

Office of Inspector General

City of New Orleans

Evaluation of the City's Workers' Compensation Program

**E. R. Quatrevaux
Inspector General**

Final Report

December 13, 2012

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL

December 13, 2012

Re: Evaluation of the City's Workers' Compensation Program

I certify that the inspector general personnel assigned to this project are free of personal or other external impairments to independence.

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux", located below the certification text.

E.R. Quatrevaux
Inspector General

Evaluation of the City’s Workers’ Compensation Program

Statement of Independence	i.
Executive Summary	1
I. Objectives, Scope, and Methodology.....	2
II. Introduction.....	3
City of New Orleans’s Workers’ Compensation Program	3
Claims Reporting Process	5
Workers’ Compensation Data	5
III. Findings.....	10
Vendor Selection Process	10
Finding 1. The City did not select vendors for ancillary services through an open and competitive process.....	10
Program Management and Oversight	11
Finding 2. The City did not have adequate internal controls in place to oversee vendors and ensure that all incurred charges were necessary and accurate.....	11
Finding 3. The City approved use of an HGI subsidiary for ancillary services.....	12
Finding 4. The City’s workers’ compensation claims have not been audited by an independent entity since at least 2000	12
Finding 5. The City did not have useful metrics in place to manage its workers’ compensation program effectively.....	13
Return-to-Work/Transitional Duty	13

Finding 6.	The City did not have a comprehensive return-to-work program in place for all departments.....	14
Claim Settlements.....		14
Finding 7.	The City did not budget adequate funds to pursue claim settlements in 2011	14
Legal Services		15
Finding 8.	The City did not select outside counsel for legal services through an open and competitive process.....	15
Finding 9.	The City paid outside counsel for legal interventions that could have been filed by the Law Department	16
Budget Issues		16
Finding 10.	The City did not maintain a reserve account to absorb higher than expected workers' compensation costs.....	17
Risk Management and Injury Prevention		18
Finding 11.	The City did not have an operational safety plan in place for its employees, in violation of state law	18
Finding 12.	The City gradually discontinued its safety and loss control initiatives between 2006 and 2011	19
A.	The City did not formally reassign the Safety Engineer's responsibilities after the position was eliminated in 2006	19
B.	The City discontinued its practice of conducting regular citywide safety meetings.....	19
C.	The City used less than 40 percent of its allotted loss control hours in 2011	20
D.	The City did not obtain loss control services during its most recent procurement of a third party administrator.....	20
IV.	Conclusion and Recommendations	22
A.	Conclusion.....	22

B. Recommendations	22
Recommendation 1. The City should conduct an open and competitive procurement of ancillary service vendors	22
Recommendation 2. The City should develop internal controls to monitor payments made to vendors for ancillary services	22
Recommendation 3. The City should discontinue use of Integra Medical Management for ancillary services.....	23
Recommendation 4. The City’s workers’ compensation claims should be audited regularly by an independent entity with expertise in the field	23
Recommendation 5. The City should develop metrics to manage its workers’ compensation program effectively and monitor the TPA’s performance	23
Recommendation 6. The City should develop a return-to-work program that covers all departments	24
Recommendation 7. The City should budget funds for claim settlements.....	24
Recommendation 8. The City should issue an RFP for legal services related to workers’ compensation claims	24
Recommendation 9. The City should determine whether it is cost effective to shift additional legal work related to workers’ compensation claim to the Law Department.....	24
Recommendation 10. The City should develop a reserve fund to absorb the impact of higher than anticipated workers’ compensation costs	25
Recommendation 11. The City should implement an operational safety plan as required by law, using the State of Louisiana’s plan as a template.....	25
Recommendation 12. The City should re-establish its safety and loss control program.....	25
V. Official Comments from City of New Orleans	26

APPENDIX

Appendix A. Ancillary Service Vendor Rate Analysis..... A1

LIST OF FIGURES

Figure A. Workers’ Compensation Claims Filed by City Employees, 2008-2011 6

Figure B. Workers’ Compensation Costs (New and Old Claims), 2008-2011 6

Figure C. Workers’ Compensation Expenses by Department, 2008-2011 8

Figure D. Allocated Loss Adjustment Claims Expenses, 2008-2011..... 12

Figure E. Claim Settlement Payments, 2006-2011 15

Figure F. Workers’ Compensation Legal Expenses, 2008-2011..... 16

Figure G. 2012 Budgeted Expenses for Workers’ Compensation by Job Category 17

Figure H. Developing an Effective Risk Management Program 18

Figure I. Loss Control Hours Provided by CCMSI, 2008-2011 20

EXECUTIVE SUMMARY

The Office of Inspector General for the City of New Orleans (OIG) conducted an evaluation of the City's workers' compensation program. The objectives of the evaluation were to determine whether the City managed its workers' compensation program effectively and identify opportunities for cost savings. The scope of this evaluation included the City's management and oversight of its self-insured workers' compensation program between 2008 and 2011, a period during which the City averaged almost \$16 million in workers' compensation expenses per year.

Evaluators identified the following findings relating to management and oversight of the workers' compensation program:

- The City gradually discontinued several of its safety and loss control initiatives and did not have a citywide operational safety plan in place as required by state law.
- The City did not select outside legal counsel and vendors for ancillary services through an open and competitive procurement process.
- The City did not have adequate internal controls in place to oversee vendors and ensure that all incurred charges were necessary and accurate.
- The City did not have adequate metrics in place to manage its workers' compensation program effectively and evaluate the third party administrator's performance.

We concluded that the City did not effectively manage its workers' compensation program commensurate with its financial impact and did not take sufficient measures to prevent employee injuries.

The City has made efforts to make improvements to its workers' compensation program during the course of this evaluation. However, additional actions are needed to remedy problems identified in the findings.

The OIG recommended the following:

- The City should re-establish its safety and loss control program.
- The City should conduct open and competitive procurements for outside legal counsel and ancillary service vendors.
- The City should develop internal controls to monitor payments made to vendors.
- The City should develop metrics to manage its workers' compensation program effectively and monitor the third party administrator's performance.

A draft of this report was provided to the CAO's Office and the Law Department for review and comment prior to publication. The City's full response is appended to this report.

I. OBJECTIVES, SCOPE, AND METHODOLOGY

The Office of Inspector General for the City of New Orleans (OIG) conducted an evaluation of the City's policies and practices relating to its workers' compensation program. The objective of this evaluation was to determine whether the City managed its workers' compensation program effectively, identify opportunities for cost savings, and determine compliance with applicable laws.

The scope of this evaluation included the City's management and oversight of its workers' compensation program between 2008 and 2011, a period that covered portions of two different mayoral administrations. In addition, evaluators reviewed City contracts, procurement documents, and data submitted to the State of Louisiana related to workers' compensation dating back to 2001. We did not analyze the handling of individual claims or medical decisions related to employee injuries as part of this evaluation.

To conduct this evaluation, we interviewed personnel from the City's Risk Management Division, Cannon Cochran Management Services Inc. (CCMSI), Hammerman & Gainer Inc. (HGI), the Fire Department, the Police Department, the Law Department,¹ the Finance Department, Civil Service, and the Louisiana Office of Workers' Compensation Administration. Evaluators reviewed the following documents provided by some of the aforementioned parties in response to requests for information issued.

- City of New Orleans workers' compensation contracts and extensions (2000 – 2012);
- Records relating to the City's Request for Proposals (RFP) for Workers' Compensation claims administration (June 2008 and March 2011);
- Monthly reports generated by CCMSI;
- Monthly reports generated by HGI;
- CCMSI vendor fee schedules and contracts;
- HGI vendor fee schedules;
- City of New Orleans fringe benefit tables (2007 – 2012);
- Bank statements and checks from the City's Treasury Department (2010 – 2011); and
- Annual reports filed on behalf of the City from the Louisiana Office of Workers' Compensation Administration (2001 – 2011).

The evaluation was conducted in accordance with the *Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews*.² This report includes findings and recommendations to improve the management of the City's workers' compensation program, reduce employee injuries, and lower program costs.

¹ The City's Risk Manager interviewed for this report was terminated in May 2012. In addition, the Risk Management Division has since been moved to the CAO's Office.

² "Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General," *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

II. INTRODUCTION

Workers' compensation benefits for employees of the City of New Orleans are governed by the Louisiana Workers' Compensation Act (LWCA). City employees who sustain injuries by an accident arising out of and in the course of employment are entitled to compensation.³ The categories of compensation outlined in the LWCA include:

- **Medical care.** Employers are required to furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of the State of Louisiana to rehabilitate the injured worker.⁴
- **Indemnity benefits.** Employees who are unable to return to work after receiving medical treatment are entitled to compensation from their employer to replace lost wages. Indemnity benefits are divided into four major categories, including (1) temporary total disability; (2) permanent total disability; (3) supplemental earnings benefits; (4) permanent partial disability.⁵
- **Death benefits.** Legal dependents, nondependent biological/adopted children, or surviving parents of employees who suffer work-related injuries that result in death are entitled to compensation.⁶

In addition to outlining compensation types, the LWCA establishes specific requirements for employees, employers, insurers, and medical service providers regarding workers' compensation claims filed within the State of Louisiana.

