

Introduction to UW System Risk Management

**Orientation material for University of Wisconsin System
campus employees with new responsibilities in
risk management**

(ORM Intro to RM 20150224)

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Several acronyms are used throughout this module:

DOA – Department of Administration

BSRM – Bureau of State Risk Management (within DOA)

ORM – Office of Risk Management

SSPP – State Self-funded Property Program

SSLP – State Self-funded Liability Program

What is Risk Management?

Risk is defined as the potential for loss in the future. UW System Administration and campus risk management strive to eliminate or minimize potential losses with two basic goals in mind:

- Preserve the assets of the campus
- Protect the physical well-being of students, employees and the general public involved in university activities occurring both on and off campus

Risk Management involves a five step process:

- Identify all potential losses
- Measure the impact of the potential loss
- Consider appropriate risk management tools
- Implement the chosen tool
- Monitor to ensure goals are met



Risk management options for managing exposures fall into one or more of the following categories:

- Risk avoidance
- Risk control
- Risk transfer
- Risk retention



Risk avoidance is a fairly simple risk management tool. You decide to eliminate (avoid) the exposure. For example: The National Transportation Safety Board has identified safety issues with 15 passenger vans based on numerous accidents resulting in loss of life. Several campuses have elected to manage this exposure by banning the use of 15 passenger vans.

Risk control techniques reduce the chance or size of a potential loss. For example, some campuses have elected to continue use of 15 passenger vans but have controlled the potential loss by ensuring drivers have sufficient driving experience and complete van driver training. Installing sprinkler systems in buildings is another example of a risk control technique. Sprinklers do not prevent fires from starting but they do impede the spread of fire allowing time for occupants to safely exit and emergency responders to arrive and put out the fire.

Risk transfer techniques fall into two categories:

- Insurance
- Contractual transfers

UW System uses both techniques which will be discussed in some detail later in this module.

Risk retention is a decision to accept the exposure and deal with the loss if it happens. A deductible on an insurance policy is an example of partial risk retention. Participating in a high risk sport or activity that

negatively impacts health (e.g. smoking) is another example of risk retention (although you may minimize the potential loss by purchasing health insurance and/or disability insurance).

