Understanding SAM Claims for Oregon Public Entities

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Session Description: Sexual Abuse and Molestation (SAM) claims represent one of the most complex and high-impact areas of liability exposure for public entities, particularly those serving youth and vulnerable populations. These claims can involve significant legal, financial, and reputational risks and require careful coordination between claims professionals, insurance brokers, and legal counsel.

Claims Management Perspectives

- Started handling School District Claims in 2006 with the formation of PACE
  - Mainly concerned about Employment Practices Litigation back then
  - Schools were a new world
  - First SAM case came shortly there after

- **Claims Management Perspectives**
  - After a few of these came through, we started noticing trends
  - But at the same time, resolutions were manageable

- **Claims Management Perspectives**
  - More and more cases starting to be brought
  - Realized this wasn't going away
  - Social inflation started to show
  - Attorneys getting bolder
  - Demands going up.

Claims Management Perspectives

- With the increase in frequency, an increase in severity also occurred
- Cases that settled for $50,000 were now getting into six digits
- Now SAM was rivalling Employment Practices in severity.

- # Claims Management Perspectives
  - We started taking a more progressive approach
  - Generally claims handling is reactionary
    - Claim is presented, you investigate, make your liability determination
    - For SAM, we started getting attorney involvement early

Claims Management Perspectives

- Looking to make the investigation at the direction of counsel
  - Potentially maintains privilege
  - Sensitive matters
  - Concept these cases have the potential to go to trial from the outset.

- # Claims Management Perspectives

  - SAM cases generally don't get better as time goes on
  - We look to posture for mediation early if liability is determined

Claims Management Perspectives

- SAM cases can be very detrimental to the district
  - Polarizing
  - Distrust from the public
  - Rumor mill
  - Survivor still typically lives in the community, survivor shaming.

Claims Management Perspectives

- We did notice recurring trends
  - Survivors tend to have troubled homes
  - Survivors tend to be looking for a source of stability
  - Survivors often have had prior abusive situations

Claims Management Perspectives

- We did notice recurring trends
  - Abusers tend to be the "well liked" teacher or administrator at school
  - Abusers often tend to have noted boundary issues
  - Abusers often share a good part of "DNA" with the best teachers or administrators.

Claims Management Perspectives

- Just like any other Risk Management target,
- If you can find a root cause, you can attack it
  - We added a SAM Prevention Specialist
  - PSAs available on PACE Website

Claims Management Perspectives

Success:

- Our statistics lead us to believe the time from the start of abuse to catching it is decreasing.
- Have used the PSA to show the survivor the district is actively trying to improve.

O.R.S. 30.260 – Oregon Tort Claims Act

- What is a Tort
- Who is covered
- What are the limits of damages
- What is not limited
- Why do you care?

Who is a "Participant"

- Participant means the **Named Participant** and each of the following while acting under the direction and control of the Named Participant and within the course and scope of their duties as such:

- a. Members of the Board;
- b. Executive Officers;
- c. Employees;
- d. Agents of the Named Participant;
- e. Volunteers;

Volunteer

- Direction and Control
- Course and Scope
- Position of Trust

Broker / Risk Financing

Overview of the insurance marketplace for SAM coverage,

Not Just SD’s

Anytime you have any interaction with Minors through programs, education, exposure, celebrations, work experience, etc.

Non-K12 Underwriter Questionnaire this January

Wanting to understand each entities “interaction” with minors

Year 1. Gather Information

Year 2. Charge for Associated Risk

Year 2a. Limit coverage for Risk

SAM and Cyber

How do you eat an Elephant?

Political Will

Budget for the cost

Time to complete the task

Underwriting Criteria

This is just like Cyber – Individually underwritten to your exposures and security posture

Long Application describing exposure

What is the environment like (in home/ after school/ overnight)

Underwriting Criteria

Number of kids and number of adults …Headcount not FTE

Background Checks – National with or w/o fingerprints

Outside interaction – other kids or adults in the house or program

Are there Male adults?

Reinsurance Trends

Claims Made

Lower Limits

Per Perpetrator vs Per Victim

Legal Defense Costs inside/outside

Pool Memo - Reporting Requirements

Sexual Misconduct Liability Coverage Endorsement

As we have all seen, the frequency and severity of sex abuse claims has only increased over the past few years. Our reinsurers have put us on notice that we need to mitigate our losses from these types of claims or we risk our ability to find reinsurance coverage.