City of New Orleans's Workers' Compensation Program

The City was self-insured for losses resulting from workers' compensation claims during the period covered by this evaluation. By definition, self-insured entities assume financial liability for any losses resulting from employee accidents rather than transferring the risk by purchasing an insurance policy. Large employers typically choose to self insure their workers' compensation programs because it allows them to avoid paying significant premiums to insurance companies for coverage. Some self-insured entities choose to purchase excess insurance policies that provide protection in the event of catastrophic claims that exceed a specific dollar threshold. City officials informed evaluators that it would be too expensive to obtain this type of coverage.⁷

³ La. R.S. 23:1031(A).

⁴ La. R.S. 23:1203(A).

⁵ La. R.S. 23:1221.

⁶ La. R.S. 23:1231.

⁷ The City has not solicited bids for excess insurance coverage since at least 2008.

The City's workers' compensation program was managed by the Risk Management Division (Risk Management) of the Law Department. Risk Management was established in 1993 by CAO Policy Memorandum No. 95 and originally included at least six employees: a Risk Manager, an Assistant Risk Manager, a Safety Engineer, two Claims Adjusters, and support staff. Staffing levels declined in subsequent years, and the division was temporarily eliminated in the aftermath of Hurricane Katrina.⁸ During this evaluation, Risk Management included only three employees, a Risk Manager and two Claims Adjusters. The Risk Manager was expected to provide administrative supervision of the workers' compensation program, oversee contracted vendors, and work with City departments to identify potential hazards that could result in employee injuries. The Claims Adjusters carried out activities at the direction of the Risk Manager, but they did not process workers' compensation claims.

Rather than managing claims in-house, the City contracted with a third party administrator (TPA) for management and administration of its workers' compensation claims. Based on a review of contracts and interviews with City personnel, the TPA was expected to provide the following services under the direction of the Risk Manager:

- Review and process workers' compensation claims in accordance with state regulations to verify compensability and determine the City's liability;
- Pay claims costs (medical expenses and indemnity benefits) and claims-related expenses (legal services, medical bill review, utilization review, surveillance, vocational rehabilitation, etc.);
- Pursue subrogation and Second Injury Fund recoveries on behalf of the City;⁹
- Maintain contact with injured employees, supervisors, and health care providers;
- Settle claims up to \$5,000, and request settlement authority from the Law Department for settlements that exceed this threshold;
- Estimate amounts to be reserved for future liability on each claim;
- Assist in preparing all reports for government agencies;
- Submit monthly reports to the City on claims activity and costs; and
- Provide access to an electronic claims database.

The City obtained TPA services from Cannon Cochran Management Services Inc. (CCMSI) between July 2000 and February 2012. Hammerman & Gainer, Inc. (HGI) was awarded a professional services contract to provide the City with TPA services beginning in March 2012. The scope of services remained unchanged.

⁸ Risk Management services were provided by an external consulting firm during this period.

⁹ Subrogation is the ability to pursue reimbursement of workers' compensation benefits paid to an injured employee if the accident involved a negligent third party. The Second Injury Fund is a state agency that reimburses employers for part of the workers' compensation costs in certain instances when an employee with a pre-existing permanent partial disability is injured on the job.

Claims Reporting Process

State law requires employees to report injuries to their supervisors within 30 days of the date of the incident to be eligible for workers' compensation benefits, and employers must conspicuously display the worker's compensation poster provided by the Louisiana Workforce Commission.¹⁰ Upon receiving notification of an injury, the department head or designated representative must complete and sign an Employer Report of Injury/Illness Form ("incident report"). The completed incident report is sent to the City's TPA for review and assignment to a claims adjuster. The claims adjuster contacts the employee and the supervisor to review details of the incident and determine if it is compensable under state law. If the claim is authorized, state law allows the injured employee to select a physician.¹¹ The City also has the authority to require the injured worker to be examined by a physician of its choosing.¹² If the two physicians make differing determinations as to the condition of the employee, either party may request a state appointed, independent medical examination (IME).¹³

If the examining physician determines that the injured employee is not able to return to work after treatment, the employee is not eligible for indemnity benefits until one week has elapsed.¹⁴ Louisiana law entitles injured workers to sixty-six and two-thirds percent of the weekly wages they would have earned, up to a maximum amount, during their disability period.¹⁵ The maximum weekly amount allowed at the conclusion of this evaluation was \$592.¹⁶ According to CAO Policy Memorandum No. 12(R), City employees can use sick or annual leave to make up for the difference between the amount received from indemnity benefits and their regular base pay.

Workers' Compensation Data

To determine how many claims were filed by City employees, evaluators obtained copies of the Annual Report of Workers' Compensation Costs ("CNO annual report") filed with the Louisiana Office of Workers' Compensation Administration (OWCA) between 2008 and 2011.¹⁷ Evaluators separated the total number of newly filed claims into two categories, medical only and indemnity, as shown in Figure A.

¹⁰ La. R.S. 23:1302

¹¹ La. R.S. 23:1121(B)(1).

¹² La. R.S. 23:1121(A).

¹³ La. R.S. 23:1123.

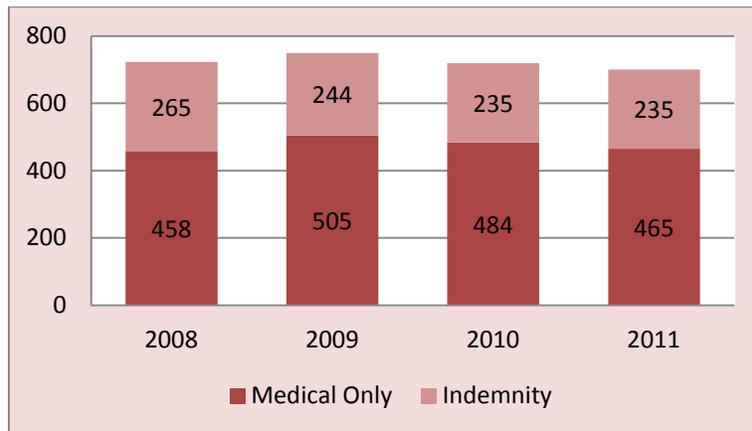
¹⁴ La. R.S. 23:1224.

¹⁵ La. R.S. 23:1221.

¹⁶ The maximum weekly compensation is updated annually and is calculated as 75% of the statewide average weekly wage.

¹⁷ All self-insured employers, insurance companies, and self-insured groups are required to submit Form LWC-WC-1000 by April 30th as per La. R.S. 23:1291.1. The TPA submits this form on behalf of the City; it includes a categorical breakdown of all workers' compensation related expenses incurred during the previous year, the number of new claims filed, the number of open claims at year end, and the City's outstanding liability.

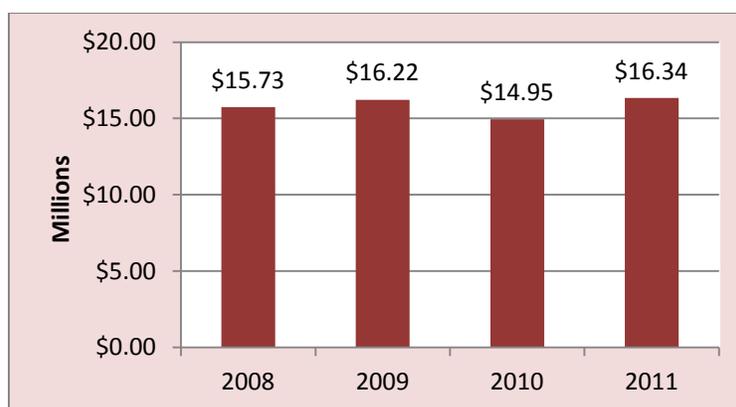
Figure A: Workers' Compensation Claims Filed by City Employees, 2008-2011¹⁸



The total number of new workers' compensation claims filed by City employees was stable between 2008 and 2011. In addition, indemnity claims, which are inherently more expensive because they include wage replacement, comprised approximately one-third of all new claims filed each year during the sample period.

The City is self-insured and assumes financial liability for losses incurred as a result of workers' compensation claims. Financial costs to the City include expenses for medical treatment, indemnity benefits, and claims-related services. To determine how much the City spent annually on workers' compensation claims, we obtained data from the CNO annual report that represent the amount spent for all claims filed within a given year in addition to open claims from previous years (see Figure B).¹⁹

Figure B: Workers' Compensation Expenses (New and Old Claims), 2008-2011



¹⁸ A limited number of workers' compensation claims that do not require any medical attention (thus, not incurring any costs) are categorized as incident-only. However, these claims are not tracked separately by the CNO annual report and may be included within the claim amounts shown in Figure A.

¹⁹ Administrative costs including the TPA contract are not included in these figures.

As shown in Figure B, the City spent an average of almost \$16 million per year between 2008 and 2011. In addition to the actual costs shown in Figure B, the City carries financial liability based on open claims reserve amounts estimated by the TPA's adjusters. Claims reserves represent projected future monetary obligations (i.e. medical expenses and/or indemnity benefits) as a result of injuries incurred but not yet paid by the City. According to the CNO annual report, the City had an estimated long-term workers' compensation liability of \$46.7 million as of December 31, 2011.²⁰ These current and future expenses represent a significant liability to the City's budget.

Evaluators obtained data from the Risk Manager that tracks the number of claims and payments by department to determine how workers' compensation expenses were distributed across City government. We combined all payments for 2008 through 2011 to illustrate the distribution of workers' compensation expenses across the City (see Figure C). These totals include all payments for claims filed during the four-year sample period as well as payments for prior claims still open during the sample period.

