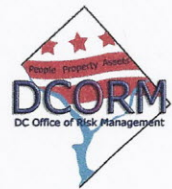


**TORT LIABILITY PROGRAM  
TREND ANALYSIS REPORT - 2014**

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**Tort Liability  
Trend Analysis Report (2014)**

**I. Introduction**

The mission of the District of Columbia Office of Risk Management (DCORM) is to reduce the probability, occurrence and cost of risk to the District of Columbia government through the provision of risk identification and insurance analysis and support to District agencies, and by efficiently and fairly administering the District's public workers compensation, tort liability and Captive insurance programs. DCORM consists of four programs: the Public Sector Workers' Compensation Program, the Risk, Identification, Analysis, and Control Program, the Insurance Program, and the Tort Liability Program. DCORM's Tort Liability Program is responsible for receiving, investigating and resolving pre-litigation claims that are filed against the District under DC Official Code §12-309.<sup>1</sup> Claims may include auto accidents with government vehicles, property damage caused by a fallen tree located on city property, or injuries caused as a result of the negligent conduct of District employees.

At the end of each fiscal year, DCORM's Tort Liability Program is tasked with compiling a trend analysis based on *pre-litigated* claims that it has settled for the year.<sup>2</sup> This report outlines some of the tort liability trends identified by DCORM in fiscal year (FY) 14 as a result of the Tort Liability Program's investigation and resolution of pre-litigated claims filed against the District.

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<sup>1</sup> See Reorganization Plan No. 1 of 2003, ¶ 9, and Mayor's Order 2013-054, ¶s 1-2 (March 7, 2013).

<sup>2</sup> Litigated claims are generally handled and settled by the D.C. Office of Attorney General.

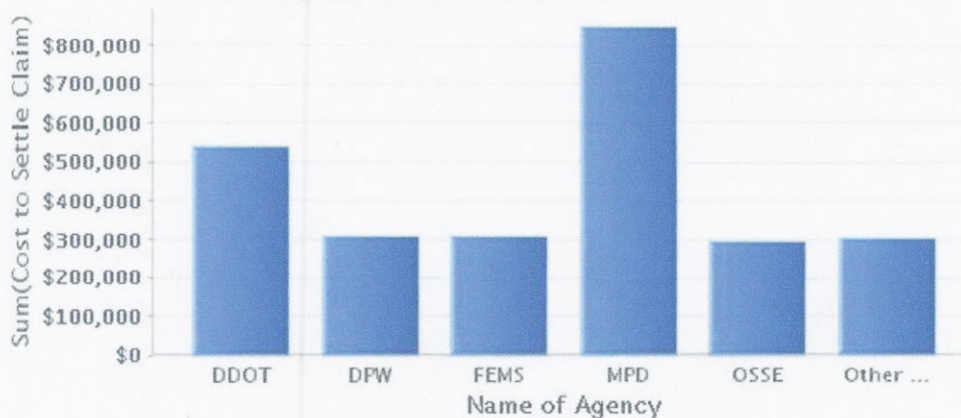
## II. Trend Analysis

In FY 14, a total of 1,675 new tort claim files were opened by DCORM, which is a 31% increase in the number of claims that were filed in FY 13 (1,276). This drastic increase in claims is due in large part to the rise in the number of pothole claims DCORM received as a result of the severe 2013-2014 winter weather. Notwithstanding this increase in tort liability claims filed against the District, DCORM resolved a total of 1,651 claims in FY 14, which included settling 450 of the resolved claims for \$2,651,136.52. The remaining claims were either closed or denied. The following five (5) agencies accounted for approximately \$2,312,120.63 or 88%, of the \$2,615,136.52 in tort claims paid in FY 14:

Department of Public Works (DPW) (\$310,144.54)  
Department of Transportation (DDOT) (\$542,777.00)  
Metropolitan Police Department (MPD) (\$854,470.43)  
Fire and Emergency Medical Services (FEMS) (\$309,621.12)  
Office of the State Superintendent of Education (OSSE) (\$295,107.54).

### Pre-Litigated Claim Payouts for Major Agencies

This chart provides information about the amount of money that the District paid to settle claims in the top five agencies with the most expensive claims in FY 14.