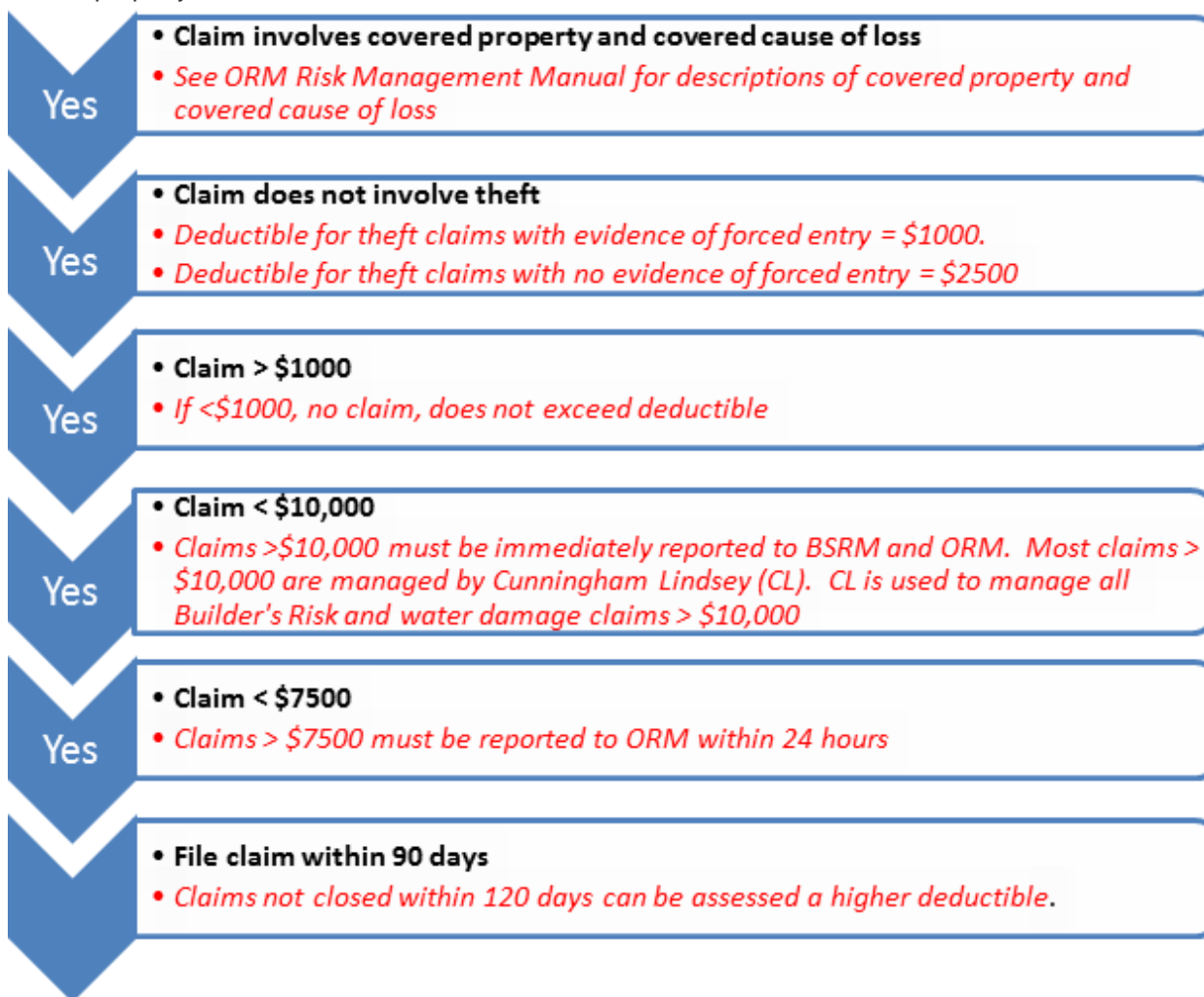
Applying the risk management process:

1. You identify potential loss: downhill skiing has the potential for injury
2. You measure the potential for loss e.g. a broken leg and lost work time
3. You consider the risk control options:
 1. Avoidance – don't ski
 2. Control – wear a helmet, ski within your ability, use equipment in good working order.
 3. Transfer – have adequate health insurance and disability insurance
4. You decide to ski and use the control and transfer options
5. Monitor success of process – you might be fortunate and not have any incidents or, if you do, the consequences are not as significant as they could have been due to use of control and transfer techniques.

Insurance Programs - Property

The UW System campuses are part of the State of Wisconsin Self-funded Property Program (SSPP). The SSPP provides coverage for loss of university-owned property, physical damage to motor vehicles, business interruption (revenue loss that occurs as a result of property loss) and extra expense due to a property loss.

The SSPP is administered by the Bureau of State Risk Management (BSRM) which is part of the Wisconsin Department of Administration. BSRM has established a \$5 million self-retention program and purchases a \$300 million commercial excess policy to cover losses above \$5 million. Therefore, BSRM uses a combination of risk retention and risk transfer (insurance) to manage property losses to state-owned property.



Much like standard commercial insurance, BSRM assesses UW System a premium for participation in the program. UW System's Office of Risk Management (ORM) in turn assesses individual campuses a property premium based on exposure (value of campus property) and loss experience over the three most recent years.

The campus risk manager must file a claim when a loss occurs to receive coverage provided by the SSPP. The chart on this page summarizes the property claims management process.

