

RISKY BUSINESS

A Publication of the
Miami Valley Risk Management Association

May 2018

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FYI...Closure of LY 24 (2012)

By Tom Judy

One of the chief benefits of MVRMA membership is the closure of a loss year and the return of the unspent funds to the members. The MVRMA Board of Trustees approved the closure of LY 24 (2012) at its March 2018 meeting, returning over \$1.5 million to the member cities. Over \$18 million has now been returned to the members from the 24 loss years closed since the pool's inception in 1989.

The 2012 loss year was originally funded with member contributions of \$2.4 million. The amount of the loss fund contribution is determined by an actuarial study. Claims arising out of 2012 events were charged against the loss fund. The balance in the loss fund was invested along with the pool's other funds and earned interest. Once all 2012 claims activity was resolved, it was possible to close the loss year and refund the balance to the member cities in the same proportion they contributed to it.

According to the Surplus Loss Reserves Disbursement Policy, refunds are credited to the members' General Reserve Fund (GRF) accounts unless, within 30 days, the member requests a cash disbursement. Once deposited to the GRF, the member may request a withdrawal in January of each year. Also, members may apply their GRF funds to any MVRMA invoice at any time during the year. Members' funds on deposit in the GRF continue to earn interest to the credit of the member.

Please contact me if you have questions about loss year funding and refunds.

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Loss Control Lowdown...

Does Your City Have a Driver Safety Culture?

By Starr Markworth

What is the leading cause of worker fatality in the U.S.? The answer may surprise you. It's not machinery accidents, exposure to harmful substances, fire or falls. It is fleet motor vehicle accidents.

Given the high incidence of fleet accidents and their often-devastating consequences, it is vital to minimize risks. Safety-conscious organizations require candidates and current employees to meet specific criteria regarding driving. These criteria should include regular checks of employee motor vehicles records to ensure employees have desirable driving records.

Driver selections should go beyond physically checking that the individual has a valid license. A physical license simply makes it legal for one to drive, but not necessarily suitable to represent your city behind the wheel. It is management's responsibility to establish criteria for the selection of drivers and to follow through with the enforcement of the established criteria. The city may desire to have a written policy defining acceptable "point" limits and possible sanctions, which may range from counseling or remedial training to termination.

Although a large number of municipalities conduct regular driver's license checks, it is far from universal. Often, governments do not see the importance of such a program. One reason is that public sector vehicles, particularly those operated by municipalities, travel fewer than 10,000 miles per year. However, municipal vehicles drive primarily in high-density urban traffic, which increases accident risk exposure. Although hard to quantify, common sense says that every accident prevented represents funds that affect the fleet's budget. Reducing the number of preventable accidents presents a huge opportunity to reduce fleet costs.

Every fleet safety program should include driver's license checks to ensure the workforce is comprised of safe drivers. Fleet policy should clearly define the number of violations an employee can accumulate before losing driving privileges. Failure to take remedial action could create exposure for a negligent entrustment lawsuit. A fleet must know the driving histories of all its drivers. If you do not know, you are just waiting for trouble to happen. But more importantly, it is the "right thing" to do, especially if these actions prevent a fatality or debilitating injury.

Liability should also be taken into consideration. Are you being negligent if you allow a city employee with a poor driving record to drive one of your city vehicles and they are involved in a motor vehicle accident?





Broker's Beat

First Responder Fitness, Wellness and Injury Prevention

First responders operations are inherently risky. Yet, it is likely your entities train the least, for what these employees do the most. Sadly, the number one reason for a first responder to leave the profession is having sustained a soft tissue Musculoskeletal Injury (MSI) from patient handling. This is correspondingly the number one job task we spend the least amount of time training for.

The disconnect is vast and diverse as it pertains to injury prevention, first responder wellness, and resiliency. All three are connected, yet the profession has treated them like they have no bearing on each other. Even with all the technology and engineered solutions the fact remains that the job is physical, has always been physical and will always require the responder to be fit for duty.

Key Reasons for Injury

1. Responders are spending more and more time in the trucks posting and running from call to call. The longer someone sits the greater the risk of injury.
2. Responders will always require a degree of lifting, pushing, pulling, carrying etc. But there is a lack of scientifically validated training.
3. Years of faulty training and poor biomechanics results in responders using their back as a lifting mechanism. The hips and legs should bear this load with the torso muscles acting to stiffen the trunk; sparing the spine. Without the ability to do this, without teaching responders how to do this injury will remain the primary cause of attrition.
4. The more deconditioned, fatigued, poorly fed and stressed responders become the poorer their muscle firing patterns become.
5. Obesity causing joint compression and altered movement patterns, poor sleep due to airway abnormalities and cardiovascular disease.

