UAC INSURANCE MUTUAL

Board of Trustees Meeting

Thursday, May 27, 1999, 9:30 a.m.
Utah Association of Counties Offices

A G E N D A

9:30	Call to Order	Gary Herbert
	Review of Board Members Absent	Gary Herbert
	Approval of March 25, 1999 Minutes	Gary Herbert
	Loss Control Managers Report	Shawn Guzman
	Audit Committee Report	Ann Skanchy
	Broker Report	John Chino
	First Quarter Broker Review	Brett Rich
	Director's Report	Brett Rich
	Year 2000 Compliance	Brett Rich
	Claims Audit Report	Brett Rich
	Claims Administration Report	Doug Alexander Curt Hamby
11:30	Lunch	
	Set Date and Time for Closed Meeting to Discuss Pending or Reasonably Imminent Litigation	
	Action on Litigation Matters	Kent Sundberg
	Set Date and Time for Closed Meeting to Discuss the Character, Professional Competence, or Physical or Mental Health of an Individual	
	Summary of Financial Statements	Brett Rich
	Other Business	Gary Herbert
1:30	Adjourn	

5397 South Vine Street, Salt Lake City, UT 84107

UTAH ASSOCIATION
OF COUNTIES
INSURANCE MUTUAL

UACIM BOARD OF TRUSTEES MEETING

MINUTES

May 27, 1999, 9:30 a.m.
Utah Association of Counties Offices

BOARD MEMBERS PRESENT	Gary Herbert, *President*, Utah County Commissioner Jerry Hess, *Vice President*, Davis County Deputy Attorney Dannie McConkie, *Secretary-Treasurer*, Davis County Commissioner Tony Dearden, Millard County Commissioner Chad Johnson, Beaver County Commissioner Royal Norman, Box Elder County Commissioner Tex Olsen, Sevier County Commissioner Ed Phillips, Millard County Sheriff Sarah Ann Skanchy, Cache County Council Member Kent Sundberg, Utah County Deputy Attorney
BOARD MEMBERS ABSENT	Kent Petersen, Emery County Commissioner
OTHERS PRESENT	Brent Gardner, UAC Executive Director Brett Rich, Director, UACIM Shawn Guzman, UACIM Loss Control Manager Sonya White, UACIM Administrative Assistant John Chino, GRMS Account Executive Doug Alexander, McLarens Toplis Claims Manager

CALL to ORDER

Gary Herbert called the meeting to order and welcomed those in attendance.

REVIEW of BOARD MEMBERS ABSENT

Kent Petersen requested to be excused from this meeting due to a family commitment. Sarah Ann Skanchy made a motion to excuse Kent from this meeting. Dan McConkie seconded the motion, which passed unanimously.

APPROVAL of MINUTES

The minutes of the Board of Trustees meeting held March 25, 1999 were previously sent to the Board Members for review. Ed Phillips made a motion to approve the minutes as written. Chad Johnson seconded the motion, which passed unanimously.

SET DATE and TIME for CLOSED MEETING

Dan McConkie made a motion to set the date and time for a closed meeting to begin at 9:40 a.m. on May 27, 1999, to discuss pending or reasonably imminent litigation. Ed Phillips seconded the motion, which passed unanimously.

Tony Dearden made a motion to conclude the closed meeting at 10:50 a.m. on May 27, 1999. Chad Johnson seconded the motion, which passed unanimously.

ACTION on LITIGATION MATTERS

Chad Johnson made a motion authorizing settlement on claim number 801UTA97825402 up to an amount of $40,000. Tex Olsen seconded the motion, which passed unanimously.

Sarah Ann Skanchy made a motion authorizing the filing of an *Offer of Judgement* on claim number 801WAT978235, contingent on the resolution of any coverage questions, in the amount of $250,000. Royal Norman seconded the motion, which passed unanimously.

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Dan McConkie made a motion ratifying the agreement arrived at during mediation to settle claim number 801MIL957009 for an amount of $80,000—Millard County of which will pay $40,000. Sarah Ann Skanchy seconded the motion, which passed 5-3. Dan McConkie, Sarah Ann Skanchy, Jerry Hess, Tony Dearden and Royal Norman voted in favor of the motion. Ed Phillips, Chad Johnson and Tex Olsen voted against the motion. Gary Herbert abstained and Kent Sundberg was excused from the meeting at 10:30 a.m.

BROKER REPORT

Brett Rich requested that John Chino review the broker performance standards for his report (see First Quarter Broker Review).

FIRST QUARTER BROKER REVIEW

John Chino reviewed each item of the broker performance standards and detailed the efforts provided for each standard for the first quarter 1999. He requested that item number 12, *Issue certificates of insurance, when necessary, within 24 hours of our receipt of the request*, be deleted from the standards as it no longer applies to Arthur J. Gallagher & Company. Brett Rich concurred with John's report and recommended that the Board approve the first quarter performance bonus. Sarah Ann Skanchy made a motion approving payment of the first quarter 1999 brokerage performance bonus. Ed Phillips seconded the motion, which passed unanimously.

LOSS CONTROL MANAGER'S REPORT

Shawn Guzman reported that the 1999 Personnel Workshop, held in Iron County on May 12-13, was well attended and each member county was represented except for one. Each attendee was asked to complete an evaluation survey of the workshop. Approximately one-third of the attendees did so and Sonya White has compiled the results (see attachment #1).

Shawn reported that he attended the Children's Justice Center Symposium May 24-26. The Attorney General's office is pushing the counties to be the sponsoring agencies of these Centers, which includes the responsibility for liability. By statute, an *Advisory Board* is contrived to govern the Centers and a *Friends Board* is created to raise money for the Centers. Therefore, any county employees working in the Centers feel they answer only to the Attorney General's office or the Advisory Board. Shawn feels that the employees working in these Centers should be employed by the state.

AUDIT COMMITTEE REPORT

Sarah Ann Skanchy reported that the Audit Committee met today to review the 1998 audit conducted by Larson & Company. The Statutory Financial Statements comparison of 1997 and 1998 identified a decrease in the net income of $3,678. The auditor's Internal Control report stated that: *We noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined.* Material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being auditor may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

One of the Audit Committee's duties under their internal control is the review of the line items of the administrative budget. A fee is paid to the Utah Association of Counties each year for the administration of UACIM. The Audit Committee requested that Brent Gardner disclose total amounts spent under each line item of the administrative budget during the budgetary process.

By statute, UAC Insurance Mutual is a political subdivision and must file their annual audits with the Utah State Auditor's Office. Also, Larson & Company will provide a letter to the Insurance Department stating that the UAC Insurance Mutual audit, for the year ending 1998, is complete. Tex Olsen made a motion accepting the 1998 audit as presented. Tony Dearden seconded the motion, which passed unanimously.

DIRECTOR'S REPORT

Brett Rich recommended that the Board research expanding the language to include local government in the two-year civil rights statute of limitations legislation, which already applies to the state. There is no limitation at the Federal level; therefore, Federal courts look to state law to determine the appropriate statute of limitations. Jerry Hess suggested Brett research the Federal court actions before pursing change in legislation.