A few things to note after reviewing the property claims management process:

1. The standard deductible for a property claim is \$1000.
2. The deductible for a property loss claim involving theft depends on whether there is evidence of forced entry.
3. Large loss property claims (> \$10,000) are managed by an independent adjuster assigned by BSRM. Although the adjuster will coordinate management of the claims process, the campus risk manager is expected to play a significant role in the process.
4. ORM needs claims closed in a timely manner. Therefore, the deductible may be increased for claims not closed within 120 days.

Additional information on filing property claims is found in the UW System Risk Management Manual.

Once you have decided a claim can be filed, you will need to collect necessary information for claim submission. Several examples below illustrate some of the issues involved in determining whether a claim can be filed.

Example #1

A music professor brings her flute from home to practice on campus. The flute (valued at \$2500) is damaged when a pipe bursts and her office is flooded.

Question: Can you file a property claim for repair or replacement?

Answer: No. Water damage is a covered peril. However, personal property of an employee is not covered under SSPP. Employee should contact her personal property insurance carrier.

Of note: It is possible for employee personal property to be covered by SSPP under certain conditions. See UW System Risk Management Manual.

Example #2

A wind/rain event damages the score board at your campus football field. Loss = \$8000.

Question: Can you file a property claim?

Answer: It depends. Wind damage to property out in the open is a covered peril. However, the claim will be denied if the score board was not reported as covered property on your annual property valuation submission to ORM.

Example #3

The same wind/rain event that damaged the scoreboard also downed 50 mature trees on the campus. Your grounds department estimates a cost of \$10,000 to remove debris and replace the trees.

Question: Can you file a property claim for tree debris removal and replacement?

Answer: SSPP excludes coverage for growing crops, trees, shrubs, lawns, land or land value, foundations, roads, sidewalks, pavements, pipes which contain wiring below ground and floating docks.

Example #4

A UW employee brings a campus-owned laptop computer (value = \$1850) to a conference. He leaves it in a conference room over the lunch hour. Upon return the laptop is gone.

Question: Can you file a property claim?

Answer: Theft by a non-employee is a covered peril and the laptop is covered property so a claim could be filed. However, because there is no evidence of forced entry, the deductible for this claim is \$2500. Since the value of the laptop is less than the deductible, there is no claim.

The documentation needed to file a claim is listed below.

Documentation	Description
Proof of Loss Form	Gives an overall picture of how, when and where the loss occurred.
Estimates or invoices	From vendors or contractors; supports labor and material numbers. Two estimates are required for losses over \$2500.
Internal work orders	Supports campus labor and material figures.
Police reports	Required for theft, vandalism and collision.
Original purchase price	Required to substantiate age and value of property when seeking compensation for an item you will not replace.
Vehicle Incident Report	Form DOA-6496 – required for claims on vehicle damage.
Lightning affidavit	Required if damage caused by lightning.
Other information	Memos from departments detailing how the loss occurred, photographs and any other documents that will support the claim.

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Insurance Programs - Liability

A liability exposure arises when one party can be held legally and financially responsible for the injury of another person or their property. UW System campuses are covered for liability claims under the State Self-funded Liability Program (SSLP) when all three of the following criteria are met: *the incident involves a state officer, employee or agent (agency status) who commits a negligent act while in scope of their employment.* Let's consider each of these criteria.

Agency status

Officer or employee—For the most part, one can determine whether an individual is a state officer or employee because of a formal employment agreement (is the person on the state payroll?) or has been appointed an officer of the state. Whether a person who is not an officer or employee is an agent of the state is not always easily determined. Two groups at universities that may have agency status are volunteers and students.

A **volunteer** may be considered an agent of the State if the relationship is a benefit to the university and there is direction and control of the volunteer. For example, a person is a volunteer usher at their campus performing arts center. The person receives training, an ID card, usher's vest and is supervised by the paid event manager while ushering. In return the volunteer can watch the performance. This person would be considered an agent of the State under SSLP while performing ushering duties.