²⁰ The City's 2011 Comprehensive Annual Financial Report lists a long-term workers' compensation liability of \$77 million. This was developed through an actuarial analysis performed by an independent consultant; the \$46.7 million figure was developed through the TPA's internal claims reserve process.

Figure C. Workers' Compensation Expenses by Department (New and Old Claims), 2008-2011²¹

Dept	Expenses
NOFD (<i>includes Heart & Lung</i> ²²)	\$37,334,044
NOPD	\$22,959,111
Orleans Parish Sheriff	\$2,136,437
Health	\$1,723,485
Parks & Parkways	\$961,411
Public Works	\$449,524
Property Management	\$426,919
Recreation	\$332,287
Human Services	\$221,338
CAO	\$167,427
City Council	\$159,538
Finance	\$139,627
Mosquito Control	\$90,100
Library	\$84,599
City Attorney	\$73,186
Judicial	\$42,490
Mayor's Office	\$27,584
Safety & Permits	\$25,111
Civil Service	\$19,272
City Planning	\$16,080
Sanitation	\$13,635
Remaining Departments (5)	\$7,114
Payments	\$67,410,319
<i>Recoveries (Subrogation and Second Injury Fund)</i>	<i>\$2,808,616</i>
<i>Credits/Refunds</i>	<i>\$172,310</i>
Total Expenses	\$64,429,393

Workers' compensation claims, particularly indemnity claims that result in lost work time, also indirectly affect the City's operations. Examples of indirect costs include reduced staffing levels and loss of departmental productivity. The consequences of these indirect costs are particularly significant in the context of emergency first responders. When an employee suffers an on-the-job injury, resulting workers' compensation claims can result in fewer police officers available

²¹ The total expense amount calculated using the Risk Manager's data was approximately 1.8% higher than the information obtained from the CNO annual report. This was likely due to refunds and/or recoveries that occurred between the end of the year and the CNO annual report filing date (April 30th).

²² According to La. R.S. 33:2581, firefighters with at least five years of service who develop heart or lung disease are eligible for workers' compensation benefits. The disease is considered, *prima facie*, to have been caused by the nature of the work performed.

for duty, understaffed firehouses, and an overall diminished capacity to provide emergency services to citizens in need.

III. FINDINGS

The data presented in the preceding section show that the City's workers' compensation program demonstrated little change in frequency of claims and annual expenses between 2008 and 2011. Although most aspects of workers' compensation are guided by state law, this evaluation focused on the City's management of the workers' compensation program, which had a direct impact on outcomes and costs.

Vendor Selection Process

In addition to processing claims and making medical/indemnity payments, the City's third party administrator (TPA), CCMSI, was authorized to obtain services from vendors related to the defense, litigation, or cost containment of a claim. Expenses for these ancillary services were not included within the City's contract with CCMSI. Instead, CCMSI was authorized to make payments directly to vendors using City funds from a dedicated bank account. Examples of ancillary services included the following:

- Medical cost containment services such as pre-admission certification,²³ medical bill review,²⁴ and case management services;
- Vocational rehabilitation; and
- Surveillance and investigation of suspected fraudulent claims.

Expenses incurred for these services are known as allocated loss adjustment expenses (ALAE).

The requests for proposals (RFPs) issued in 2008 and 2011 did not require TPAs to formally disclose ancillary service vendors and rates within their proposals; the City only asked respondents to outline their administrative philosophy as it related to the assignment, utilization, and monitoring of vendors. Thus, the selection of ancillary service vendors was separate from the procurement process.

FINDING 1: THE CITY DID NOT SELECT VENDORS FOR ANCILLARY SERVICES THROUGH AN OPEN AND COMPETITIVE PROCUREMENT PROCESS.

According to the Risk Manager, most ancillary service vendors were chosen by CCMSI since "the vendors work for them." When evaluators pointed out that these vendors were paid with City funds, the Risk Manager clarified that CCMSI provided her with a list of vendors and their respective rates, and she had the authority to reject a vendor or request a lower rate. Although the Risk Manager retained final approval authority, there was no formal procurement process in place to solicit competitive bids from interested vendors. In most cases, the City authorized

²³ Pre-admission certification is a review of the medical necessity and appropriateness of hospital admission. The level of care and duration of the proposed hospitalization are reviewed during this process.

²⁴ Medical bill reviews are performed using specialized software that adjusts fees for medical services to correspond to Louisiana's maximum reimbursement allowances (Louisiana Administrative Code 40:I:5157) and identifies duplicate billing.

CCMSI to identify vendors, negotiate rates, and assign work. The method of selecting vendors for ancillary services did not change after the transition in March 2012 to HGI, the new third party administrator.

Although allowing the TPA to select ancillary service vendors is common practice within the industry, it nonetheless exposed the City to risk. The informal nature of the selection process and the indirect relationship between the City and vendors raised three major concerns: (1) by allowing the TPA to provide a pre-selected list of vendors, the City ceded its purchasing authority and could not ensure that it was receiving the best services at the lowest price; (2) potential vendors were not provided with an equal opportunity to submit competitive bids; and (3) the City potentially exposed itself to price markups for ancillary services as a result of undisclosed financial agreements in place between the TPA and vendor(s).

The failure to obtain ancillary services through an open and competitive process can result in paying higher than necessary rates to vendors. Evaluators found multiple examples of this scenario occurring between 2007 and 2011 (see Appendix A). Although the City negotiated lower rates for ancillary services beginning in September 2009 and achieved significant cost savings, it still could not ensure that it was paying the lowest possible rate for services, because it did not conduct a formal procurement.

Program Management and Oversight

By contracting with a TPA, the City outsourced day-to-day management of its workers' compensation claims to an external vendor and authorized them to make millions of dollars of payments on the City's behalf. The vendor relationship required the City to outline expectations, actively monitor the TPA, and evaluate performance.

FINDING 2: THE CITY DID NOT HAVE ADEQUATE INTERNAL CONTROLS IN PLACE TO OVERSEE VENDORS AND ENSURE THAT ALL INCURRED CHARGES WERE NECESSARY AND ACCURATE.

The City authorized CCMSI to use external vendors for various ancillary services. To determine how much the City spent on these services, evaluators compiled data from CCMSI's monthly vendor reports from January 2008 through December 2011. We included all vendors listed on the fee schedule provided by CCMSI and separated the data into three major categories: medical cost containment, legal services, and surveillance (see Figure D).²⁵

²⁵ Evaluators included expenses for vocational rehabilitation services in the medical cost containment category, because several vendors provided both types of services, and the expenses were not separated on the CCMSI Vendor Report.

Figure D. Allocated Loss Adjustment Expenses, 2008-2011

Category	Total Expenses (2008-2011)
Medical Cost Containment	\$2,155,134
Legal Services	\$1,738,177
Surveillance	\$660,189
Total	\$4,553,500

Vendors who provided these services sent invoices directly to CCMSI for approval. If approved, payments were issued directly by CCMSI using City funds. We asked the Risk Manager if there was a formal process in place to oversee vendor payments, and she stated that she reviewed the monthly reports generated by CCMSI to check for irregularities. We obtained copies of the monthly reports and they included basic information such as the claim number, check number, vendor name, and amount paid. The monthly reports did not contain any detailed information about the services provided or the number of hours billed.

According to the Chief of Litigation, the Law Department began reviewing all invoices for legal services beginning in May 2012. The Risk Manager did not outline a similar plan to review invoices for the remaining ancillary service vendors.

FINDING 3: THE CITY APPROVED USE OF AN HGI SUBSIDIARY FOR ANCILLARY SERVICES.

The City did not change how it paid allocated loss adjustment expenses when HGI began providing TPA services in March 2012. Vendors sent invoices to HGI for approval and HGI issued payment using City funds. In addition to many of the same vendors that provided ancillary services under CCMSI, the City permitted HGI to obtain services from Integra Medical Management (Integra), an HGI subsidiary.²⁶

Because the City did not have a functional oversight process in place to oversee ancillary service vendors, HGI was responsible for assigning work and making payments with City funds to its own subsidiary. Although HGI's Vice President of Claims stated that Integra would be subject to the same level of oversight as other vendors, this arrangement created a conflict of interest.

FINDING 4: THE CITY'S WORKERS' COMPENSATION CLAIMS HAVE NOT BEEN AUDITED BY AN INDEPENDENT ENTITY SINCE AT LEAST 2000.

The City's contracts with CCMSI and HGI included provisions requiring the TPA to provide assistance to the City's designated representative(s) in performing regular, random, independent claim audits of open or closed workers' compensation claims. Although the City

²⁶ Integra Medical Management currently provides the City with medical bill review, pre-admission certification, case management, and vocational rehabilitation.

retained this authority, the Risk Manager informed evaluators that the City had not used an independent consultant to perform a claims audit since 2008.

Evaluators asked officials from CCMSI if the City requested access to individual claims files since being awarded the TPA contract in July 2000. They stated that they provided information based on requests for the City's Comprehensive Annual Financial Report (CAFR) and the Louisiana Workers' Compensation Administration. However, these audits were primarily financial in nature and did not evaluate program/TPA performance, efficiency, and compliance with Louisiana statutes.

FINDING 5: THE CITY DID NOT HAVE USEFUL METRICS IN PLACE TO MANAGE ITS WORKERS' COMPENSATION PROGRAM EFFECTIVELY.