Brent Gardner reported that Karl Hendrickson, Salt Lake County Deputy Attorney, is putting together a sub-committee to work on governmental immunity legislation. Brent will contact Senator Howard Stephenson to see who is sponsoring opposing legislation.

YEAR 2000 COMPLIANCE

Brett Rich reported that he is in the process of contacting those members who have not completed and returned their Y2K questionnaires. Also, the Insurance Department is requiring that UAC Insurance Mutual complete a Y2K survey form each quarter. The first quarter survey has been completed and returned. Brett will have a draft contingency plan for the Board to approve at the next meeting. Brett and Sonya White have identified the service providers that may effect the operations of UACIM and who will receive a letter requesting compliance.

CLAIMS AUDIT REPORT

Brett Rich explained that Alan Turnipseed of Ernst & Young; spent three days in the UACIM office analyzing the operation and 70 claims files (approximately 100 claims) for the claims audit he was contracted to complete. Brett reviewed the audit with the Board and explained that out of the 100 claims analyzed, Mr. Turnipseed found no indication of "stair stepping" reserves. However, as detailed on page six, eight claims were listed as "reserves were not adequate". Relating to coverage issues, the auditor reported that coverage should be resolved by the Mutual and the coverage attorney, rather than the excess carrier. The duty of the claims administrator is to the Mutual not the excess carrier. Problems were reported with the diary system being utilized by the claims department. With the implementation of the new Pyramid Reporting System, deficiencies should be eliminated. The present caseload of the claims department is average and should be handled adequately by the two employees. Sarah Ann Skanchy made a motion accepting the Ernst & Young claims audit. Royal Norman seconded the motion, which passed unanimously.

CLAIMS ADMINISTRATION REPORT

Doug Alexander reviewed the written response to the audit prepared by Curt Hamby, McLarens Toplis Branch Manager (see attachment #2). Doug also reviewed his written response to case reserving and explained that one of the eight claims listed as "reserves were not adequate" for Wasatch County was a calculation error by the auditor—the total incurred amount was not listed. This was brought to Mr. Turnipseed's attention who clarified that the reserve for this claim was listed in error on the report but that the corrected amount was also inadequate. Another one of the eight claims listed as "reserves were not adequate" for Uintah County showed inadequate reserving because the accident occurred in June and was not reported to the claims department until December after corrective measurers were taken prior to an investigation being conducted. Sarah Ann Skanchy made a motion to accept the written responses to the claims audit by McLarens Toplis. Royal Norman seconded the motion, which passed unanimously.

SUMMARY of FINANCIAL STATEMENTS

Brett Rich reviewed the February, March and April 1999 financial statements with the Board. The net income is down from the first quarter due to the partial repayment of the debentures in April.

SET DATE & TIME for CLOSED MEETING to DISCUSS the CHARACTER, PROFESSIONAL COMPETENCE or PHYSICAL or MENTAL HEALTH of an INDIVIDUAL

Chad Johnson made a motion to set the date and time for a closed meeting to begin at 1:35 p.m. on May 27, 1999, to discuss the character, professional competence or physical or mental health of an individual. Ed Phillips seconded the motion, which passed unanimously.

Dan McConkie made a motion to conclude the closed meeting at 1:50 p.m. on May 27, 1999. Tex Olsen seconded the motion, which passed unanimously.

OTHER BUSINESS

The next meeting of the Board of Trustees will be held on Thursday, June 24, 1999 at 9:30 a.m. at the UAC offices.

Approved on June 24, 1999

Dan R. McConkie, *UACIM Secretary-Treasurer*
Davis County Commissioner

AFFIDAVIT OF GARY R. HERBERT

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

Gary R. Herbert, being duly sworn upon oath, deposes and says:

1. That the affiant has personal knowledge of the matters hereinafter referred to in this Affidavit.

2. That the Affiant, on or about the _____ day of _____, 1999, presided over a meeting of the Utah Association of Counties Insurance Mutual Board of Trustees, an open and public meeting within the provisions of Chapter 4, Title 52, Utah Code Annotated, 1953, as amended.

3. That a quorum of the Utah Association of Counties Insurance Mutual Board of Trustees was present and at least two-thirds of the members present, voted to close the meeting pursuant to the provisions of Section 52-4-4, Utah Code Annotated, 1953, as amended, for the purpose of discussing the character, professional competence, or physical or mental health of an individual.

4. That the affiant was present throughout the meeting and, pursuant to the provisions of Section 52-4-7.5, the affiant does hereby affirm that the sole purpose for closing the meeting was to discuss the character, professional competence, or physical or mental health of an individual or individuals.

FURTHER, Affiant saith not.

DATED this 27th day of May, 1999.

Gary R. Herbert

GARY R. HERBERT, President
Utah Association of Counties Insurance Mutual

On the 27th day of May 1999, personally appeared before me Gary R. Herbert, who, after being by me duly sworn, deposed and said that the information contained in the above and foregoing Affidavit is true and correct.

NOTARY PUBLIC
F. JEAN EVANS
4021 South 700 East #180
Salt Lake City, UT 84107
My Commission Expires: 1-31-2002
State of Utah

F. Jean Evans

NOTARY PUBLIC

Residing at: Salt Lake City, Ut

My Commission Expires: 1-31-2002

1999 PERSONNEL WORKSHOP
Evaluation Results

Overall impression of the workshop.

Excellent	Very Good	Average	Poor
11	19	1	

Did you like starting the workshop with a social?

Very Enjoyable	Either Way	Could Do Without
19	12	

Overall, how useful were the workshop topics?

Very Useful	Average Usability	No Use To Me
29	5	

How useful were the topic handouts?

Very Useful	Average Usability	No Use To Me	No Handouts
24	10		

If presenters did not hand out materials would you have liked them to?

Yes	No
27	

What did you like best about this workshop?

Timely subjects (4).
The environment, the schedule & the information from Judge Valerga.
Mr. Valerga's presentation (2) and the FOOD!
The focus on interviewing, job reviews & safety. Good ideas on how to interact.
Good visual aides, animated personalities.
Very informative (2). The opportunity to discuss matters with others from other jurisdictions.
Useful topics, chance to meet and mingle and the location.
Chance to get away to concentrate on personnel and safety issues.
Very organized (2). Location and setting was great (5). The social was a great time to visit.
Presentations, networking.
Information on employee discipline
The entertainment, FOOD (3), Dr. Lee was a nice break from the day.
Topics taught from a legal aspect.
Contacts, helpful information.
Well prepared presenters.

What would you suggest we do differently?

More open forum for questions & answers. Role playing to re-enforce topics taught.
More comfortable chairs (2).
Continue with similar format.
Not such a time lapse between dinner & entertainment.
Jeff Rose was good for law enforcement only--didn't seem to apply to personnel issues.
Audience participation.
Better seating (2) & acoustics.
Larger meeting room (2) with more bathrooms.
Make sure visibility of visual material is good.
More on first day, less on second day (2).
Do not schedule Holiday Inn for sleeping rooms.

How would you rank the speakers, topics and handouts?