Students qualify for agency status in limited situations. Students may be considered agents of the State under SSLP when completing internships and practicums when all of the following criteria are met:

- must be approved by the university
- must be part of a credit course
- faculty/staff supervision provided
- internship or practicum is unpaid

Student agency status for activities other than the categories listed here is not always clear. Students are not in agency status while attending classes or going on field trips. They are probably not in agency status when participating in a rugby tournament as part of the campus club rugby team. They are probably not in agency status when organizing a run/walk for charity as part of a student organization service project. They may be in agency status when doing volunteer work at a local food pantry as part of a requirement for graduation.

Starting to get confusing? Student agency status will be determined on a case-by-case when the claim is filed. The staff at ORM will assist with this determination.

Negligence

There are four basic elements to negligence:

- A duty is owed (e.g. keep floors dry)
- A breach of that duty occurs (e.g. floor is knowingly left wet with no signage)
- Injury results (e.g. a person slips and falls, breaking an arm)

- The breach was the proximate cause of the injury (e.g. the slippery floor directly contributed to the fall)

Two examples may help to illustrate when negligence is present.

Example #1

A visitor slips on a snow covered sidewalk when entering a campus building during a snow event and breaks her ankle.

Question: Is the campus negligent in this situation?

Answer: The answer is “It depends.” Most people will agree the campus owes a duty to keep the sidewalks clear and that the injury resulted from slipping on the snow covered sidewalk. What is not clear is whether there has been a breach of that duty. If your campus has a regular schedule of clearing sidewalks every two hours in a snow event (the most they can do with the resources available) and the sidewalk had been cleared one hour before the incident, there is likely no breach of duty and therefore, no negligence.

Example #2:

A person trips on a step inside the institution’s performing arts center while attending a campus sponsored event. He falls and breaks his wrist. He calls you up and asks if the campus will cover his medical bills.

Question: Is the campus negligent in this situation?

Answer: You do a follow-up investigation and find there was sufficient illumination and no trip hazards on the steps where the incident occurred. You deny the claim since there was no negligence because there was not a breach of duty. However, there may be negligence due to breach of duty if one of your event staff had run an extension cord across the step where the incident occurred and failed to protect the cord and the patron tripped on the cord.

Scope of employment

The final criteria that must be met for coverage under the SSLP is that the State officer, employee or agent must commit a negligent act while **in scope of his or her employment**. This should be a fairly simple test: was the employee doing something defined in his or her job description?

Consider two employees:

1. A groundskeeping employee is removing snow (part of her job description) with university-owned equipment in a campus parking lot and hits a legally parked vehicle.
2. A faculty person is presenting a paper at an academic conference (the university is covering his expenses). He takes a break over the lunch hour and goes to an off-site restaurant to meet a friend. He hits a legally parked car in the restaurant parking lot while driving a university-owned vehicle.

Who is in scope of employment? In these two cases, both employees are in scope of employment at the time of the incidents, and both incidents would be covered under the SSLP. Keep in mind that determining scope of employment is not always simple.

The examples above demonstrate that agency status, negligence and scope of employment are not always easily determined. Even if all three criteria are met, it is still possible the SSLP will not cover the incident. Consider employee #2 again. Let's change the scenario and say he is driving his personal vehicle when the incident occurred. He is still an employee who commits a negligent act while in scope of his employment. However, in this situation his personal liability coverage will be primary. SSLP will only apply when his personal liability coverage limits are exceeded. Determining negligence is all in the details.

Liability defenses

Once a claim is filed, the state can use several defenses against liability claims:

- Comparative negligence
- Assumption of risk
- Exculpatory contract
- Wis. Stat. s. 893.82

Comparative negligence means the negligence of the parties is compared, commonly on a percentage basis. There is no right of recovery due a person who is more than 50% responsible for the incident. One who is 50% responsible may collect up to 50%. Remember the example of the visitor slipping on a campus snow covered sidewalk? Let's change the situation and now say there was a breach of duty because the campus failed to follow its snow removal procedures. A comparative negligence defense might be used if the visitor was wearing high heeled shoes with non-gripping soles.