The Risk Manager received several reports on a monthly basis from CCMSI and HGI. The monthly reports contained basic information about claims, payments, and vendors. Although these monthly reports helped the City keep track of expenses and claims, they did not include analytical metrics that could be used by the City to improve management of its workers' compensation program. Examples of these metrics could include average claim duration, lost work time, and allocated loss adjustment expenses. Regular reporting of these, and other similar metrics, would enable the City to perform trend analyses and better identify areas in need of improvement. A review of RFPs and contracts showed that the City never formally requested this information from CCMSI or HGI. We asked the Risk Manager whether she developed any of these performance metrics on her own and she stated that she did not.

The City also did not have adequate metrics in place to monitor and evaluate the performance of the TPA. Examples of these metrics include adjuster closing ratios, average claimant contact times, fraud referrals, and timeliness of bill payments. Although some standards were listed in the contract, there was no monitoring process in place to determine if this was actually occurring.

The lack of useful metrics indicated that the City did not have adequate information at its disposal to manage its workers' compensation program effectively and evaluate the TPA's performance.

Return to Work/Transitional Duty

To reduce workers' compensation costs, employers often develop programs designed to provide employees who are temporarily unable to perform their pre-injury job duties with an opportunity to return to work in a transitional capacity on a temporary basis. For example, an injured firefighter might temporarily work as a dispatcher. From an employer's standpoint, effective return to work programs can increase the likelihood that employees recovering from injury/illness will return to full duty by boosting morale and keeping them connected to the workplace. From the employees' perspective, transitional duty allows them to collect full salary without having to use sick or annual leave to supplement their indemnity benefits.

FINDING 6: THE CITY DID NOT HAVE A COMPREHENSIVE RETURN-TO-WORK PROGRAM IN PLACE FOR ALL DEPARTMENTS.

CCMSI agreed to develop a return-to-work program for the City as part of the contract it signed in July 2000. Details of this program are outlined in CAO Policy Memorandum No. 12(R). The program provided recovering employees with transitional duty employment options until the employee reached maximum medical improvement and returned to his/her original position, or one year, whichever came first. If the employee was not cleared by his/her physician to return to full duties within a year of the claim, then additional vocational rehabilitation options could be considered.

According to the Risk Manager, the City no longer had a return-to-work program in place in any departments other than NOPD and NOFD, which represent approximately one-half the City's workforce and approximately 90% of the City's annual workers' compensation expenses. We met with personnel from NOPD and NOFD and confirmed that transitional duty positions exist within their departments. For the remaining half of the City's workforce, there is no return-to-work program in place to transition convalescing employees back to full duty.

Claim Settlements

Louisiana state law allows employers and injured workers to settle workers' compensation claims voluntarily upon approval of a special judge from the Office of Workers' Compensation Administration.²⁷ The employer and injured worker must agree on the terms of the settlement and the lump sum payment must clearly be in the best interests of both parties.²⁸ In exchange for providing the injured worker with a lump sum payment, the employer obtains a full and final discharge of all liability related to the claim. Settlements are beneficial from an employer's perspective, because a lump sum payment is lower than the projected long-term costs associated with a claim. It is also in the employer's best interest to pursue settlements, because the total liability attached to a claim typically increases as the claim ages.

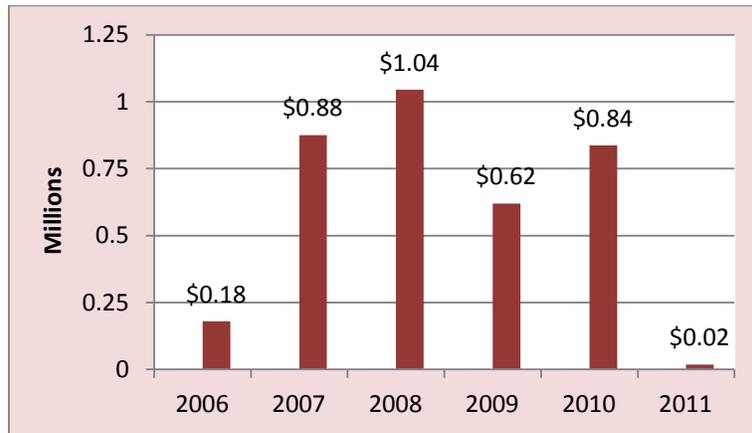
FINDING 7: THE CITY DID NOT BUDGET ADEQUATE FUNDS TO PURSUE CLAIM SETTLEMENTS IN 2011.

The City authorized CCMSI's claims adjusters to settle non-litigated claims up to \$5,000. Settlements that exceeded this threshold required approval from the Law Department and involvement from one of the City's contracted legal firms. The City paid \$18,500 in settlement payments to claimants in 2011. To place this amount into historical context, evaluators gathered payment data from the CNO annual report between 2006 and 2011 (see Figure E).

²⁷ La. RS 23:1272

²⁸ La. RS 23:1271

Figure E: Claim Settlement Payments, 2006-2011



According to the City's Budget Administrator, funds for claim settlements were typically secured only if citywide workers' compensation expenses were lower than projected within a given year. As a result, the City did not establish a dedicated stream of funds used for settling claims and reducing the City's long-term workers' compensation liability.

Legal Services

Although the City's workers' compensation program is housed within the Law Department, the City contracted legal services to handle disputed claims or subrogation opportunities.

FINDING 8: THE CITY DID NOT SELECT OUTSIDE COUNSEL FOR LEGAL SERVICES THROUGH AN OPEN AND COMPETITIVE PROCUREMENT PROCESS.

According to CCMSI's Executive Vice President, the City began using outside counsel shortly after CCMSI was awarded the TPA contract in July 2000. There was no formal procurement in place to solicit proposals from interested firms. As a result, the City could not confirm whether it was paying a competitive rate for these services. In 2009, the Risk Manager suggested that the Law Department should issue an RFP for legal services, but the City did not act.

To determine how much the City spent on legal services during our sample period, evaluators obtained data from the CNO annual report (see Figure F).

Figure F. Workers' Compensation Legal Expenses, 2008-2011

Category	Total Expenses (2008-2011)
Attorney Fees	\$1,772,812
Deposition Costs	\$51,801
Penalties and Interest	\$31,000
Administrative/Other Costs	\$38,650
Total	\$1,894,263

As shown in Figure F, the City spent almost \$2 million in legal services from outside counsel between 2008 and 2011.

According to the HGI vendor list, additional legal firms have been added to the City's roster of outside counsel options as of March 2012. HGI's Vice President of Claims stated that the Law Department asked her to include attorneys HGI has used on other clients' workers' compensation claims. None of the options for legal counsel listed on the roster was selected through an open and competitive procurement process.

FINDING 9: THE CITY PAID OUTSIDE COUNSEL FOR LEGAL INTERVENTIONS THAT COULD HAVE BEEN FILED BY THE LAW DEPARTMENT.

Louisiana state law provides employers with an opportunity to pursue reimbursement of workers' compensation benefits paid to an injured employee if the accident involved a negligent third party.²⁹ This process, known as subrogation, allows an employer to intervene on its own behalf to protect its interest in a lawsuit between the injured employee and third party. According to the legal fee schedule provided by CCMSI, the City used outside attorneys to file interventions since at least 2005.

CCMSI's State Director told evaluators that filing interventions is not an arduous process, and she suggested on several occasions that the City should shift these responsibilities to the Law Department rather than paying fees to outside counsel. We asked the City's Chief of Litigation whether this would be feasible, and she informed us that these responsibilities have been shifted to the Law Department.

Budget Issues

The City budgets for workers' compensation expenses annually by projecting costs that will be incurred by both previously open and newly filed claims within various job categories. Evaluators obtained from the City the projected costs for pending claims and the number of employees included in each job class to determine how much was budgeted for 2012 (see Figure G).

²⁹ La. R.S. 23:1101

Figure G: 2012 Budgeted Expenses for Workers' Compensation by Job Category

Job Category	# of Employees	Budgeted Cost per Employee	Total Budgeted Expenses
Fire Suppression (includes Heart and Lung)	701	\$13,800	\$9,673,800
Law Enforcement	1341	\$3,400	\$4,559,400
EMS	139	\$3,000	\$417,000
Waste Collectors	13	\$2,700	\$35,100
Laborers & Related	180	\$1,700	\$306,000
Vehicle/Equipment Operators	28	\$900	\$25,200
Laundry & Food	3	\$520	\$1,560
Trades	21	\$500	\$10,500
Inspectors	89	\$450	\$40,050
All Others	1898	\$300	\$569,400
No Deduction	183	\$0	\$0
TOTAL	4596		\$15,638,010

The City developed these estimates using actual workers' compensation expenses incurred by each job category during previous years. The City appropriates a share of the budgeted per employee amount into a dedicated workers' compensation fund during each weekly or bi-weekly payroll period. These estimates were not included as a line item in the City's Annual Operating Budget; they were integrated into departmental personnel expenses.

FINDING 10: THE CITY DID NOT MAINTAIN A RESERVE ACCOUNT TO ABSORB HIGHER THAN EXPECTED WORKERS' COMPENSATION EXPENSES.

According to the Chief Financial Officer, the City does not have a system in place to build reserve funds over low-liability years to absorb the budgetary impact of one or more years of higher than projected workers' compensation expenses. If expenses exceeded the budgeted amount, the City allocated additional monies from its general fund.³⁰ This approach, combined with the lack of an excess insurance policy, poses a risk to the City's finances and increases the potential for unexpected budgetary shortfalls, particularly in the event of costly catastrophic claims.