	Speaker	Topics	Handouts	
J. Francis Valerga, Disciplining Problem Employees	4	5	4	*1=poor*
Susan Preator, How to (Legally) Recruit & Interview Prospective Employees	4	4	4	*2=fair*
Dr. David Lee, Luncheon Speaker	5	4	N/A	*3=average*
Jeff Rose, How to Handle a Potentially Explosive Situation	3	4	4	*4=good*
Jeff Rose, Office, Court & Court Clerk Security	3	4	4	*5=excellent*

What topics would you like to see at next year's workshop?

Communications.
How to get leadership to focus more in individual counties.
More security information, different speakers and more specific information.
Training opportunities, employer responsibilities for safety.
Suggestions on staff meeting methods and ways to hold them.
Actual case studies. I always learn new things even if the topic has been covered before.
Updates on new developments on COBRA, FMLA, ADA, ERISA, etc. (2)
Helping your employees write measurable goals.
Workers Comp (2), developing training programs (2).
How to train supervisors, stress management.
"At Will" employees, developing a supervisor's file, presentations by attorneys and judges.
Doing the employee evaluation, how to convince supervisors to follow program.

Other location(s) you would like to have a personnel workshop held:

Brian Head, Cedar City (6), Logan (2), Midway, Manti, Moab (4), St. George (2), Park City (5)

McLARENS TOPLIS
North America, Inc.

Adjusters and Surveyors

7840 Madison Avenue, Suite 185
Fair Oaks, California 95628
Tel 916-863-2570 • Fax 916-863-2572

May 24, 1999

Mr. Brett Rich, Director
UACIM
5397 South Vine Street
Salt Lake City, UT 84107

RE: ERNST & YOUNG AUDIT REPORT OF APRIL 1999

Dear Brett,

The following is my response to Ernst & Young's Audit Report of April 1999. I believe the report will address most of the concerns raised in the report. Areas of concern raised in the report that I am not in a position to address will be deferred to you as UACIM Director for any policy revision. McLarens Toplis will then institute those policies/procedures in its claims manual for use by its dedicated claims unit. This report principally addresses the general administrative issues raised by the auditor rather than specific claim file detail. Since the Claims Manager, Doug Alexander, is more familiar with the specific files, I am also enclosing his response to the audit report.

SUMMARY:

The overall conclusion by the auditor was that McLarens Toplis is performing a satisfactory job and meets, or exceeds, industry standards in most cases. My review of the report shows that the auditor had nine very positive things to say about the claims operation, and had six areas of concerns. The body of this report will list the nine favorable comments, and then address the six concerns in detail.

In addition to claims administration, McLarens Toplis routinely audits Insurance Pools and Public Agency Insurance Mutuals on a regular basis. From our experience, we know that auditors have a very limited amount of time in which to review large and complex cases, and usually look for trends. Because of the limited amount of time and familiarity with accounts, they have difficulty in correctly assessing individual claim files. Typically auditors have between 20 and 30 minutes per file for a review. The short time of the review, as well as the inherent lack of day-to-day knowledge of the claims operation, does not always allow for an adequate picture of the claim. Therefore, it is

necessary for us to respond to the auditor's comments so that we can assure our client that all their files are receiving proper handling.

The auditor's concerns over *coverage*, *reserving*, and *authorization for payments*, we believe are really policy issues. Claims personnel have been following what was felt to be UACIM policy. If UACIM wishes to change current reserving procedure, handling of coverage, and claims payments control, McLarens Toplis will make any/such changes.

The next issue concerned the claims unit's use of the TOPCAT system, particularly in regard to *diary functions*. According to the claims unit, it has not created any additional workload for them. The next issue concerns *subrogation*. The auditor noted that he reviewed 14 separate subrogations opportunities and found that he only had one single criticism. There was a delay in pursuing the subrogation in court. However, there had been six formal attempts to recover subrogation during the history of this claim. The attempts were made directly by the claims unit to try to avoid the cost of paying out 40% to a subrogation firm. When they could not get the other side to agree to payment, the matter was turned over to a subrogation law firm on a contingency fee basis. The delays in attempting to resolve this without payment to a law firm did not diminish the claim in any way. In fact, the attorney assigned to the case stated that the delay actually worked in UACIM's favor, in that no filing was made until it was too late for the other side to bring a counter claim.

The final issue raised was over utilization of appraisers and defense attorneys. The two cases cited by the auditor are exceptions to the way that claims are normally handled. The claims unit maintains strict control over legal discovery and settlements. For valid reasons only, are exceptions made for early assignment to defense attorneys, or to give defense counsel the authority to handle settlement negotiations. The two exceptions to routine procedure is detailed further in this report. In view of these facts, I believe the two files were handled appropriately. In fact, good results were obtained in both cases, with payments averaging only $1,350 to each of the two defense firms.

AUDITOR'S COMMENTS:

Positive Comments

1. Settlements and case reserving practices appear reasonable, and claim files are well documented.

2. Subrogation is routinely identified and pursued.

3. Property and fast track claims are routinely resolved in an expeditious manner.

4. Bodily injury claims were resolved in a timely fashion thereby limiting exposure and unnecessary litigation costs.

5. Claim personnel did an excellent job at maintaining contact with membership and UACIM staff keeping them fully apprised of investigations.

6. Efforts relating to claimant control meet or exceed industry standards, and initial contacts were made within 24 hours of receipt.

7. There was no pattern of stair-stepping case reserves on any open or closed claims; the initial case reserves appeared reasonable and were reflective of available claim documentation. All reserve changes were generally tied to receipt of new claim file documentation. A total of 14 separate subrogation opportunities were identified and actively pursued in a timely and appropriate manner with the exception of one claim which was felt to have been delayed.

8. Claim resolution efforts were consistent with industry standards and settlements were reasonable based on claims investigation. Claims personnel pursued negotiations in a timely manner eliminating unnecessary legal costs.

9. Claim file detail relating to payments made and outstanding case reserves was consistent with financial information contained in UACIM Loss Experience Reports.

Claims Concerns

1. There was over utilization of certain vendors.

2. Inefficiencies in the current Topcat system exist, particularly relating to diary functions.

3. The auditor believed that five claims were *slightly* under-reserved with three claims *significantly* under-reserved; and that the McLarens Toplis claims manual does not set forth a reserving philosophy consistent with the wishes of UACIM's senior management.

4. There was one file where the pursuit of subrogation was significantly delayed. Subrogation or salvage recoveries made on an individual claim file basis were not included on the Loss Experience Report. (Note that the new Pyramid system will allow these recoveries to be tracked.)

5. On one claim, a coverage issue was addressed directly to the re-insurer for interpretation, which did not follow the prescribed claim procedures.

6. There is a necessity for additional internal financial controls on claim payments.

The following are comments regarding the auditor's concerns regarding overall claims handling and administration. The attachment from Doug Alexander addresses specific comments regarding particular files.