Additional Coverage 7 – Sexual Misconduct will be removed and coverage for sexual misconduct will be entirely excluded from the PACE Educators Liability Coverage Document.

Coverage is tied to the member’s adherence to mandatory reporting, training, and policy adoption requirements as required by law and rule.

It also specifically excludes coverage if any administrator, board member, officer, or official that had a legal obligation to make a report failed to do so.

Wait What?

$10 Million to Zero, Nada, Zip, Zilch

personal injury to which this **Additional Coverage 12** does not apply.

Additional Coverage 12 applies to **bodily injury** and **personal injury** because of **sexual misconduct** *only if:*

a. The **Named Participant** is in full compliance with all Oregon statutes, administrative rules, and regulations governing the investigation and reporting of abuse and sexual conduct, including, if applicable to the **Named Participant**, the background check, reporting policies, and training requirements set forth in ORS 339.370, ORS 339.372, ORS 339.388, and ORS 339.400;

b. The **bodily injury** or **personal injury** is caused by an **incident** that takes place within the **Coverage Territory**;

c. The **bodily injury** or **personal injury** is caused by an **incident** that first occurs or is initiated during the **Coverage Period**; and

Underwriting Background Check

Comprehensive criminal background check,

Including a nationwide sex-offender registry search.

State-specific checks are no longer considered sufficient to meet current underwriting standards or risk-management expectations.

Defense Costs PACE

Defense costs are in addition to the Limits of Liability set forth in the Schedule of the Sexual Misconduct Liability Coverage Endorsement, and payment of Defense costs by the Trust will not reduce or exhaust these Limits of Liability.

Self Insured Wording we are seeing

Reporting Requirements Self-Insured

In addition, following **discovery** of any **sexual misconduct** occurring during a policy period insured by XXXXX Insurance Company, the **Insured** shall report such **discovery** to XXXXX Insurance Company no more than

120 consecutive days after the **discovery**. Any failure to comply with this provision for any reason will result in the exclusion of coverage for any associated claim for **sexual misconduct**,

Reporting Requirements

Regardless of whether XXXXX Insurance Company has been prejudiced by such failure.

The **Insured** hereby agrees and acknowledges that XXXXX Insurance Company shall automatically be deemed to have been prejudiced by the **Insured's** failure to report such **discovery** within the 120-day time period.

Reporting Requirements

C. **SECTION IV – DEFINITIONS** under **Coverage Part A – School Liability** is amended by the addition of the following definition:

Discovery of any **sexual misconduct** means the earliest date on which any of the **Insured**'s administrators, officials, trustees, directors, officers, board members, or any person designated by the **Insured** to be responsible in an official capacity to prevent, investigate, or report **sexual misconduct**, has first taken receipt, or first knows or in the exercise of reasonable care should have known, of any of the following:

1. Any lawsuit alleging **sexual misconduct**;

2. Any demand for money or services related to **sexual misconduct**;

3. Any criminal investigation or prosecution related to **sexual misconduct**;

Vendors = Opportunity for Loss

Require real SAM Coverage to do business with us

Your Procurement process should include a SAM and/or Cyber component where appropriate.

Legal Counsel Perspective

- Analysis of litigation trends, statutory and regulatory developments, defense strategies, and the potential legal ramifications for public entities when these claims arise.

Who is liable?

- Bad actor
- Vicarious liability to public entity
  - Anything that facilitates the relationship
- Direct liability to public entity
  - Failure to report, failure to supervise, failure to train

Trends in filings

- More claims
- Statute of limitations is rarely a defense
- Local and national attorneys

Trends in Verdicts

- Monetary awards are less and less connected to measurable damages
- Juries are less trusting of public entities
- Tort Claim Caps are of limited application
- Oregon can look to other west coast states as a predictor for future claim values

Litigation Challenges

- Understandable public pressure
- Need to support current employees
- Importance of coordinating efforts between litigation team and those involved in pre-loss efforts
- Dynamic concerns and strategies

Moderated Panel Discussion

Any Questions?

Thank You

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