³⁰ The City charges higher than projected workers' compensation expenses to the Department of Miscellaneous within the City's budget. According to the City's annual operating budgets, the City experienced an average shortfall of \$2.6 million between 2009 and 2011.

Risk Management and Injury Prevention

Risk Management is responsible for developing and implementing risk mitigation programs to reduce the frequency and magnitude of employee injuries. The Government Finance Officers Association (GFOA) recommends the following process for developing an effective risk management program (see Figure H):

Figure H: GFOA Process for Developing an Effective Risk Management Program



Each component of this process is integral to an effective citywide risk management program to reduce workers' compensation claims and contain costs. Although it is impossible to eliminate risk completely, appropriate policies and programs could reduce employee injuries and their financial and operational impact.

FINDING 11: THE CITY DID NOT HAVE AN OPERATIONAL SAFETY PLAN IN PLACE FOR ITS EMPLOYEES, A VIOLATION OF LA. R.S. 23:1291(B)(4).

According to La R.S. 23:1291(B)(4), every Louisiana employer with fifteen or more employees is required to have an operational safety plan in place. The Louisiana Administrative Code (LAC) defines an operational safety plan as a document that presents simply and clearly the program that the employer should follow to reduce accidents in the work place and incidences of industrial and occupational disease.³¹ According to LAC:40:I:907, the operational safety plan must include the following components:

1. Management policy statement;
2. Assignment of safety responsibility;
3. Supervisory inspections (quarterly, at minimum);
4. Accident investigation;
5. Safety meetings (quarterly, at minimum);
6. Safety rules;
7. Training;
8. Record keeping;
9. First aid; and
10. Emergency preparedness program.

Evaluators requested copies of the City's operational safety plan from the Risk Manager and Chief of Litigation and were referred to the CAO's Office. The Chief Administrative Officer was not able to produce a copy of the City's operational safety plan.

³¹ LAC 40:I:903

Although individual City departments such as NOPD and NOFD have safety plans in place, these plans are not controlled or evaluated by the City. Furthermore, state law requires a centralized plan that applies to all City employees.

FINDING 12: THE CITY GRADUALLY DISCONTINUED ITS SAFETY AND LOSS CONTROL INITIATIVES BETWEEN 2006 AND 2011.

- A. *The City did not formally reassign the Safety Engineer's responsibilities after the position was eliminated in 2006.*

According to CAO Policy Memorandum No. 95 (December 1992), the Safety Engineer was responsible for making recommendations regarding safety risks and suggesting corrective action. However, evaluators found that the Safety Engineer position had been vacant since at least 2008. The Risk Manager told evaluators that she occasionally met with departments to discuss safety-related issues, but there was no formal policy or program in place that required her to do so.

We requested a job description for the Risk Manager position from the City Attorney and Civil Service to determine if safety-related activities were officially reassigned to the Risk Manager after the Safety Engineer position was eliminated. Neither the City Attorney nor Civil Service produced a job description. Thus, we were unable to determine who was actually responsible for implementing safety programs to prevent employee injuries.

- B. *The City discontinued its practice of conducting regular citywide safety meetings.*

CAO Policy Memorandum No. 99 (December 1995) established safety committees within Public Works, Sanitation, NOPD, NOFD, Parks and Parkways, Recreation, Equipment Maintenance Division, as well as an Administrative Safety Committee that included the Risk Manager. The policy memo directed the committees to review accidents and perform site inspections to assess safety hazards. The Municipal Training Administrator was assigned the task of meeting with each committee on a monthly basis.

Evaluators asked the Risk Manager whether the City held regular safety committee meetings. She stated that she had not attended any meetings since being hired in 2008, but she was not sure whether safety committees still existed at the departmental level. We interviewed officials from NOPD and NOFD and they stated that these committees and meetings no longer existed. Although other City departments may have had regular safety meetings, there was no centralized system in place.

C. *The City used less than 40 percent of its allotted loss control hours in 2011.*

The City's contract with CCMSI provided up to 120 hours of loss control services per year under the direction of the Risk Manager.³² Loss control services included activities such as performing site inspections, providing injury trend analysis, and implementing preventative safety measures. These loss control services were critical, because the City had not employed an in-house Safety Manager since at least 2008. According to officials from CCMSI, safety training and site inspections were historically requested by individual departments via the Risk Manager, but that practice gradually decreased and departments began coordinating directly with CCMSI's Loss Control Manager.

We obtained data from CCMSI to determine how many hours of loss control were provided to the City between 2008 and 2011. This information is presented in Figure I.

Figure I: Loss Control Hours Provided by CCMSI, 2008-2011

Year	Loss Control Hours Used	% of Allotted 120 Hours Used
2008	203.9	170%
2009	103.2	86%
2010	139.5	116%
2011	46.7	39%

Evaluators asked the Risk Manager to explain why the City did not use approximately 60 percent of its allotted loss control hours in 2011, and she stated that she was not aware of the decrease nor could she explain why it occurred.

Our interviews with NOPD and NOFD personnel and review of loss control activity logs showed that all loss control activities were provided through the same consultant, limiting the overall range of training available. Although many of the activities were relevant, some efforts were repetitive, duplicating instruction that was already provided as part of employees' training requirements.

D. *The City did not obtain loss control services during its most recent procurement of a third party administrator.*

The City received loss control services as part of its contract with CCMSI from July 2000 until February 2012. However, the City's RFP for TPA services, released in March 2011, did not include loss control activities in the requested scope of services. As a result, these services were not included in the contract awarded to HGI.

³² The original contract with CCMSI (July 2000) stated that loss control activities were to be carried out under the direction of the City's Safety Manager.

The Risk Manager informed evaluators that the City was considering an offer from an external safety consultant suggested by HGI; however, a loss control program was not in place at the time we concluded this evaluation.

IV. CONCLUSION AND RECOMMENDATIONS

This evaluation found that the City did not take an active role in evaluating the performance of its workers' compensation program or the third party administrator, making program improvements, overseeing vendors, or identifying opportunities for cost savings.

Evaluators also found that the City gradually dismantled most of its safety and cost containment initiatives. Instead of taking proactive measures to prevent injuries and minimize costs, the City primarily responded to claims post-injury by making payments for medical expenses and indemnity benefits. Between 2001 and 2011, the City's long-term workers' compensation liability increased from \$33.6 million to \$46.7 million.³³

As evidenced by the data trends, the City's current approach and trajectory is not sustainable. Improving the City's workers' compensation program requires making financial commitments that should yield cost savings over time. In addition, the City must place a greater emphasis on developing a culture of employee safety. The City's leadership should establish programmatic goals, require employee participation, and develop accountability measures at the departmental level.

The City has made efforts to make improvements to its workers' compensation program during the course of this evaluation. However, additional actions are needed to remedy problems identified in the findings. The following recommendations are offered to improve the management of this program, capture benefits of the competitive marketplace, and prevent employee injuries.

RECOMMENDATION 1: THE CITY SHOULD CONDUCT AN OPEN AND COMPETITIVE PROCUREMENT OF ANCILLARY SERVICE VENDORS.

The City should select vendors for ancillary services through an open and competitive procurement process. The current practice inhibits the City's ability to achieve optimal pricing, because bids are not solicited from all potential interested and qualified vendors. In addition, the indirect manner by which vendors are selected exposes the City to potential price markups as a result of undisclosed financial agreements between the TPA and ancillary service vendors.

RECOMMENDATION 2: THE CITY SHOULD DEVELOP INTERNAL CONTROLS TO MONITOR PAYMENTS MADE TO VENDORS FOR ANCILLARY SERVICES.

The City failed to implement a formal structure to approve and monitor millions of dollars in vendor expenses. In April 2012, the City's Chief Deputy of Litigation stated that the Law Department developed an oversight process to review all invoices generated by contracted attorneys, but the City has not developed a similar plan to review other ancillary service

³³ These amounts represent the claim reserve estimates developed by the TPA and reported on the CNO annual report. The actuarial estimates are significantly larger.

invoices. Although it is not feasible to review all invoices, the City should develop an internal audit process that randomly samples and reviews these invoices.

RECOMMENDATION 3: THE CITY SHOULD DISCONTINUE USE OF INTEGRA MEDICAL MANAGEMENT FOR ANCILLARY SERVICES.

The City created a conflict of interest issue by allowing HGI to use its own subsidiary for ancillary services such as medical bill review and case management. The City should discontinue using Integra Medical Management for ancillary services and obtain these services from independent third party vendors obtained through an open and competitive procurement process. In addition, the City should insert language into all contracts prohibiting any fee sharing between the TPA and ancillary service vendors.

RECOMMENDATION 4: THE CITY'S WORKERS' COMPENSATION CLAIMS SHOULD BE AUDITED REGULARLY BY AN INDEPENDENT ENTITY WITH EXPERTISE IN THE FIELD.

The City should issue an RFP to obtain audit services from a qualified consultant with expertise in Louisiana workers' compensation statutes. The failure to conduct random and independent claims audits prevented the City from determining whether individual claims were being handled appropriately, detecting TPA/adjuster deficiencies, and identifying opportunities for cost savings.

RECOMMENDATION 5: THE CITY SHOULD DEVELOP METRICS TO MANAGE ITS WORKERS' COMPENSATION PROGRAM EFFECTIVELY AND EVALUATE THE TPA'S PERFORMANCE.