The **assumption of risk** defense may be used when a person has knowledge or an awareness of risk and was voluntarily exposed to the danger. A spectator at a baseball game assumes some risk of being injured when a foul ball is hit into the seating area. A player in a pick-up basketball game at the campus recreation center assumes some risk of being injured by another player. People assume the risk of having their sense of propriety offended if they attend a lecture by a controversial speaker.

An **exculpatory contract** is an agreement releasing the university from any liability arising out of its negligence. However, court interpretation of such an agreement may result in some responsibility being placed on the university. A campus sports facility may require paying members to sign a form releasing the university from liability for any and all incidents that occur while the member is using the facility. A similar agreement may be used for students going on a campus-sponsored trip. Again, keep in mind the courts may still rule on behalf of the member or student if harm was caused by a negligent act of a university employee.

Wis. Stat., s. 893.82 — The fourth defense the university may use is Wis. Stat., s. 893.82, which offers two protections from liability claims. First, it states liability claims must be made within 120 days (medical malpractice claims within 180 days). If the injured party fails to give notice within that time, the claim may be denied. Second, it limits the amount recoverable to \$250,000 per negligent state officer, employee and/or agent involved. However, note that civil rights, employment practices and environmental liability

claims are not subject to this recoverable limitation. Claims resulting from incidents outside of Wisconsin are also not subject to this limitation.