Many of the points made above can be quickly addressed through a validated job task simulation physical abilities test. Testing pre-hire and annually can identify if an employee is no longer fit for duty. Better to test and then prehab the employee than wait until they are injured or injure someone else.

How can first responders remain resilient and avoid risk averse behaviors when by the design the system breaks them down? From an operations perspective it is far more economical to keep an employee healthy and on the job to retirement than to constantly hire new employees that will only stay for a few years.

This article was written in conjunction with Bryan Fass. Bryan has dedicated the past 10 years to changing the culture of Fire-EMS from one of pain, injury and disease to one of ergonomic excellence and provider wellness. If interested in more information on Bryan and his work, please visit his website www.fitresponder.com.

Counselor's Comments

OHIO'S EIGHTH DISTRICT RULES HOME RULE PERMITS LOCAL INCENTIVES IN PUBLIC CONSTRUCTION CONTRACTS

At the end of last year, the Ohio Eighth District Court of Appeals ruled that a City ordinance favoring low-income workers and local residents in public construction contracts was a valid exercise of local self-government permitted by Ohio's Home-Rule Provisions. (See *City of Cleveland v. State of Ohio*, 2017-Ohio-8882 (8th App. Ohio 2017.)) As it currently stands, the Eighth District's decision nullifies Ohio's enactment of R.C. 9.75, but the State of Ohio has appealed the Eighth's Circuit's decision and we are currently waiting for the Ohio Supreme Court to determine whether they will accept jurisdiction over the appeal.

In 2003, the City of Cleveland passed an ordinance which imposed local hiring requirements on public construction contracts over \$100,000 by requiring that a minimum of 20 percent of the total construction work hours be performed by Cleveland residents, and that no fewer than four percent of those resident work hours be performed by persons of low income. C.C.O. §§ 188.02(A)(1), 188.01(G). The ordinance also required a contractor to pay a certain monetary amount for non-compliance, and afforded the City other remedies. Other Ohio cities, including Cincinnati, Columbus, and Akron also imposed local hiring requirements on public construction contracts.

In 2014, the Ohio Contractors Association (OCA) filed a Complaint

for Injunctive and Declaratory Relief alleging that the City of Akron's local hiring policy violated the equal protection provision of both the United States Constitution and the Ohio Constitution. *Ohio Contrs. Assn. v. Akron N.D. Ohio* No. 5:14cv0923, 2014 W.L. 1761611 (May 1, 2014). The federal court rejected the OCA's equal protection challenge and in response, in 2016 the Ohio Legislature enacted R.C. 9.75. That statute purports to prohibit public authorities from requiring contractors on public improvement projects to employ a certain percentage of individuals who reside within a defined geographical area. It likewise prohibits the use of bid award bonuses or preferences to a contractor as an incentive to meet local hiring requirements.

In August of 2016, the City of Cleveland sued the State of Ohio challenging the constitutionality of R.C. 9.75 in part on the basis that the statute "unconstitutionally infringes upon the City's Home-Rule Authority." The trial court found in favor of the City and an appeal by the State to the Eighth District in Cuyahoga County followed. In a lengthy analysis, the Eighth District agreed that R.C. 9.75 was not a valid exercise of the legislature's authority pursuant to Article II, Section 34, and that the statute "unconstitutionally infringes upon the municipal Home-Rule Authority guaranteed by Article XVIII, Section 3." Specifically, the Eighth Dis-

trict ruled that R.C. 9.75 "is not part of a statewide and comprehensive legislative enactment," but instead "aims to pre-empt and restrict local authority in the establishment of the terms of contracts for public improvements." The Court also found that R.C. 9.75 "does not set forth a police, sanitary, or similar regulation and only serves to limit the legislative power of a municipal corporation." Finally, the Eighth District ruled that "the statute does not prescribe a rule of conduct upon citizens generally." Instead, it impermissibly "[prescribes] requirements that municipalities must follow when contracting with the construction companies."

As noted above, the State of Ohio has asked the Ohio Supreme Court to accept jurisdiction and review the decision of the Eighth District. Although the matter has been fully briefed, to date, the Ohio Supreme Court has not determined whether it will or will not accept jurisdiction. If the Ohio Supreme Court declines to accept jurisdiction, the decision by the Eighth Ohio Appellate District will be persuasive authority that other jurisdictions can utilize to enact similar legislation favoring low-income workers and local residents on public construction contracts. Conversely, if the Ohio Supreme Court accepts jurisdiction and agrees to review the decision, it may signal the Court's willingness to further restrict the use of Home-Rule provisions in the State of Ohio.