Evaluators found that the monthly reports sent to the City primarily conveyed expense-related information about the workers' compensation program. These reports did not typically include detailed data or analytical metrics that could be used to evaluate and set goals for improving the performance of the overall program and TPA. Organizations such as the Workers' Compensation Research Institute and Public Entity Risk Institute have developed workers' compensation metrics that could be used to improve the City's ability to monitor and improve the program's performance. In addition to these programmatic metrics, the City should develop measures to monitor the TPA's performance.

During the course of this evaluation, we also found insufficient accountability related to the workers' compensation program at the departmental level. Basic information such as claims frequency and costs were tracked, but the City did not set goals and performance targets for individual departments or Risk Management.

To address this problem, the City should integrate workers' compensation performance indicators into its ResultsNOLA initiative. This would increase the visibility and accountability related to workers' compensation and safety issues and convey to departmental leadership that program improvements are a citywide priority.

RECOMMENDATION 6: THE CITY SHOULD DEVELOP A RETURN-TO-WORK PROGRAM THAT COVERS ALL DEPARTMENTS.

The City should develop and implement a citywide return-to-work program using the Louisiana Office of Risk Management's Transitional Duty Policy as a template. Developing an effective return-to-work program will require several steps, such as identifying a citywide program manager (preferably someone with a vocational rehabilitation background), working with City departments to outline physical requirements of various job tasks, and effectively monitoring the program to ensure effectiveness.

In addition, the City should work with Civil Service to determine whether it is feasible and cost effective to provide transitional duty options across departments.

RECOMMENDATION 7: THE CITY SHOULD BUDGET FUNDS FOR CLAIM SETTLEMENTS.

Although the City has limited financial resources, it should aggressively pursue claim settlements in order to reduce its overall long-term liability. Older workers' compensation claims typically carry significant claims reserves and could be potential candidates for settlement.

The City's Budget Administrator informed evaluators that funds for settlements were typically available only if citywide workers' compensation expenses were lower than projected within a given year. This practice diminishes the City's ability to pursue claim settlements regularly and reduce its overall long-term liability. Instead of its current approach, the City should annually budget funds specifically for pursuing claim settlements.

RECOMMENDATION 8: THE CITY SHOULD ISSUE AN RFP FOR LEGAL SERVICES RELATED TO WORKERS' COMPENSATION CLAIMS.

The City has engaged in an informal procurement process for legal services since at least July 2000, and as a result it did not ensure that it was receiving the best services at the lowest possible price. The City should issue an RFP for legal services to determine if it can obtain better rates and/or services.

RECOMMENDATION 9: THE CITY SHOULD DETERMINE WHETHER IT IS COST EFFECTIVE TO SHIFT ADDITIONAL LEGAL WORK RELATED TO WORKERS' COMPENSATION CLAIMS TO THE LAW DEPARTMENT.

According to the Chief of Litigation, the City has discontinued its practice of paying outside counsel to file interventions. The City should determine if it is cost effective to shift additional legal work related to workers' compensation claims to the Law Department.

RECOMMENDATION 10: THE CITY SHOULD DEVELOP A RESERVE FUND TO ABSORB THE IMPACT OF HIGHER THAN EXPECTED WORKERS' COMPENSATION COSTS.

Higher than anticipated workers' compensation expenses are funded through the City's general fund. This setup creates a strain on the City's overall finances as these expenses can create budgetary shortfalls that affect other departments. To prevent this from occurring, the City should gradually build reserve funds specifically for its workers' compensation program. This requires increasing annual budget estimates for workers' compensation expenses to ensure that there are surplus funds remaining in the account at the end of the year.

RECOMMENDATION 11: THE CITY SHOULD DEVELOP AN OPERATIONAL SAFETY PLAN AS REQUIRED BY LAW, USING THE STATE OF LOUISIANA'S PLAN AS A TEMPLATE.

As required by state law, the City should develop and implement an operational safety plan using the State's plan as a template. Potential benefits of an effective safety plan include a safer working environment for City employees, increased productivity, and lower workers' compensation costs as a result of reduced injuries.

RECOMMENDATION 12: THE CITY SHOULD RE-ESTABLISH ITS SAFETY AND LOSS CONTROL PROGRAM.

Evaluators found that the Safety Engineer position has been vacant since at least 2006. The City should re-establish the position and hire a qualified full-time safety professional to carry out many of the activities outlined in the City's operational safety plan. This includes performing inspections, analyzing and evaluating injury trends, conducting regular safety committee meetings, working with loss control consultants, and developing training programs. These activities should enable the City to reduce the number and severity of employee injuries.

The City previously obtained loss control services from a single consultant. Instead of this one-size-fits-all approach, the City should identify high frequency/high cost injuries and obtain more specialized training services from qualified professionals with expertise in that specific area. Programs such as wellness and fitness initiatives for NOPD/NOFD, ergonomic training, and back safety training could potentially reduce the number of injuries and reduce the City's overall liability. Although obtaining these services would require additional funding from the City, they have the potential to create significant long-term cost savings as a result of fewer and less severe employee injuries.

V. OFFICIAL COMMENTS FROM CITY OF NEW ORLEANS

The Office of Inspector General provides an internal review draft to any person or entity that is the subject of report findings or recommendations. Any written response submitted by a subject within 30 days after receiving the draft will be included in the final public report.

The OIG provided a review draft of this report to the City's Chief Administrative Officer and the City Attorney on November 2, 2012. Prior to finalizing the public report evaluators met with City personnel to discuss the report findings and recommendations. The City's response was received December 13, 2012 and is included in its entirety in this section.

This public report reflects corrections and other changes made to the review draft based on the responses received from the report subjects.

CHIEF ADMINISTRATIVE OFFICE
CITY OF NEW ORLEANS

MITCHELL J. LANDRIEU
MAYOR

ANDREW D. KOPPLIN
FIRST DEPUTY MAYOR & CAO

December 13, 2012

Mr. Edouard Quatrevaux
Inspector General
Office of the Inspector General
525 Saint Charles Avenue
New Orleans, Louisiana 70130

RE: Evaluation of the City's Worker's Compensation Program

Dear Inspector General Quatrevaux:

Thank you for sending us a copy of your evaluation of the City's Worker's Compensation Program and for thoughtfully addressing the concerns we have raised during the course of your review. As you are aware, the City has moved our risk management program, including worker's compensation, from the Law Department, which provides legal support and representation to the City, into the Chief Administrative Office, which has line responsibility for managing and implementing programs and also has broad oversight of every city department. We believe this will enable our risk management program to best meet the city's needs and be most effective. In addition, following the practices outlined in the City's new competitive procurement process for professional services contracts that was created by Mayor Landrieu with assistance from your office, the City has selected a new worker's compensation vendor and has retained significant savings from the cost-cutting we did to the contract we inherited back in 2010.

We appreciate your review of our program and your suggestions for making it more effective. After a careful review of your report, we have included our responses below.

FINDING 1: THE CITY DID NOT SELECT VENDORS FOR ANCILLARY SERVICES THROUGH AND OPEN AND COMPETITIVE BID PROCESS.

The City entered into contracts with CCMSI, and subsequently HGI, to perform services in administering the City's workers compensation program. Although the vendors are paid with City funds, those payments are made pursuant to the City's contract with its contractor—HGI.

To be clear, the City has not relinquished control of the work performed by HGI's vendors. The City has the authority to approve or reject any vendor submitted by the TPA and we actively monitor the work performed under the contract. HGI remains answerable to the City for all services performed pursuant to its contract with the City regardless if those services are performed directly by HGI or by one of HGI's vendors. Second, potential vendors have an equal opportunity to submit proposals to the TPA at any given time. Indeed, vendors submit their services and pricing to HGI on a regular basis. As you have noted, it is common practice in the industry to allow the TPA to select ancillary service providers.

1300 PERDIDO STREET | SUITE 9E06 | NEW ORLEANS, LOUISIANA | 70112
PHONE 504.658.8600 | FAX 504.658.8648

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Lastly, the City requires, and did in this case require, that the TPA disclose any financial agreements in place with vendor(s).

FINDING 2: THE CITY DID NOT HAVE ADEQUATE CONTROLS IN PLACE TO OVERSEE VENDORS AND ENSURE THAT ALL INCURRED CHARGES WERE NECESSARY AND ACCURATE.

The City has implemented measures to ensure adequate oversight of vendors. The City has formal weekly meetings with HGI as well as quarterly meetings with HGI and outside legal counsel. At these meetings HGI provides status reports on claims, which status reports include issues related to medical cost containment, surveillance, and any other issues that might be addressed by vendor services.

With regard to legal services, the City has provided outside legal counsel with billing guidelines, which expressly set forth maximum hourly rates for lawyers and paralegals, tasks and costs for which the City will not pay, and guidelines required for billing descriptions so that the City may fully and properly review any invoices for services. These billing guidelines became effective June 2012.

FINDING 3: THE CITY APPROVED USE OF AN HGI SUBSIDIARY FOR ANCILLARY SERVICES.

During the City's competitive evaluation and selection process, HGI disclosed the conflict and their plans to utilize Integra Medical Management to provide ancillary services should they be selected as the City's vendor. Because of the concerns raised by the OIG, the City will undertake a more rigorous review of Integra's pricing as well as HGI's utilization of Integra while also increasing ongoing oversight of this service to insure that the relationship between HGI and Integra is of benefit to the City. We will also review the option of terminating Integra's relationship as an ancillary service provider.