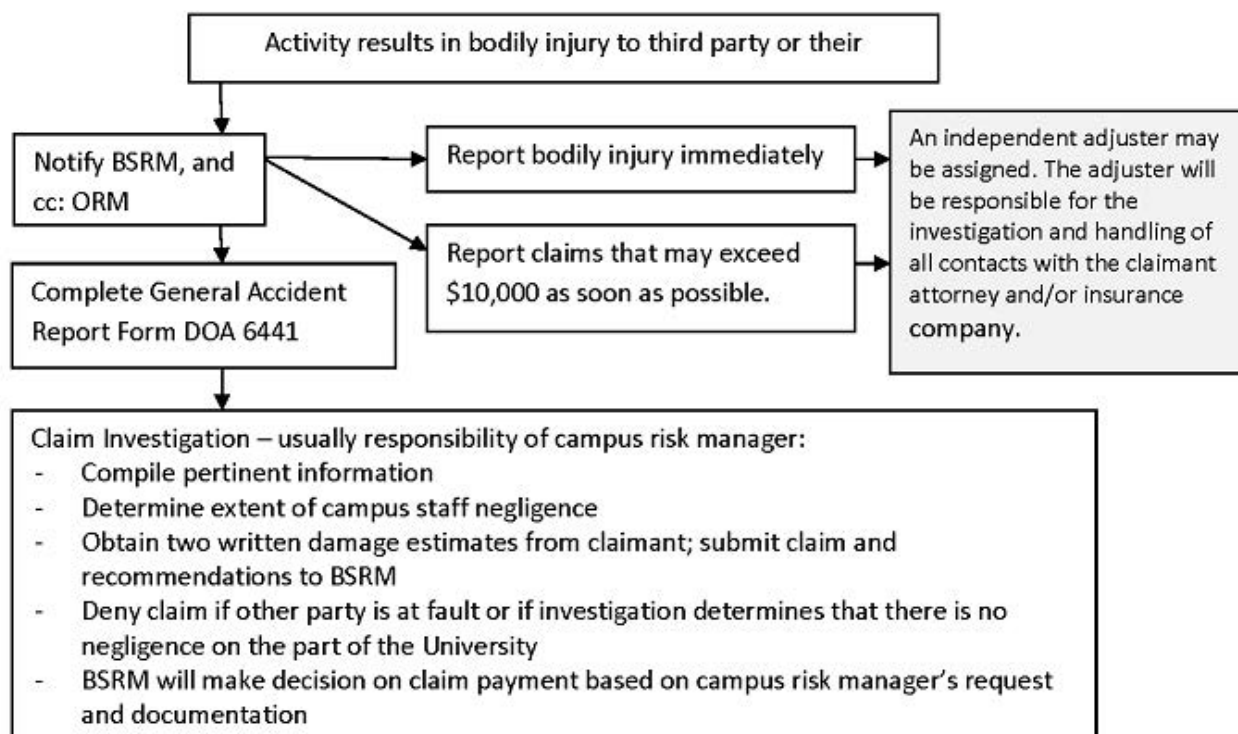
Processing Liability Claims

Reporting incidents/claims at the campus level – Any incident resulting in injury or damage to a third party (non-university employee) or their property should be reported to the campus risk manager. This includes:

- Bodily injuries that occurred on university property or during university events to students or guests of the university
- Damage incurred to non-university property which is on or off campus as a result of a university activity
- Any other damages that may potentially be construed as the responsibility of the university

The campus risk manager is responsible for informing campus personnel of proper reporting procedures. The campus risk manager is also responsible for submitting liability claims directly to BSRM for processing. Though liability claims are handled at BSRM, campus risk managers also need to notify ORM about the incident. The flow chart below summarizes the steps involved in reporting and submitting a claim to BSRM.

Liability Claims Process



Several points to emphasize after reviewing the liability claims management flow chart:

- The BSRM processes and approves/denies all liability claims. ORM should be copied on pertinent claim information and may be of assistance in investigating liability claims.

- Bodily injury claims should be reported immediately. They are normally managed by an adjuster assigned by BSRM. The adjuster handles all contact with claimant and insurance companies.
- The campus risk manager may deny a claim. A standard denial letter is available. The claimant still has the option to file a claim with BSRM.

Incidents vs. claims

Incidents are cases that are not reportable to BSRM because they are not expected to turn into claims. Since one is never sure if an incident will turn into a claim, an informational file should be set up by the campus risk manager for all incidents. As mentioned earlier, Wis. Stat., s. 893.82, allows the claimant up to 120 days from date of incident to file a legal claim. It is in the best interest of the campus risk manager to be aware of incidents that have occurred and assist the potential claimant in resolving the matter.

Commercial Insurance Programs

BSRM and ORM have purchased additional commercial insurance to cover gaps in the self-funded programs. These include the following:

Boiler and Machinery Coverage – ORM and BSRM obtain commercial insurance through Liberty Mutual. Annual premiums are allocated to the institutions based on the institution's property values and the previous three years of loss experience.

Blanket Contractual Coverage – ORM obtains a policy that covers bodily injury and property damage liability which the university has assumed through contractual agreements specifically designated in the policy. This coverage is specifically purchased for those contracts that impose liability that cannot be covered by the SSLP due to statutory limitations. Coverage may only be secured after a specific agreement has been reached between the parties regarding the limits of liability.

Crime Bond – The SSPP does not cover losses due to employee embezzlement or theft. To cover this gap in coverage, ORM purchases a comprehensive crime policy with the corresponding premium allocated to the campuses. Current deductible is \$1000 for credit card forgery and \$500,000 per occurrence for all other claims.

Cheerleader/Mascot Insurance – ORM purchases coverage for accidental death, dismemberment, medical and dental expense for all cheerleaders, dance team members, and mascots while participating in spirit competitions, practice, alumni events, charity events, or any other activity not related to a specific sporting event. Premium is allocated to campuses based on counts they provide on an annual basis.

Camps and Clinics Blanket Accident Insurance – Camps and clinics insurance is purchased by ORM to reduce the potential for liability claims arising out of injuries that occur at campus sponsored camps and clinics. This is not a substitute for liability insurance but rather provides “goodwill coverage” for small medical bills incurred by camp participants. Coverage provides medical benefits up to \$7500 per participant for medical expenses that are the result of a covered accident. This is not an illness policy.