1. CONCERN OVER POSSIBLE UTILIZATION OF CERTAIN VENDORS:

Another question raised by the auditor was in regard to appraisals. He stated that most of the appraisals were utilized by independent appraisers rather than soliciting multiple estimates. Furthermore, the auditor questioned why certain appraisals were not performed by UACIM staff. The Claims Manager has never done appraisals in the history of the Mutual, as it is not cost effective to do so. To save both expense and time, independent appraisers are secured. Multiple estimates are not always practical. Industry studies have shown that appraisers are usually able to get the body shop to agree to an amount lower than their initial estimate. Other practical considerations may be that... 1) due to the nature of the State of Utah and the claims locations, body shops may not be numerous or conveniently located for claimants; 2) most claimants are annoyed by having to drive great distances to obtain several estimates. In many cases the claimant's vehicles are not operative. If the vehicle is operational, the claimant may not wish to drive the vehicle due to its damaged condition. The more promptly an appraisal is made, the more quickly the person will be out of a rental car--which in most cases--more than pays for the appraiser's bill. Therefore, we feel that the present system works adequately. However, if change is preferred, please advise.

The auditor stated that there were several files turned over to defense counsel with incomplete investigations and/or an attorney was assigned to undertake settlement negotiations. The McLarens Toplis Caims Manual requires claims personnel *to perform all investigations where practical and to control the claim throughout its entirety, including the legal discovery and settlement negotiations.* I believe that the claims unit ordinarily maintains tight control over defense attorneys and only assigns cases where absolutely necessary -- for unusual and specific reasons. The *two cases* cited by this auditor *are anomalies and do not represent ordinary handling procedure.* I believe that in both cases there were specific and unusual reasons why the Claims Manager made an assignment to defense counsel prior to litigation, and why he authorized them to conduct settlement. In both cases, the attorneys' total fees at the end of the case averaged less than $1,350 each. We feel that the expense was justified. Mr. Alexander typically coordinates all legal discovery and settlement negotiations with defense attorneys. Mr. Alexander typically negotiates all legal discovery or is present to direct counsel. Unusual circumstances may be a reason to deviate from stated policy. Please refer to Mr. Alexander's attached report for specific detail.

2. SUGGESTED INEFFICIENCIES IN DATA SYSTEM:

The auditor noted that he felt there was an inefficiency in the TOPCAT diary system, as well as its inability to type notes directly into the files--notes had to be handwritten. Since TOPCAT was converted from the former LINX system when McLarens Toplis acquired the UACIM account it was meant to be an interim system only. As the auditor noted, the forthcoming Pyramid system will enable efficient multi-tasking such as *automatic diary function* and the ability to create *electronic file memos.* This superior system will offer extensive capability when properly utilized. Claims personnel for the dedicated unit will be provided comprehensive onsite training by expert technicians from our Chicago office.

3. RESERVING PROCEDURES:

The auditor listed eight specific claims in which he felt that the reserves were low. He suggested a small reserve change on five, and substantial reserve change on three. *The auditor was correct in that at least two of these cases needed to have reserves raised substantially. We have discussed the auditor's comments on reserving with Mr. Alexander.* Reserves in both cases have been discussed with the UACIM Director and Litigation Management Committee. Reserves have been raised to what we expect to be the "life of claim" reserves.

RE: **#UIN98-008520,** Mr. Alexander had been waiting for factual information from the Member before raising the reserve. Mr. Alexander states that he will be more diligent in the future by obtaining all necessary documentation to assess liability, so that a "life of claim" reserve can be established at the earliest opportunity.

RE: **#WAT97-008235** , the auditor had misread the amount of reserve outstanding. It was actually $40,000 more than what he indicated in his report. Nevertheless, Mr. Alexander admits that due to higher than anticipated legal expenses, including expert testimony, that the legal expenses were in need of increase at the time of the audit. Since that time, the Litigation Management Committee has reviewed the case and has recommended a "life of claim" reserve. Mr. Alexander has subsequently done so. Mr. Alexander will exercise more diligence in the future by tracking expenses and adjusting upward when the original estimate proves unrealistic.

Dedicated Unit Claims Personnel are guided by the *McLarens Toplis Claims Manual - Standards and Procedures*, specifically designed for the UACIM. In addition to this manual, there is a general claims procedures guide. Both contain procedural information on reserving. The auditor was apparently not aware of this fact and had thus not reviewed the guide. It outlines claims reserving philosophy.

The formula that is currently being used in the claims department is a combination of methods. They are: 1) individual case estimate; 2) use of historical settlements; and, 3) minimal reserve based on information currently known. I believe this formula has worked well throughout the history of UACIM, resulting in no major judgments or settlements exceeding reserves.

4. SUBROGATION RECOVERIES:

RE: **#BEA96-007004**, the auditor states that in only on this file did he evaluate subrogation efforts to be below standard. He found all other opportunities to be routinely pursued in a timely manner. A review of this case shows that subrogation was pursued in a timely manner. When settlement negotiations broke down, the matter was referred to a defense firm on a contingency fee basis. There was a delay in turning this over to the defense firm due to Mr. Alexander's efforts to pursue alternatives to the typical 40% contingency fee.

Mr. Alexander believes that he acted judiciously to spare the Mutual excess cost in the above matter. *I have encouraged Mr. Alexander to always pursue subrogation in a timely fashion. Should there be meritorious reason for a delay, that he secure approval from the Claims Administrator. He will follow this policy in the future.*

5. CLAIMS POLICIES ON COVERAGE ISSUES:

The auditor noted that a coverage issue was addressed directly to the re-insurer for interpretation. He questioned whether or not this should have been done and/or whether or not the UACIM was copied with the report to the re-insurer. *All coverage reports to the excess carrier or re-insurer are copied to both myself and to UACIM* as this file indicates was done in this case.

However, Mr. Alexander did not follow normal claims procedures when he directed the coverage question to the Excess Insurance Carrier. Mr. Alexander advises that, this was an exceptional case. He states that the Excess Carrier had been questioning UACIM's interpretation of the policy section regarding coverage. Mr. Alexander discussed the matter with the Director, who in turn discussed the matter with a coverage attorney. A decision regarding coverage had not been arrived at through these discussions.

Due to the Excess Carrier's negative interpretation of the coverage section, Mr. Alexander departed from normal claims procedure and asked the Carrier for their opinion. He agrees with the auditor that he should not have done so, that he should have merely advised on the status of the case. *He states that he misunderstood directions on how to pursue resolution of the coverage issue. In the future, Mr. Alexander agrees to follow stated procedures in such matters, unless he has written directions from either the Claims Administrator or UACIM Director to do otherwise.*

On page 10 of the audit report, the auditor refers to McLarens Toplis' reporting to the Excess/Re-Insurer regarding coverage issues and how its primary fiduciary relationship lies exclusively with UACIM. We certainly agree in principle with the auditor's comments. However, we feel that this is an appropriate time to raise questions/issues that have previously concerned us. We will be pleased to handle issues of coverage and reporting to the Excess Carrier in the manner prescribed by UACIM.

Our research does not show a great deal of case law in this area. However, through personal experience, I have seen numerous lawsuits filed in California involving members against their insurance pools. There have been disputes among Pool Management, Third-Party Administrator, and Excess / Re-Insurance Carriers on how issues of coverage should be handled. It is our current understanding that UACIM does not wish to release the coverage opinions to any outside parties without their specific approval. This is the current policy that we are working under. However, we would like to take this opportunity to get a policy clarification. *While we have clear direction that*

you do not wish for us to release copies of coverage opinions to the Re-insurer / Excess Carrier, does that policy also apply to member counties?