FINDING 4: THE CITY'S WORKERS' COMPENSATION CLAIMS HAVE NOT BEEN AUDITED BY AN INDEPENDENT ENTITY SINCE AT LEAST 2000.

We agree that it is prudent to have an independent audit of the City's claims, and we are in the process of scheduling such an audit.

FINDING 5: THE CITY DID NOT HAVE USEFUL METRICS IN PLACE TO MANAGE ITS WORKERS' COMPENSATION PROGRAM EFFECTIVELY.

The City's Risk Management Unit works closely with HGI regarding development of monthly reporting metrics and meets weekly with HGI to monitor HGI's services and the claims that it is handling. In addition, the City utilizes the resources of the Office of Performance and Accountability, along with the Service and Innovation Team of the Office of Information Technology and Innovation, to assist with analyzing workers' compensation data. In addition, the City has recently partnered with ICMA, the International City/County Management Association, to establish benchmarks and to identify leading practices in performance management.

FINDING 6: THE CITY DID NOT HAVE A COMPREHENSIVE RETURN-TO-WORK PROGRAM IN PLACE FOR ALL DEPARTMENTS.

The City has return-to-work programs in all of its public safety departments. These departments represent approximately 80% of the workers' compensation claims filed and over 90% of the City's annual workers' compensation expenses. Nevertheless, the City has revised CAO policy Memorandum 12(R) to include a comprehensive return-to-work program for all departments.

FINDING 7: THE CITY DID NOT BUDGET ADEQUATE FUNDS TO PURSUE CLAIM SETTLEMENTS IN 2011.

The City agrees that it is beneficial to use settlements as a tool to manage and address workers' compensation costs and reduce long term liabilities. In 2011, as the report notes, budgeted funds for current year expenses were given priority and settlements were considered only if budgeted funds were sufficient to address current year expenses. In recent years, workers' compensation costs have exceeded budgeted funds and this overrun has been one of the factors in the City's General Fund structural imbalance in those years. When the Landrieu administration took office in May 2010, the City was facing a projected \$100 million gap between projected revenues and expenses—so we held the line on any and all types of expenditures, including worker's compensation settlements, in order to address the fiscal crisis we inherited. The 2011 and 2012 budgets have also been extraordinarily tight, as we have cut general fund spending by more than 8 percent from 2009 levels, even as expenses for items like pensions and employee health care have increased. Therefore, the resources for settlements have not been available. Going forward, the City will continue to strive to identify sufficient funds for worker's compensation to allow for settlements to be considered as part of our overall strategy for managing workers' compensations costs. As Finding 10 notes, it would ideal to budget not just sufficient funds for anticipated costs, but also a reserve for uncertainty as well.

FINDING 8: THE CITY DID NOT SELECT OUTSIDE COUNSEL FOR LEGAL SERVICES THROUGH AN OPEN AND COMPETITIVE PROCUREMENT PROCESS.

The report makes reference to contracts entered into prior to the Landrieu Administration taking office. Obviously the Landrieu Administration was not in control of the contract entered into in 2000, nor can we confirm a suggestion purportedly made in 2009 by the Risk Manager or management's failure to act on that suggestion at that time.

As addressed in Findings 1 and 2, the City does not hire or procure vendors who provide ancillary services, including legal services, as subcontractors under the City's contract with HGI. The City has not relinquished control of the work performed by HGI's vendors, and more importantly, the City Attorney actively monitors work performed by outside counsel.

This Administration ensures that it is paying competitive rates by providing outside legal counsel with billing guidelines, which expressly set forth maximum hourly rates for lawyers and paralegals, tasks and costs for which the City will not pay, and guidelines required for billing descriptions so that the City may fully and properly review any invoices for services.

FINDING 9: THE CITY PAID OUTSIDE COUNSEL FOR LEGAL INTERVENTIONS THAT COULD HAVE BEEN FILED BY THE LAW DEPARTMENT

This finding appears to rely solely on CCMSI's State Director's testimony, and contrary to that testimony, the City does not concede that filing interventions "is not an arduous process." On the contrary, the filing of interventions and litigating these matters to completion is a difficult process that requires active engagement by lawyer handling these often complex litigation matters. The City currently handles interventions in-house through the City Attorney's office.

FINDING 10: THE CITY DID NOT MAINTAIN A RESERVE ACCOUNT TO ABSORB HIGHER THAN EXPECTED WORKERS' COMPENSATION EXPENSES.

As noted in the response to Finding 7, the City in 2011 did not have funds sufficient to budget for both current expenses and settlements, and thus did not have enough funds to include a reserve for uncertainty. As you may recall, following Hurricane Katrina and prior to the Landrieu Administration taking office, the City spent approximately \$300 million in Community Development and GO Zone loans and fully exhausted its \$72 million fund balance, leaving the city with zero reserves while facing a \$100 gap between projected revenues and expenses. We cut aggressively in 2010, and have maintained expenditure levels at 8% below 2009 levels ever since.

As the City's General Fund outlook improves in future years, the City's Financial Policies described in the Operating Budget lay out a five year plan to build an unreserved fund balance and emergency reserve account that when fully funded would total ten percent of the City's annual General Fund revenues. These reserves are intended precisely to address unexpected costs or events such as a costly, catastrophic worker's compensation claim or evacuation costs. Once that unreserved fund balance is established, it would also be worthwhile to consider creating a specific reserve account within the worker's compensation program.

FINDING 11: THE CITY DID NOT HAVE AN OPERATIONAL SAFETY PLAN IN PLACE FOR ITS EMPLOYEES, A VIOLATION OF LA R.S. 23:1291[B][4].

The City does have operational safety plans for each of its public safety departments. As stated previously, these departments represent 90% of all Workers Compensation costs. However, the City is currently developing a comprehensive operational safety plan that will apply to all City employees.

FINDING 12: THE CITY GRADUALLY DISMANTLED ITS SAFETY AND LOSS CONTROL PROGRAM BETWEEN 2006 AND 2011.

A. *The City did not formally reassign the Safety Engineer's responsibilities after the position was eliminated in 2006.*

Although the Safety Engineer position has been vacant since 2008, it is incorrect to assume that those responsibilities are currently going unfulfilled. Inherent to the positions of Safety Engineer and Risk Manager is the protection of people, property and the work environment. According to the OIG's report, the Risk Manager fulfilled these responsibilities when she met with departments to discuss safety-related issues. In government, as in other employment sectors, job duties are often increased or

decreased without formal policy revisions or written evidence of the change. In addition to the Risk Manager's fundamental responsibility, this Administration believes that work-place safety is every City employee's responsibility. Every employee has a duty to report safety-related issues to their supervisor, department head, and ultimately to the Risk Management Unit.

B. The City discontinued its practice of conducting regular citywide safety meetings.

A centralized Safety Committee does exist under this Administration. The Deputy Mayor for Operations and the Risk Manager conduct quarterly meetings to discuss workers' compensation claims and expenses, reported safety hazards, and general work-place safety.

C. The City used less than 40 percent of its allotted loss control hours in 2011.

This Administration is committed to making sure that all services contracted for are being received, and part of the reason Risk Management was transferred to the Chief Administrative Office was to ensure greater performance and accountability from this division.

D. The City did not obtain loss control services during its most recent procurement of a third party administrator.

Even though the third party administrator contract for workers' compensation did not include loss control activities requested in the scope of services, the City has discussed amending the contract with HGI to include loss control. In addition, the City recently awarded a contract for Insurance Producer of Record that encompasses general loss control and risk management.

RECOMMENDATION 1: THE CITY SHOULD CONDUCT AN OPEN AND COMPETITIVE PROCUREMENT OF ANCILLARY SERVICE VENDORS.

The City believes that it is impractical to conduct the formal procurement process for subcontractors performing on each and every City contract, but will work with HGI to insure that they solicit a wide pool of potential vendors for each ancillary services so that the City gets the best value.

RECOMMENDATION 2: THE CITY SHOULD DEVELOP INTERNAL CONTROLS TO MONITOR PAYMENTS MADE TO VENDORS FOR ANCILLARY SERVICES.

Since November 2012 the Risk Manager has requested HGI submit specific monthly reports detailing subcontractor performance and cost.

RECOMMENDATION 3: THE CITY SHOULD DISCONTINUE USE OF INTEGRA MEDICAL MANAGEMENT FOR ANCILLARY SERVICES.

The City is closely monitoring Integra's performance and costs. Because of the concerns raised by the OIG, the City will undertake a more rigorous review of Integra's pricing as well as HGI's utilization of Integra while also increasing ongoing oversight of this service to insure that the relationship between HGI and Integra is of benefit to the City. We will also review the option of terminating Integra's relationship as an ancillary service provider.

RECOMMENDATION 4: THE CITY'S WORKERS' COMPENSATION CLAIMS SHOULD BE AUDITED REGULARLY BY AN INDEPENDENT ENTITY WITH EXPERTISE IN THE FIELD.

The City agrees with this Finding. In January 2013, the Risk Manager will solicit bids for recurring annual audits of the workers' compensation program.

RECOMMENDATION 5: THE CITY SHOULD DEVELOP METRICS TO MANAGE ITS WORKERS' COMPENSATION PROGRAM EFFECTIVELY AND EVALUATE THE TPA'S PERFORMANCE.