Marine Cargo Insurance – Property which is owned by the university is subject to loss while in transit. The university self-insures under the SSPP its owned and non-owned transit exposures. BSRM also purchases a separate transit policy for shipments of high value equipment >\$100,000 when the university is responsible for its value during shipment either over land, air or water. For university-owned property, shipments (overseas and domestic) that are valued at \$50,000 and greater are required to be reported to BSRM via an on-line form on a per shipment basis.



Fine Art Coverage – This is included under the SSPP. It also includes coverage for museum collections and temporary loans. Coverage is extended to property of the institution or property of others loaned to the institution and which the institution has been instructed to insure, covering the property on a “wall to wall” basis from the time the property is removed from its normal repository, incidental to shipment, until returned at or



other points designated by the institution. Coverage includes while in transit and while on exhibition. If we are responsible for insuring exhibits that are coming to or leaving campus worth more than \$50,000 in any one shipment, transit coverage **MUST** be discussed with BSRM prior to the shipment.

Special Event Insurance – This ORM-purchased insurance covers lessees and vendors who use university space but would not be covered under the university's liability program because they fall outside of the mission of the university. The campus risk manager must complete a Special Event Questionnaire and submit to Gales Creek for coverage. Coverage premium depends on type of event, total event attendance and the number of days the event runs.

Europ Assistance – BSRM purchases medical emergency assistance coverage for employees while traveling on business for the state employees outside of the USA. Europ Assistance is designed to ensure the availability of competent health care as promptly as possible in situations where health care may not be available or not be up to U.S. standards. Coverage includes: 24 hour, seven days a week, toll-free emergency assistance service; medical evacuation and repatriation coverage; and limited accidental death and dismemberment coverage. Campus risk managers or the campus' international liaison can issue cards which should be carried with travelers. The card will have the necessary phone numbers should they become necessary. Europ Assistance does not cover the cost of actual health care.

CISI - ORM purchases a comprehensive package of medical benefits and emergency services specifically designed to address the risks associated with study abroad. The coverage is primary. Specific benefits include: Medical Expense, Accidental Death/Dismemberment, Emergency Medical Evacuation and Repatriation, Team Assist Plan, Emergency Medical Reunion and Security Evacuation.

Student Health Insurance – ORM purchases student accident and health insurance for institutions that elect to offer the coverage for their domestic and inbound international students.

Contractual Programs

Contractual transfer agreements are a risk management tool used by one party to shift responsibility of loss to another party or to clarify who is responsible if a loss occurs. The university may be shifting responsibility to an outside contractor or the outside contractor may be shifting responsibility to the university. Although risk managers are not typically responsible for establishing contractual agreements, they may need to evaluate contractual language that may impact the university's liability exposure. There are three basic types of contractual transfer agreements:

A **hold harmless agreement** is an agreement whereby the first party (the indemnitor) agrees to hold the second party (the indemnitee) harmless from tort liability arising out of the indemnitor's negligent act or omission.

An **exculpatory agreement** is an arrangement whereby one party agrees to absolve a second party from any blame even when damage or injury is caused by negligence of the second party.

An **indemnity agreement** is an arrangement whereby one party agrees to pay the other party for any damages regardless of who is at fault.

The university as the Indemnitor	The university as the Indemnitee
<p>The university will take responsibility for its own negligence through a hold harmless agreement. The university will not (and cannot) agree to any contractual transfer which is exculpatory or indemnity in nature.</p>	<p>The university can attempt to shift the responsibility for injury and damage to others by proposing contracts which use exculpatory, indemnity and hold harmless language that makes the other party responsible. The university will also typically require a Certificate of Insurance from indemnitors.</p>

A **Certificate of Insurance** is a document issued by an insurance company/broker used to verify the existence of insurance coverage under specific conditions granted to listed individuals. A Certificate of Insurance should be obtained for any high risk procurement. ORM has established standard insurance limits, which are the minimum acceptable for any vendor. Evidence of higher insurance limits may be required for vendors providing high risk services. Language naming the Board of Regents as an additional insured is also required. The campus risk manager may or may not be responsible for obtaining and maintaining Certificates of Insurance. This responsibility varies by campus.