6. INTERNAL FINANCIAL CONTROLS:

Attached is a memo from Sue Benton on how claims checks are issued. She makes copies of all checks and generates a Transaction Register on a daily basis. We believe that the auditor is incorrect when he states that there are no internal controls between authorization and issuance of checks. He feels that there is potential to facilitate fraud or embezzlement. We do not believe this is to be the case. All checks over $25,000 must be signed by Brent Gardner and counter-signed by Doug Alexander. Checks over $10,000 must have a claim payment form submitted to UACIM and approved before the check is released. Checks less than $10,000 must have funds transferred into the account, thereby notifying UACIM each time a check is issued. This acts as a control. The auditor may not have fully understood this system. However, if UACIM wishes to add additional controls over authorization and/or check issuance procedure, we would be pleased to institute such.

CONCLUSION:

We appreciate the auditor's favorable comments on our operation. Regarding his concerns, we hope we have successfully addressed them herein. In those cases where there is a question of policy, we await direction from UACIM for any revisions. We would then be pleased to amend our claims procedures manual accordingly.

Yours truly,

Curt Hamby

Curt Hamby, JD, ARM
Branch Manager

CH:99-1301
Enclosures

McLARENS TOPLIS
North America, Inc.

Adjusters, Surveyors and Administrators

5397 South Vine Street
Salt Lake City, Utah 84107
Tel 801-288-0906 • Fax 801-288-9006

DATE: May 17, 1999

TO: Curt Hamby, Branch Manager

FROM: Douglas Alexander, Claims Manager

RE: Utah Association of Counties Insurance Mutual (UACIM) Claims Audit Report - Ernst & Young, LLP - April 12, 1999

CASE RESERVING

KAN98-008466-04 This claimant is currently domiciled in a foreign country, she is not represented by an attorney. She was a passenger in the Wheeler vehicle providing primary no-fault insurance benefits. There has been no medical produced on this claimant. We don't Expect any claim. Her legal time limit to file a notice of claim would expire 9-27-99.

KAN98-008466-01 The total incurred reserve on this claim is 57,500 of which $10,000 is for legal expense , $15,000 property, $5,000 BI for Dale Wheeler and passenger Srbova (in Yugoslavia) and $27,500 for Mrs. Wheeler, age 71.No medical has been produced for Mr. Wheeler. Do you wish for me to change the reserve?

JUA98-008417-03 Our total incurred for this claimant is actually $20,000; the outstanding is $8,948. This claimant was a passenger in a county sheriff's vehicle. We controlled the case by paying his medical and out-of-pocket expenses to date. We have not received any medical expense since our last payment in Dec. '98.We expect to settle this case within our reserve. The auditor Misguoted the amounted of the reserve.

KAN98-008466-03 This is a situation where Mrs. Wheeler was riding as a passenger in a vehicle operated by her husband, Dale Wheeler, who was hauling a boat and boat trailer. Our reconstructionist has determined that he had insufficient brakes and was hauling more weight than appropriate for his Ford Bronco. The reconstructionist concluded that he should have been able to stop prior to impact had he proper brakes and hauling the recommended weight. Therefore, we feel that Mr. Wheeler is at least 50% at fault under the comparative fault statute.

Mrs. Wheeler age 71,retired, recovered from a collapsed lung. The tube in her chest was removed after seven days. She had a Compression fx at L-5, neck sprain, shoulder injury and rib sprain. According to her records, her primary Dr. saw her once. She saw her Chiropractor 4x weekly. She was seen 2 or 3 x in Dec. '98 and 3x in Feb. ' 99. Her medical was stopped in Feb. 5th 1999. We have not received any med. After 2-5-99. Her total med. Is $12,000 . We feel the case has a settlement value of 30k to 40k. It is our Atty's opinion that the County would owe 50% under the Comparative Fault Rule. We feel the reserve is adequate.

UTA97-008254-02 Our total incurred on this case is $52,500 of which $50,000 is for indemnity. On April 6, 1999, I directed a settlement conference at the claimant attorney's office where I met with Mr. and Mrs. Gardner and offered $35,000. On April 30, 1999, we received a very positive response from the attorney indicating that they would settle the case for $40,000. We are reqesting an additional $5,000 from the Board , we have $35,000 auth.The case is settled for $40,000,$10,000 under the reserve.

DAV97-008199-02 The total incurred is $25,000, $5,000 of which is for legal expense. The parents were undergoing a divorce at the time of the accident; custody battle over Kenyon Bitter, now age 12. On July 15, 1998, we wrote Attorney Michael Mueller, who represented Kenyon E. Bitter (father). We indicated to Mike Mueller that we were at a loss as to why he refuses to respond to our repeated attempts to resolve the matter, or even respond to our phone calls and letters over the past year from the date of the letter. Seven months before that date, he indicated in a phone conversation that a physician wanted to wait six months post accident to render an opinion about possible future effects, if any, to bone growth in young Kenyon's arm. I continued attempting to divulge information with no response from Mueller. In December, 1998, we talked with Linda Waymant, the mother, who said she was not represented by Mike Mueller. She said her divorce attorney handled the case; she has custody. We indicated we

need medical reports authorization and the matter will have to be resolved by court order because of his age. We have heard nothing back from Waymant. We've been stonewalled in this case. Therefore we will conduct our own activity check.

If there is a problem with the growth bone, it could become an important matter. However, if there was no problem with the growth bone, it could be a minor claim.

UIN98-008520 The claim was received in December, 1998, at which time we requested a complete maintenance and accident history. We did not receive information until April 5, 1999. Reportedly, foliage partially blocked the stop sign located in the Canal Proper. The adjacent landowner owns to the middle of the road. The county has assumed some maintenance responsibilities. It appears that responsibility could be divided among three parties. The claim exposure could go between $100,000 and $150,000. There is an offset of $50,000 paid by Safeco Insurance Company.

WAT97-008235 Our total incurred on this case was $125,000, of which $50,000 was for indemnity. We did not want to be guessing at the life of the file reserve. Rather, we were awaiting more detailed information from our attorney to put a more realistic reserve rather than stairstep. Shortly before the audit we received a surprisingly high legal bill, along with a billing statement from Geotechnical Service in the amount of $14,000. Our attorney had indicated to us that he anticipated that bill would be approximately $4,000 . At the time of the audit, we had paid $68,000 in legal expenses. The outstanding amount was $56,844. The auditors comments have been duly noted and acted on.

ADEQUACY /QUALITY OF CLAIMS POLICIES AND PROCEDURES:

MIL98-008493 Great American was disputing the inverse condemnation limited defense and endorsement. I did discuss this case with the UAC Insurance Mutual Director, Brett Rich. In fact, we talked with coverage attorney John Chipman on the duty to defend issue. Also, there was only 20 days to file an Answer. We needed to

respond within at least five days whether or not a defense would be provided. I am enclosing a copy of our letter dated November 19, 1998, directed to Great American Insurance Companies with enclosures; carbon copies to both Brett Rich and Curt Hamby with enclosures. For your information, both Kathy Brady of AIGTS and Donna Moore of the Great American Insurance Companies, have communicated with us verbally that they request we report coverage issues to them.