The City regularly receives detailed information from the TPA and with assistance from ITI and OPA, we analyze the data for trends. This information is presented to departments at the monthly Bottom-line Stat meeting and quarterly at the Safety Committee meeting. We appreciate the referral to other sources of useful metrics.

RECOMMENDATION 6: THE CITY SHOULD DEVELOP A RETURN-TO-WORK PROGRAM THAT COVERS ALL DEPARTMENTS.

Revised CAO policy Memorandum 12(R), to be released in January 2013, includes a comprehensive return-to-work program.

RECOMMENDATION 7: THE CITY SHOULD BUDGET FUNDS FOR CLAIM SETTLEMENTS.

Before the 2014 budget cycle, the City will examine options for funding for workers' compensations costs and the role that a set-aside for settlements could play versus an approach of budgeting a higher amount for overall current year and settlement costs combined. Having separate budgets may add inflexibility to what is an uncertain cost, given that the city self-insures.

RECOMMENDATION 8: THE CITY SHOULD ISSUE AN RFP FOR LEGAL SERVICES RELATED TO WORKERS' COMPENSATION CLAIMS.

The City will review this recommendation and, if it is determined to be most beneficial to the City, the Law Department will issue an RFP for legal services related to workers' compensation claims in 2013.

RECOMMENDATION 9: THE CITY SHOULD DETERMINE WHETHER IT IS COST EFFECTIVE TO SHIFT ADDITIONAL LEGAL WORK RELATED TO WORKERS' COMPENSATION CLAIMS TO THE LAW DEPARTMENT.

Although the OIG report minimizes the complexity of the laws affecting workers' compensation claims, prior to the 2014 budget cycle the City will determine if it is most beneficial to shift additional legal work related to workers' compensation claims to the Law Department.

RECOMMENDATION 10: THE CITY SHOULD DEVELOP A RESERVE FUND TO ABSORB THE IMPACT OF HIGHER THAN EXPECTED WORKERS' COMPENSATION COSTS.

The City will examine options to funding for workers' compensations costs and the role that a program-level set-aside for settlements could play versus overall reserves at the General Fund city wide level.

RECOMMENDATION 11: THE CITY SHOULD DEVELOP AN OPERATIONAL SAFETY PLAN AS REQUIRED BY LAW, USING THE STATE OF LOUISIANA'S PLAN AS A TEMPLATE.

The City will release a city-wide operational safety plan in 2013.

RECOMMENDATION 12: THE CITY SHOULD RE-ESTABLISH ITS SAFETY AND LOSS CONTROL PROGRAM.

Although many of the Safety Engineer's responsibilities have been either reassigned or assumed by other individuals, we will examine whether it is most beneficial to the City to hire a full-time employee in that position. In June 2012 we began utilizing our internal and external resources to re-establish the safety and loss control program.

Thank you again for your review and suggestions regarding ways to operate the best worker's compensation program for the City of New Orleans.

Sincerely,



Andrew D. Kopplin
First Deputy Mayor & Chief Administrative Officer
City of New Orleans

Cc: Michelle Thomas, Deputy Mayor of Operations
Norman Foster, Chief Financial Officer
Erica Beck, Chief Deputy City Attorney
Michael McKenna, Director, Risk Management

APPENDIX A – ANCILLARY SERVICE VENDOR RATE ANALYSIS

The City paid higher than necessary rates for medical bill review services between 2007 and 2009.

According to the Executive Vice President of CCMSI, the City selected CBI Insurance & Care Management (CBI) to provide medical bill review services beginning in February 2005. CBI was originally paid a flat rate of \$310,000 per year, renegotiated to \$279,000 per year in August 2006. The City continued to pay this flat rate until the Risk Manager and Senior Chief Deputy City Attorney requested a rate reduction by shifting to a per-bill rate beginning in August 2009. Although the Risk Manager mentioned industry standards of approximately \$7 per bill, the City still agreed to pay CBI \$12 per bill. The City further renegotiated the rate to \$9 per bill in September 2010, the rate effective at the time of this evaluation.

To determine how much could have been saved if the City achieved the \$9 per bill rate reduction before September 2010, evaluators calculated the potential costs using data provided by CCMSI.

Actual and Projected Costs of Medical Bill Reviews, 2007-2010³⁴

Year	Actual Paid	# of bills reviewed	Average cost per bill	Potential Yearly Cost at \$9/bill	Potential Savings
2007	\$279,000	7945	\$35.12	\$71,505	\$207,495
2008	\$279,000	8666	\$32.19	\$77,994	\$201,006
2009 ³⁵	\$230,434	9582	\$24.05	\$86,238	\$144,196
2010 ³⁶	\$96,315	8756	\$11.00	\$78,804	\$17,511
Total	\$884,749			\$314,541	\$570,208

On a per-bill basis, the City paid rates that were more than three times greater than the current \$9 rate from 2007 to 2009. Although \$9 per bill represents a significant decrease from previous years and has resulted in significant cost savings, the City still had no way of knowing if it was

³⁴ Evaluators used 2007 as the starting year for this analysis because it was the first full year of data we obtained and because it represented the first full year that PPO discounts were not allowed for workers' compensation medical care in Louisiana.

³⁵ The bill review rate was paid as a flat fee of \$23,500 per month until August 2009 and changed to \$12 per bill beginning in September 2009. Evaluators used the number of total bills reviewed (9582) in 2009 to estimate the number of bills per month from January to August (\$23,500 monthly flat rate) and September to December (\$12 per bill).

³⁶ The bill review rate was lowered to \$9 per bill in September 2010, so evaluators used the number of total bills reviewed (8756) in 2010 to estimate the number of bills per month from January to August (\$12 per bill) and September to December (\$9 per bill). We then applied the corresponding bill rates to the number of bills for the two time periods.

the lowest possible rate because it did not conduct an open and competitive procurement process to select a vendor for bill review services.

The City paid higher than necessary rates for pre-admission certification, vocational rehabilitation, and case management services.

Evaluators also found that the City paid higher than necessary rates to vendors for other ancillary services such as pre-admission certification, vocational rehabilitation, and case management. According to documents we obtained from CCMSI, the City paid between \$72 and \$95 per hour to vendors for these services as of November 2010. Prior to November 2010, the City paid between \$80 and \$105 for vocational rehabilitation services, but these fees were reduced after the Risk Manager pointed out that they were above the maximum reimbursable allowance established by the State of Louisiana.³⁷

Many of the same vendors reduced their rates to \$70 per hour after the transition to HGI in March 2012. According to HGI's Vice President of Claims, HGI contacted vendors at the City's request to reduce their rates to \$70 per hour.³⁸ She stated all of the vendors that were contacted agreed to the reduction despite the fact that \$70 per hour was considered competitive in terms of an hourly rate.

In order to determine how much the City could have saved if it requested a reduction in hourly rates in 2008, evaluators first compared the hourly rates paid to vendors for claim handling services under CCMSI and HGI. This comparison was used to obtain the difference (in percent) between each vendor's hourly rate after the reduction was achieved in March 2012.

³⁷ LAC 40:I:4915

³⁸ The Vice President of Claims stated that the \$70 hourly rate was suggested by HGI.

Ancillary Service Vendor Rates under CCMSI and HGI³⁹

Vendor Name	Hourly Rate under CCMSI (as of Nov. 2010)	Hourly Rate under HGI	Variance
Heyward X. Johnson	\$80/hour	\$70/hour	-12.50%
Genex Services Inc.	\$82/hour	\$70/hour	-14.63%
Riggle & Associates, LLC	\$80/hour	\$70/hour	-12.50%
Novare	\$75/hour	\$70/hour	-6.67%
<i>Younger & Associates, Inc*</i>	<i>\$72/hour</i>	NA	-2.78%
<i>Seyler & Favaloro Ltd.*</i>	<i>\$95/hour</i>	NA	-26.32%
<i>CBI Insurance & Care Management*</i>	<i>\$80-\$85/hour</i>	NA	-12.50% to -17.64%
* See footnote #31			

We then applied the percentage difference calculated in Figure K to the actual amount paid to each vendor between 2008 and 2011 to determine how much the City could have saved if they sought rate decreases in 2008.

Potential Cost Savings for Ancillary Services, 2008-2011

Vendor Name	Total Paid (2008-2011)	Projected Payments at \$70/hour	Potential Savings
Heyward X. Johnson	\$60,792	\$53,193	\$7,599
Genex Services Inc.	\$540,158	\$461,133	\$79,025
Riggle & Associates, LLC	\$177,210	\$155,059	\$22,151
Novare	\$86,708	\$80,928	\$5,781
<i>Younger & Associates, Inc.</i>	<i>\$30,891</i>	<i>\$30,032</i>	<i>\$859</i>
<i>Seyler & Favaloro Ltd.</i>	<i>\$176,998</i>	<i>\$130,412</i>	<i>\$46,586</i>
<i>CBI Insurance & Care Management</i>	<i>\$653,958</i>	<i>\$555,406</i>	<i>\$98,551</i>
Total			\$260,552

Although the City negotiated a lower hourly rate for these vendors and achieved cost savings, the City still had no way of knowing whether it was the best rate possible because it did not conduct an open and competitive procurement process.

³⁹ Although HGI's Vice President of Claims stated that all vendors accepted an hourly rate reduction, the italicized companies were not listed on the vendor list provided by HGI. However, they were included in this analysis to determine how much the City could have potentially saved if it achieved a rate reduction to \$70 per hour with all vendors prior to the transition to HGI in March 2012.