University Certificate of Coverage – The university may enter into some contractual agreements that require the university provide evidence of insurance. This is done by issuing a Certificate of Coverage. ORM has a master certificate that can be copied as needed. The master certificate does not provide insurance limits nor can language for additional insured be added. Instead, the master certificate references Wisconsin statutes which limit our liability. Blanket insurance can be purchased to cover situations where the master certificate (and the limits of coverage implied through reference to state statutes) is not acceptable. The campus risk manager is the only person delegated authority to sign a master Certificate of Coverage on behalf of the campus.

Affiliation agreements are contractual agreements unique to universities. Universities frequently require students to have clinical or field training as part of the curriculum necessary to graduate. This training is

usually done in cooperation with an outside agency. Affiliation agreement is the term applied to the contractual agreement between the university and the outside agency. The agreement clarifies who is responsible for negligent acts or omissions. The UW System master Uniform Affiliation Agreement should be used whenever possible. Campus risk manager involvement in this procedure will vary by campus. The risk manager may be responsible for initiating master agreements and/or reviewing and negotiating changes in language to the master agreement or agreements submitted by outside agencies. Signature authority for signing affiliation agreements will vary by campus.

Fleet Management

Campus employees who drive on university business create three types of risk exposures:

- Worker's Compensation – when a university employee is injured
- Property – when university property or vehicle is damaged
- Liability – when bodily injury or property damage to a third party occurs

In addition to self funded and insurance protection, the university controls these exposures through the use of a driver authorization program managed at the campus level.

Driver authorization is required for anyone who drives on university business. This includes students, LTEs, agents and employees driving a rental, personal or state-owned vehicle.

To receive driver authorization, a person must:

- Complete a [vehicle use agreement](#) that includes his or her supervisor's approval
- Read the State Fleet Policy and Procedures Manual
- Agree to monthly driver record checks
- Meet minimum driving standards
 - Have a valid driver's license
 - Have two years licensed driving experience
 - Be at least 18 years of age

Authorization will be denied if a driving record shows any of the following:

- Three or more moving violations and/or at-fault accidents in the past two years
- An OWI or DUI violation within the past year
- License has been reinstated for less than one year after revocation



Wisconsin driving records are checked monthly through the state-managed Fleet Anywhere Program. Campus risk managers are responsible for initial review and approval of driver authorizations and follow-up on monthly Fleet Anywhere reports. The campus should check records of out-of-state license holders periodically.

Conclusion

The primary goal of the campus risk manager is to preserve the assets of the campus and protect the physical well-being of students, employees and campus visitors. Campus risk managers have responsibility for managing several risk control programs at the campus level:

- The State Self-funded Property Program and the State Self-funded Liability Program
- Campus access to commercial insurance programs purchased by BSRM and ORM
- Development and/or review of contractual language as it pertains to liability issues
- Management of the campus driver authorization program
- Issuance of certificates of coverage and review of certificates of insurance
- Review of affiliation agreements

The campus risk manager will frequently be asked to provide input on the risk potential for new or proposed campus programs or activities. The risk manager should actively work to manage risks and minimize exposures.

To be successful in meeting these responsibilities, the campus risk manager must be familiar with BSRM and ORM self-funded and commercial insurance programs, have a clear understanding of state statutes that provide defenses against liability claims, and know how to apply the risk management process. This is in addition to understanding the mission of the university, how risk management fits into meeting that mission, how campus departments interact at the campus level and how the campus interacts with UW System. Finally, no one can know everything about all risk management, so contact the staff at ORM when you need assistance.