LITIGATION MANAGEMENT:

CAC95-007023

The questions raised by the auditor opens up an interesting issue. That is, how to comply with the law and yet not be taken advantage of by obnoxious plaintiffs' attorneys. Here in Salt Lake we have several law firms that plague adjusters by filing subpoenas requesting copies of their entire investigative file. For example, if the primary purpose behind the creation of the document, or taking of the statement, is not to assist in the pending or impending litigation, then the work-product protection is not justified. To sum it up, according to Case Holding, the party asserting work-product protection must demonstrate that the documents were created to assist in pending or impending litigation.

In this particular case, the attorney gave us some valuable research citing several cases regarding the county's duty to exercise due care in maintaining the street in a reasonable and safe condition for travel, and to guard against injury to persons and property by removing any dangerous objects in the street. This particular case involved loose gravel on the roadway. We have used this particular research for other cases since this case, and it has proven helpful. When we first assigned this case for research, it was on the basis that we had a subrogation claim by another insurance carrier, and the issue was either to go to arbitration or use an attorney. We are not members of arbitration so we do use our attorneys. In the attorney's first letter to us, dated December 18, 1996, she indicated, and we quote, "The claimant also alleges that the gravel was left on the road by the Cache County road crew. We have no information regarding the

accuracy of these allegations, nor whether the road crew was contacted prior to the accident regarding the hazard." That is not to say that we did not send any information. Rather, there was no information available either at our office or from the county road superintendent. I had contacted the road superintendent and requested documentation and maintenance history before the case was assigned. We hadn't received it and the attorney followed up with another letter indicating the following: "You may recall that Joe Kirby, Superintendent, of the Cache County road crew, was going to forward copies of the maintenance record on the site of the above-referenced accident. However, for some reason I have not received those records. I spoke with his office again today, and they are forwarding those records." It was determined that the county owed the subrogation claim, which we settled, and the overall attorney expense was $1,200.

We are not in a position to always be able to wait until we complete all of the investigation before submitting a file over to defense council.

DAV97-0081990-01 To assist you with an overview of this very serious personal injury case, I am enclosing copies of my captioned reports to the Excess Insurance Carrier. This was a complex case in that the county driver may not have been within the course and scope of his employment at the time of the accident. The accident occurred on a Saturday. He was driving a county-owned vehicle. He pulled out from a stop sign directly into the path of the oncoming claimant operating a motor cycle with his son seated directly behind him. The plaintiff suffered a right side hip and leg fracture, and his ankle was crushed. He had surgery where they implanted hardware, plates, and screws, and was casted all the way from his hip to his toes. He spent six months in rehabilitation. Our defense attorney assisted us in doing research on scope of employment issues which resulted in substantially reduced limits of liability for the county where the vehicle is not being driven or used within the scope of the driver's employment. In addition, I directed the settlement negotiations and attended the meeting personally. The plaintiff attorney met with us at our defense attorney's offices, and we successfully

settled the case for $100,000. Our attorney billed us $1,529 in expenses. While there was a factual dispute whether or not the County employee was within the course and scope of his employment, the case settled in the meantime.

Perhaps the auditor did not see in the file where I had attended the meeting and was involved in the strategy of the settlement negotiations. I spent a great deal of time on the case and was commended by Davis County and the Board of Trustees.

In fact, I took a recorded statement from the involved county personnel which I provided our defense attorney for their use. I obtained the necessary witness statements which we also provided to our attorney, along with the police investigation file and photographs. I surveyed the accident locus and took photos. Our defense attorney did have to make some telephone calls to the plaintiff attorney about trying to negotiate a time and place where we could take the statement of the claimant. We were unable to take his statement because of his medical condition.

DAV97-008220-02 This is another case where we were faced with the difficulty in complying with the law, and yet attempting not to be taken advantage of by this particular plaintiff attorney who has a reputation of being uncooperative and involved in a "hot bed with certain doctors and chiropractors." The idea here was to make every effort to assert work-product protection in our attempt to get the case settled. This is a case where the county vehicle rear ended the adverse vehicle causing a chain type reaction, and the issue is that of damages. I am enclosing a copy of my letter to the plaintiff attorney when we first opened up the case. I am also enclosing a copy of our attorney's review and opinion of this case which we felt was quite helpful in a jury verdict being quite low where the injury claimed is limited to soft tissue. The defense attorney did write the plaintiff attorney a letter indicating they had been retained to represent the interests of the involved member county, and did follow up on my written request for a personal interview with his clients, and also to allow us to view and photograph their vehicle to determine the extent of damage. Our attorney later on did make a settlement offer directly to the

plaintiff attorney, at our direction.

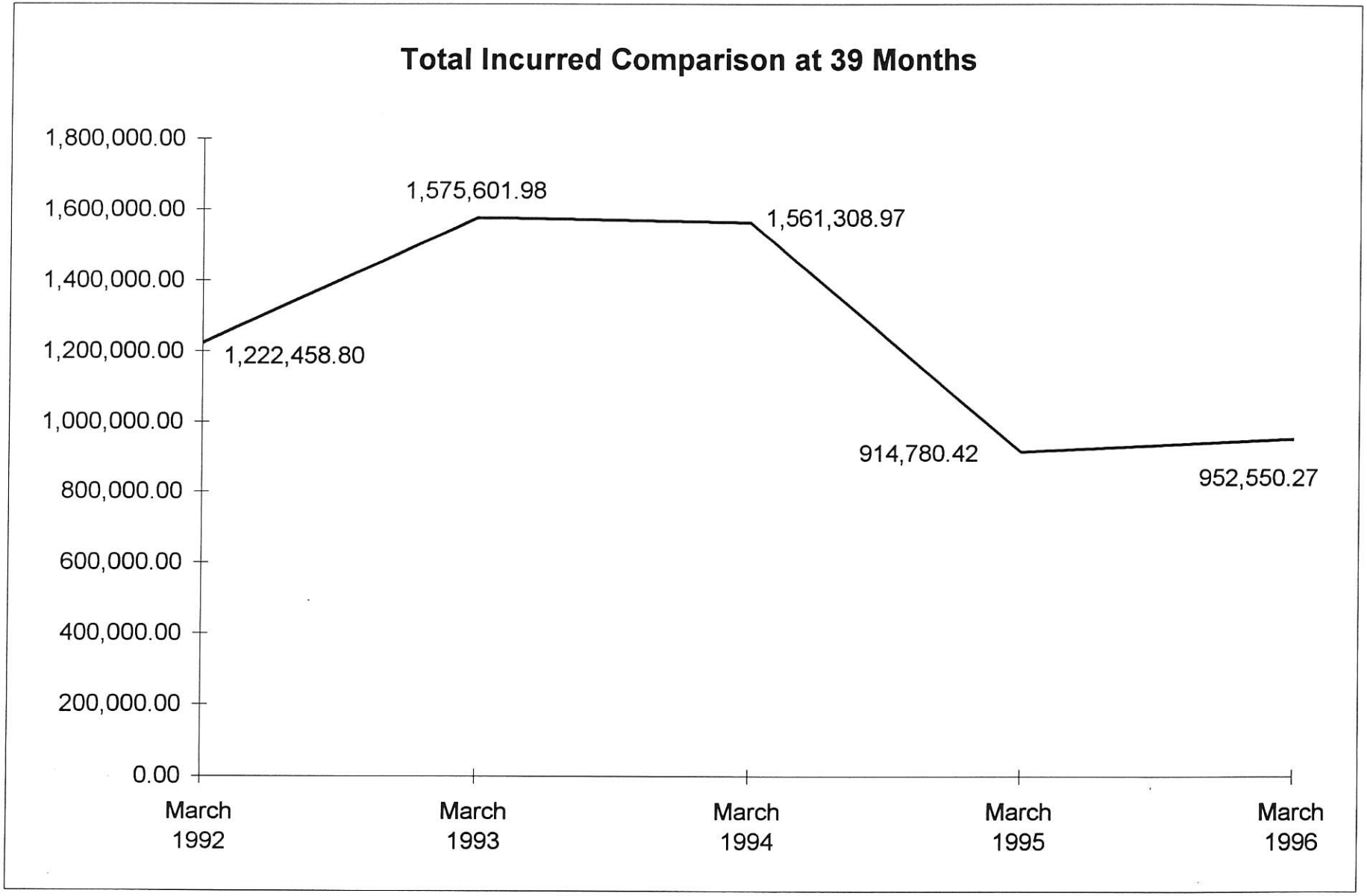
In summary, I had written to this attorney and had called him on the phone, and he did not respond. This is an exceptional attorney, and based on prior experience and experience by others with this same attorney, we decided to assign it to our attorney. In fact, about a week and a half ago, Attorney Martinez called us and indicated that he would comply with my previous request that he provide us with medical releases on each of his clients and allow us to meet and talk with them. In June of 1998, Attorney Martinez basically had rejected our proposal unless we would agree not to pursue discovery in the event he filed a lawsuit. We declined that offer for obvious reasons, and heard nothing from him since that date.