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The following twenty-one (21) agencies accounted for payments of \$303,015.89 or the remaining 12% of the \$2,615,136.52 in tort claims paid in FY14:

Department of Health (DOH)  
Department of Motor Vehicles (DMV)  
Department of Corrections (DOC)  
D.C. Superior Court (DCSC)  
D.C. Lottery and Charitable Games Control Board (DCLB)  
Department of Mental Health (DHM)  
Department of Consumer and Regulatory Affairs (DCRA)  
D.C. Public Library (DCPL)  
Department of Employment Services (DOES)  
District Department of the Environment (DDOE)  
Office of Contracting and Procurement (OCP)  
Department of Youth Rehabilitation Services (DYRS)  
Office of the Chief Technology Officer (OCTO)  
D.C. Taxicab Commission (DCTC)  
Department of Human Services (DHS)  
Department of Parks and Recreation (DPR)  
Child and Family Services Agency (CFSA)  
Department of General Services/(DRES) (DGS/DRES)  
D.C. Public Schools (DCPS)  
Office of Cable Television & Telecommunication (OCT);  
Alcoholic Beverage Regulation Administration (ABRA).

### III. Motor Vehicle Claims

Motor vehicle accidents involving District vehicles account for a vast majority of the \$2,615,136.52 in tort pre-litigated claims paid by the DCORM in settlements. Notably, in FY 14, DCORM paid \$633,953.06 in settlements for claims involving District driver's failing to yield the right of way and injuring claimants and/or damaging their property. Of this total



amount, FEMS accounted for \$89,588.20, MPD for \$312,650.12 paid, and OSSE accounted for \$89,400.00 paid. Settlements of claims in which District drivers rear-ended the vehicles of private citizens totaled \$512,846.32 with MPD (\$177,142.51), DDOT (\$118,042.94) and OSSE (\$107,168.84) accounting for approximately 79% of the total rear-end claims paid. Settlements for side-swipe or lane change claims totaled \$253,720.43. FEMS' claims accounted for \$95,272.66 paid or approximately 38% of this total. DPW (\$30,328.50), MPD (\$31,426.13), and OSSE (\$35,067.05) accounted for approximately 38% of the total claims paid for side-swipes and lane changing accidents. Page | 4

This year's trend analysis, and the trend analyses from previous years, reveal that motor vehicle claims have consistently been the most costly claims for the District. Consequently, in 2013, in addition to tracking the types of motor vehicle claims that expose the District to liability and costs, DCORM began tracking District drivers whose negligent driving conduct exposes the District to liability and costs. Specifically, if, upon investigating a motor vehicle claim involving a District vehicle DCORM determines that a District government driver is at fault for causing an auto accident, which exposes the District to liability and costs, the driver is identified by DCORM as a potential risk. If the same District employee is involved in a second auto accident and is determined to be at fault while either operating a District vehicle or conducting authorized government business in a private vehicle, DCORM forwards a letter to the employee's agency director, general counsel and Agency Risk Management Representative (ARMR) that provides information about the claims that involves the employee, the employee's negligent actions, and



the costs to settle the claims. DCORM requests that the agency investigate the claims and inform DCORM whether the employee is in need of training or other corrective action, or if other disciplinary actions will be taken against the employee to prevent future accidents. DCORM also recommends possible actions that can be taken against the driver (i.e. driver education courses). In identifying and tracking these negligent drivers, DCORM hopes to reduce the exposure to the District, and more importantly, make the District's roadways safer. Page | 5

#### **IV. Slip/Trip and Fall Claims**

The second category of claims that exposes the District to costs in FY 14 were claims involving slip/trip and falls on District sidewalks and roadways. In FY 14, ORM settled twelve (12) pre-litigated claims that involved trip/slip and falls on the District's roadways or sidewalks for a total of \$260,298.78 (an average of over \$21,000.00 per claim). In investigating each of these claims, it was determined that the District had notice of the defective sidewalk or roadway prior to the complainant's injury but that the District did not timely remedy the defect.