The Claims File...

Craig Blair

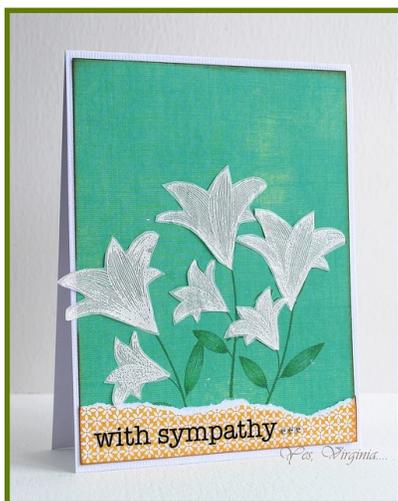
With a long winter over, heavy rains this spring, and summer on the way, several claims related to rain and high winds damage have been received. How do we determine if the city is liable and what legal standards is a city held to?

The first question when reviewing any claim is did a negligent act by the MVRMA member cause the loss? During the spring and summer, heavy rains can cause storm drains to become surcharged and lead to sewer backups. Since the storm is weather related, which is a natural act, the city cannot be held liable for the drainage system being over capacity. Ohio law provides protection for our members for “governmental functions” including the design and construction of a storm/sewer system. However, the maintenance and up keep of these lines is considered a “proprietary function” thus it is an area for which the city can be held liable. The city should inspect and clean their lines on a regular basis and document these activities. Also, when the city receives notification of a line or catch basin that is blocked by debris, the situation should be remedied in a timely manner to minimize liability.

As part of the claims process, MVRMA will need to know if there had been previous problems with backups and the frequency in the affected area. The city is required to review complaints from their residents concerning public safety issues, although they are not obligated to make changes unless they believe they are warranted. However, the city should investigate the cause of repeated backups in an area. Also, the city should determine if any recent commercial or residential development has caused the system flow to increase to capacity even in normal rain events. Documentation of this investigation demonstrates due diligence by the city which can aid in the defense of future claims.

High winds may lead to claims from limbs or branches being blown down out of city owned trees. Storms with high winds are also considered natural acts thus no negligence can be assessed against the tree owners. The only exception would be if the city was on notice of the tree being in poor condition and failed to trim or remove the tree as necessary to mitigate the risk.

The key to protecting the city is to react to a situation in a timely manner to resolve the issues and proactively address any concerns regarding future problems.



MVRMA would like to extend our deepest sympathies to the City of Vandalia for the sudden loss of their long-time Chief Doug Knight.

Chief Knight served as Chief of Police for Vandalia since 1988. Prior to being named Chief he served in other capacities in the department spanning over 37 years and was planning on retiring in June. Over the years, Chief Knight was always extremely supportive of MVRMA and risk management initiatives presented. His strong leadership and dedication to public service will be truly missed.

Calendar of Events

-Upcoming Training Events

Police Interactions with Individuals with Autism Spectrum Disorder

Centerville: May 8

Customer Service for Municipal Employees

Vandalia: May 14 Indian Hill: May 17 West Carrollton: May 22

Trenching and Excavating

Troy: May 15 Wilmington: May 16

The Life Cycle of an Employee - Centerville: June 20

- Upcoming Board Events

Committee Meetings

Risk Management - May 29th 10:00 AM Finance - May 29th 1:30 PM P&C - June 7 10:00 AM

Board Meeting

June 18 - 9:00 AM

From The Board Room

Actions taken at the March 19th Board meeting included:

- ⇒ Approval of the Amended Risk Transfer Policy; Amended Cash and Investment Policy; Surplus Loss Reserves Policy; Shock Loss Fund Policy; Excess Insurance Purchasing Policy and the Professional Development Policy
- ⇒ Approval of the Amended Contracts with Surdyk, Dowd and Turner; Dinsmore and Shohl; Subashi and Wildermuth
- ⇒ Approval of Closure of Loss Year 2012.



Over the last few months MVRMA has experienced some changes to Trustees and City staff. We would like to welcome new members and offer well wishes to those moving on.

- * Bellbrook - Mark Schlagheck, City Manager accepted another position and Melissa Dodd is the new City Manager.
- * Englewood - Janine Cooper, Finance Director, retired and Barb McCormick, Personnel Director is the new Alternate Trustee.
- * Montgomery - Brian Riblet has accepted the City Manager position vacated when Wayne Davis accepted the City Manager position in Centerville.