It has been my experience over the years, while we provide the defense attorney with our field investigation file, they will re-interview witnesses, the involved public entity officials, and visit the accident locus, jail facility, or any other involved facility themselves. Their response to us that they feel it is important to them to do it first hand for trial preparations.

DA:llf
Enclosures

99-1101

UAC Insurance Mutual



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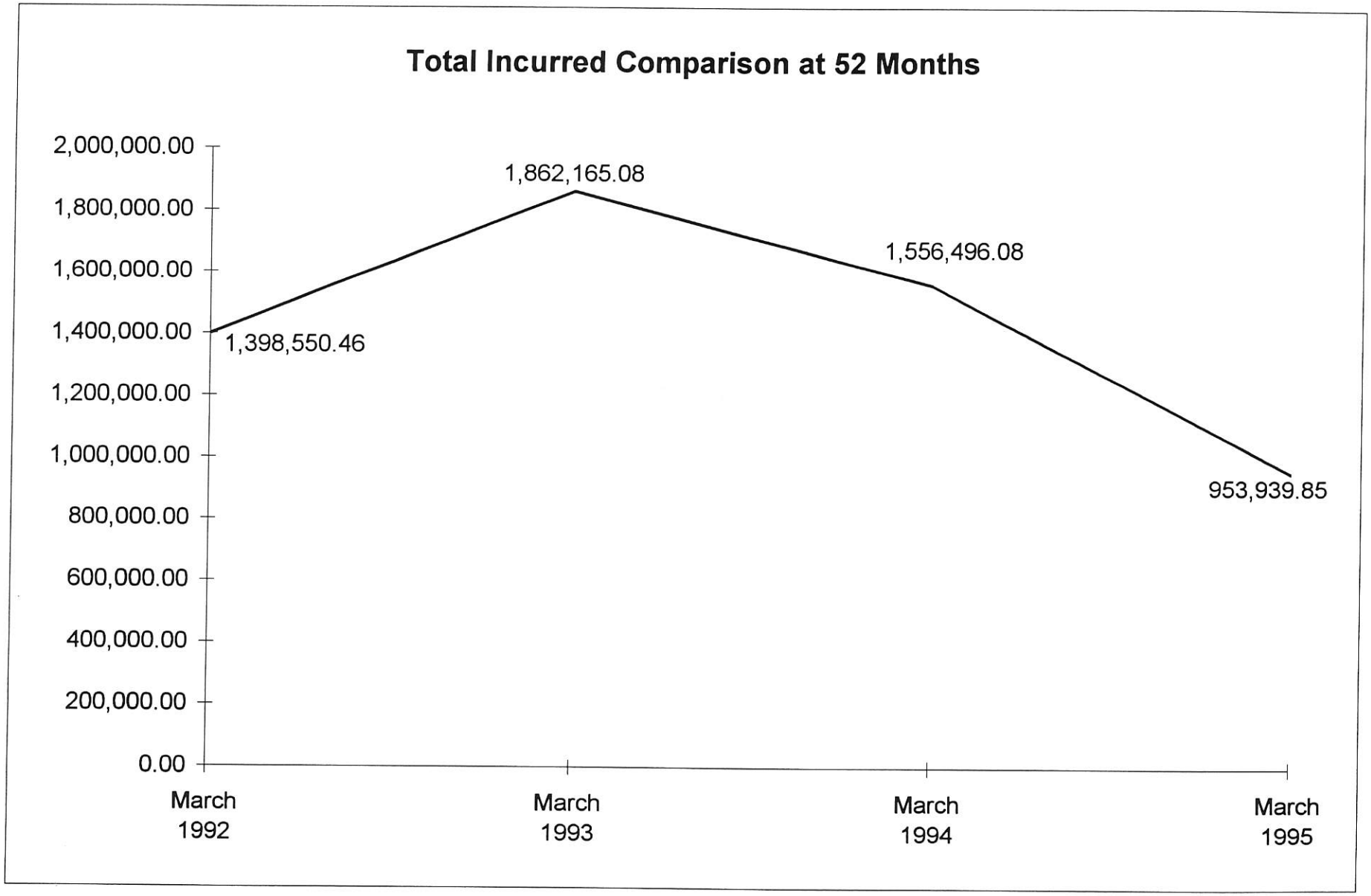