In an effort to reduce the number of slip/trip and fall claims on public sidewalks and roadways against the District and ensure public safety, upon receipt of every slip/trip and fall claim, DCORM forwards a copy of the claims to DDOT's General Counsel's Office so that the agency is put on notice of the alleged defective sidewalk/road way condition and may inspect and correct the alleged defect. Further, DCORM has requested that DDOT provide DCORM with access to its computer system that tracks sidewalk repairs so that DCORM can determine if the District is repairing defective sidewalks and roadways.

## V. Claims Involving Trees

In FY 14, DCORM settled five (5) tree claims for a total of \$6,197.88. In each of these claims, it was determined that the limbs from District trees, or the trees themselves, fell and damaged the claimants' property. Three of the claims occurred in Ward 3, one in Ward 6 and one in Ward 5. The settlement amount for the five (5) tree claims settled this year is a significant decrease from recent years. In FY 11, DCORM settled nineteen (19) tree claims for \$34,581.08. In FY 12, twenty-one (21) tree claims were settled for \$55,464.04 and in FY 13, the District paid on another twenty-one (21) tree claims for \$57,628.58.<sup>3</sup> Thus, over the last four fiscal years, DCORM has settled sixty-six (66) tree claims against the District for over \$150,000.00.

DCORM will continue to monitor tree claims it receives against the District, and similar to slip/trip and fall claims, it will continue to notify DDOT's (District agency for inspecting and maintaining District's trees) General Counsel's Office of all tree claims received and settled so that DDOT is on notice of the incidents and can make prompt inspections of problem trees.

## VI. Improper Sale of Impounded Vehicles

In FY 14, DCORM settled six (6) claims involving the improper sale of impounded vehicles for a total of \$20,525.00. Although these claims appear to be low in number and value, DCORM is still concerned that the improper selling of vehicles owned or leased by private

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<sup>3</sup> In FY 11, of the 19 tree claims settled, two were in Ward 1, four in Ward 2, four in Ward 3, one in Ward 4, three in Ward 5, one in Ward 7 and four in Ward 8. In FY 12, of the 21 tree claims settled, one was in Ward 2, eight in Ward 3, two in Ward 4, three in Ward 5 and seven in Ward 6. Finally, of the tree claims settled in FY 13, two were in Ward 1, one in Ward 2, two in Ward 3, six in Ward 4, five in Ward 5, one in Ward 6, three in Ward 7 and one in Ward 8.





citizens without providing the owner or lienholder with adequate notice that the seized vehicle may be sold at auction will give rise to the filing of federal and constitutional claims regarding the unlawful taking of property without due process of law. These claims can generate excessive attorney fee payouts. The Office of Attorney General has expressed similar concerns to DCORM.

The improper sale of impounded vehicles claims typically present themselves in two scenarios. The first scenario is where DPW (the District agency responsible for auctioning vehicles for the District) fails to notify the impounded vehicle’s owner and lien holder that the seized vehicle will be sold at auction (as is required by statute). Thereafter, DPW sells the vehicle at auction.<sup>4</sup> In these instances, the District is responsible for the value of the seized and sold vehicle minus administrative agency costs.

The second scenario occurs when DPW sells a vehicle at auction without identifying and providing notice to the lienholder. Upon learning of the lien, DPW typically requests that the purchaser return the vehicle and reimburses the purchaser the purchase price of the vehicle. In these instances, the District is responsible for certain costs associated with purchaser’s collecting and returning the vehicle. Over the last three years, DCORM has paid approximately \$50,000.00 in claims involving the improper sale of impounded vehicles.

DCORM has held meetings with DPW to discuss what efforts could be taken to reduce the improper sale of impounded vehicles by DPW. DPW has informed DCORM that it was

<sup>4</sup> See D.C. Official Code § 50-2421.07.





attempting to procure a new computer system that would enable it to conduct nationwide lien searches on impounded vehicles so that the vehicles owners and lien holders can be contacted prior to the vehicle being sold.

## CONCLUSION

The data in this report provides a snapshot of the types of pre-litigated claims that have been filed against the city. DCORM plans to continue to perfect the collection of this data, which will help the government's management and leadership to take measures to reduce risks and their costs. Please direct any question you may have about the data in this report to Eric Glover, Tort Liability Manager.

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