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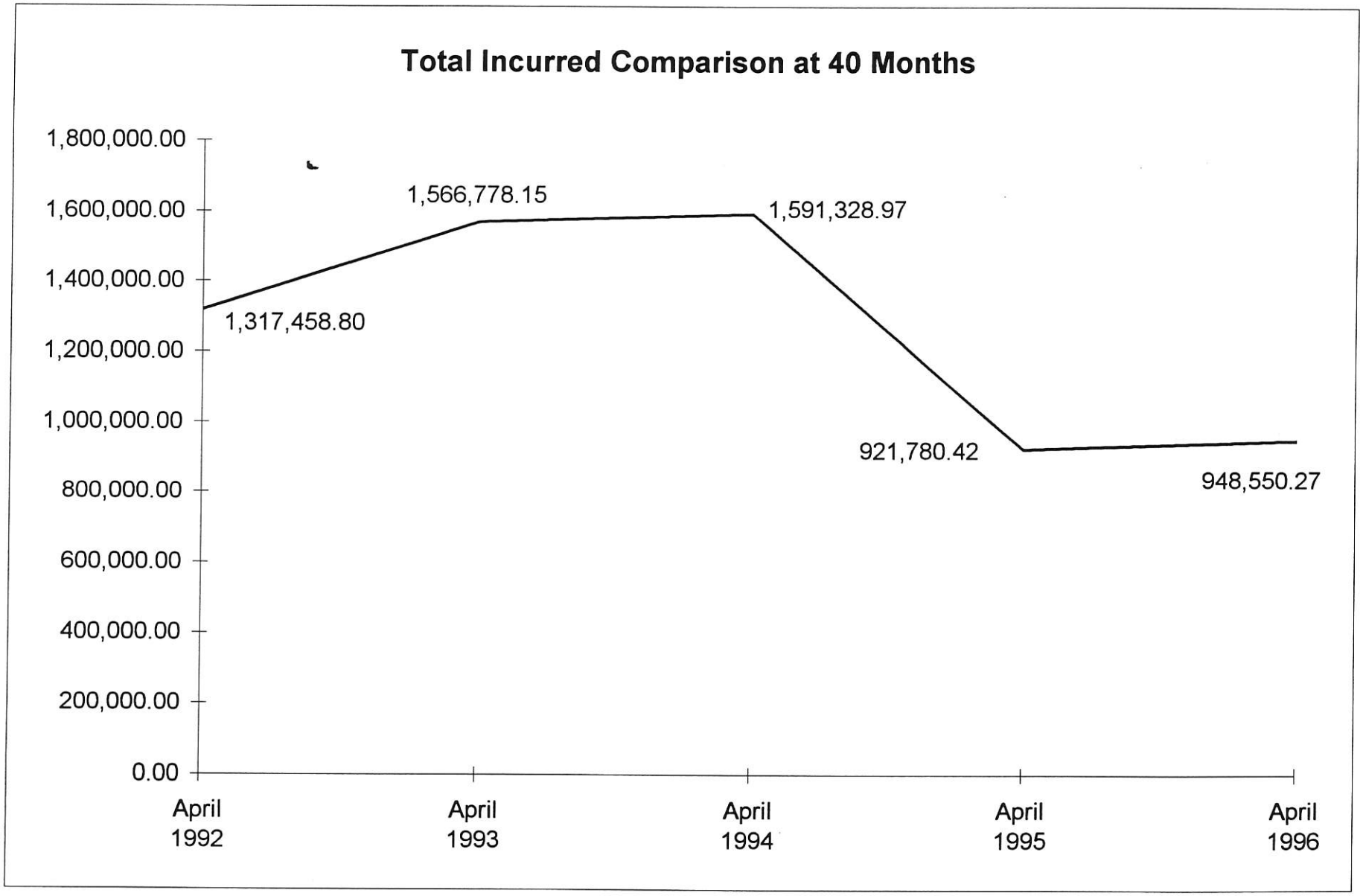

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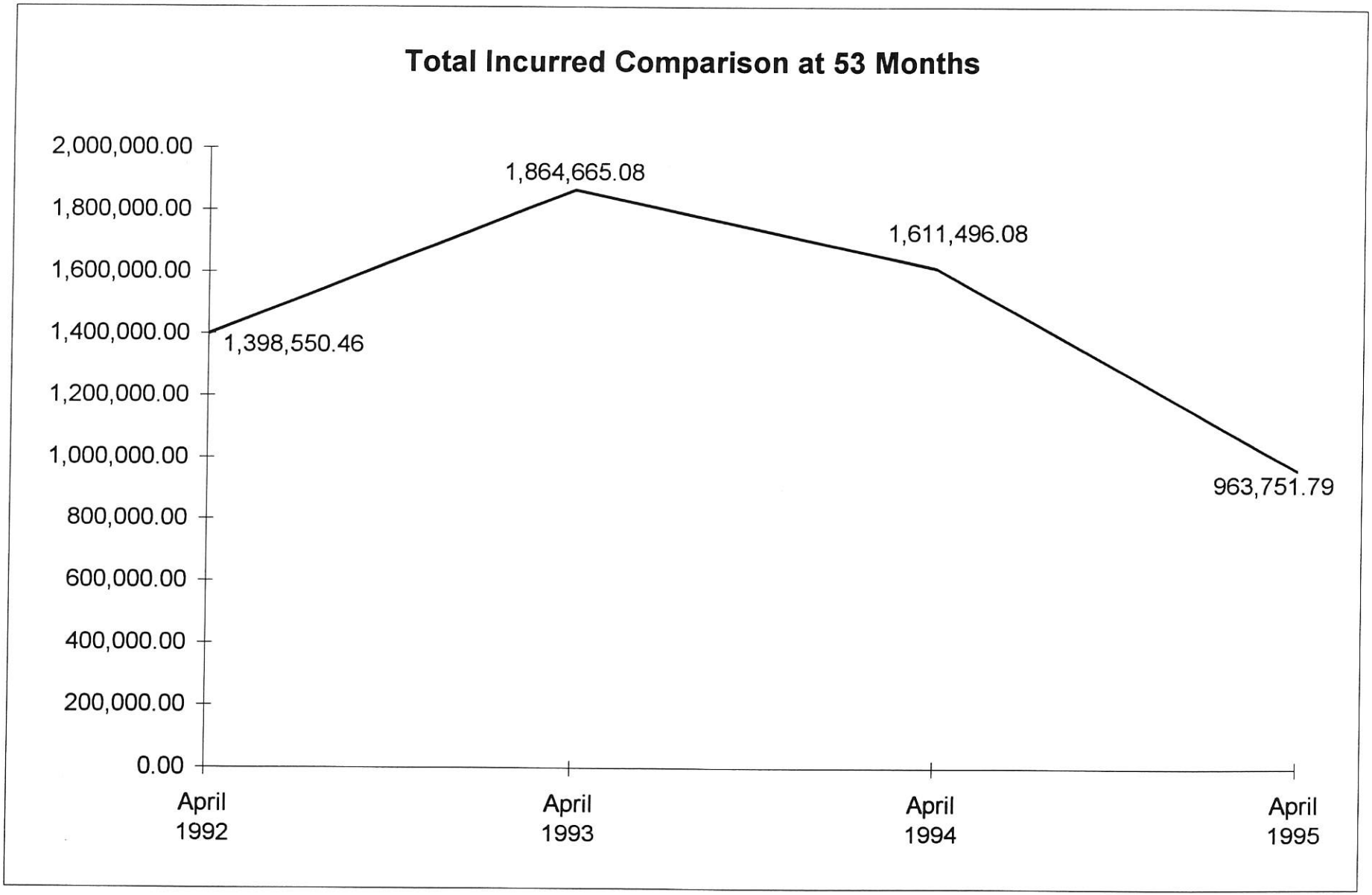

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