

# RISKY BUSINESS



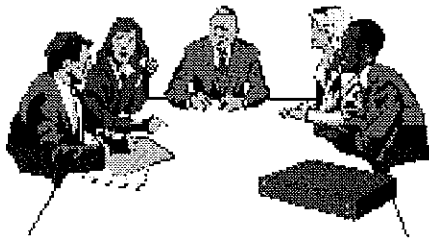
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A Publication of the Miami Valley Risk Management Association  
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NOVEMBER 2011

## From the Board Room...



At the September 26, 2011 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims and Incurred Losses Report
- Accepted the Financial Report and CAFR for the year ending 12/31/10
- Approved Carol Riggle's contract to prepare financial statements for the year ending 12/31/11
- Approved the investment management services agreement with SJS
- Approved the amended fee structure and agreement with Bond-Tech
- Approved the amended Cash and Investment Policy
- Approved participation in CEBCO for MVRMA employees' health insurance
- Accepted the loss funding study for LY24(2012)
- Approved the 2012 Preliminary Expenditure Budget and PCF
- Accepted the MVRMA Underwriting and Actuarial Report conducted by GEM
- Mr. Schlagheck directed Mr. Reilly, as chair of the Nominating Committee, to develop a 2012 slate of officers to be recommended at the December 19 Board Meeting.

## FYI

Risk Transfer Recommendations  
- Michael Hammond

In order to appropriately transfer risk to a third party, MVRMA recommends its members follow two important steps: (1) be named an additional insured under the third party's insurance and (2) include an indemnity clause in the contract or execute a hold harmless agreement with the third party. These two steps are thought of as the belt and suspenders approach to risk transfer. When one fails, the other should pick up the slack. The information below explains why both steps are necessary and provides additional guidance in the matter of risk transfer.

### Additional Insured Status

There are several reasons why you should require a third party to add you as an additional insured to his liability policy:

1. It provides the right to an immediate defense by the named insured's insurer rather than being indemnified for defense costs at a later date.
2. It reinforces the risk transfer accomplished with indemnity agreements by providing direct rights under the policy.
3. The courts will be less likely to void insurance as being solely for the purpose of funding an indemnity agreement found to be invalid.

MVRMA recommends the following language be used in the certificate of insurance provided by the third party: "The following are Additional Insureds: The City of \_\_\_\_\_, Ohio, its elected and appointed officials, all employees, agents, volunteers, all boards,

commissions and/or authorities and board members, including employees, agents and volunteers thereof. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds whether other available coverage be primary, contributing or excess."

Additional insured status should be thought of as reinforcement for the underlying hold harmless or indemnity provision. It is not a substitute for the careful drafting of a hold harmless agreement.

### Indemnification and Hold Harmless

Insurance is only one way the third party can financially guarantee his liabilities. The second step is to execute a hold harmless agreement that provides the broadest protection possible in the event a claim arises from activities of the third party. If you have an indemnity provision in the contract or a hold harmless agreement, the third party is obligated to indemnify you whether or not his insurance covers the loss. This puts the burden on the third party rather than you to make certain his insurance coverage is sufficient and current. Therefore, make sure your indemnity language is strong, and be satisfied the third party has sufficient assets to indemnify any exposures not covered by his insurance.

The *MVRMA Handbook* contains several examples of hold harmless agreements. These samples can be found on page 6:03:44. Drafting hold harmless language is a crucial part of the risk transfer process and should not be undertaken without advice and assistance from your legal counsel.

### Why Bother?

(Cont. on Page 4 - See FYI)

A tribute to the late Steve Jobs, in his own words:  
***Innovation distinguishes between a leader and a follower.***

## Counselors' Comments



Surdyk, Dowd & Turner

### Ohio Supreme Court Upholds Immunity for Officer on Emergency Call Outside Jurisdiction

Recently, the Ohio Supreme Court held the absence of a mutual-aid agreement between two jurisdictions is not determinative of whether a peace officer who leaves his jurisdiction is on an emergency call for purposes of R.C. 2744.01(A) and 2744.02(B)(1)(a). *Smith v. McBride, et al.*, --- Ohio St.3d ---, Slip Opinion No. 2011-Ohio-4674.

At issue in *Smith*, was whether a Clinton Township police officer could respond to another officer's request for assistance in a different jurisdiction when there was insufficient evidence of a mutual-aid agreement between the jurisdictions. A mutual-aid agreement typically grants authority to a municipality's police officers to respond to an out-of-jurisdiction request for aid, when the request is made by a command officer of the adjoining municipality.

On March 14, 2006, Sergeant Travis Carpenter was at the Clinton Township police headquarters when he heard a general dispatch call from a Franklin County Sheriff's deputy requesting assistance because he was on foot pursuing a fleeing suspect. Sergeant Carpenter immediately headed to the nearby location in a marked police cruiser. He was speeding at the time, but did not engage his siren or emergency lights. While in route to assist the Sheriff's deputy, Sergeant Carpenter's cruiser collided with another vehicle at an intersection. The passenger of the other vehicle filed suit against Clinton Township and Sergeant Carpenter.

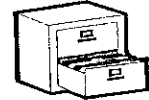
Clinton Township and Sergeant Carpenter asserted the defense of immunity under R.C. 2744 claiming Sergeant Carpenter was on an emergency call at the time of the collision. The Supreme Court noted

an inquiry into whether an officer is on an emergency call turns on whether the officer was acting pursuant to a call to duty at the time of the accident.

The Plaintiff maintained the officer could not have been on an emergency call at the time of the collision because the officer was outside of his jurisdiction and there was no evidence a mutual-aid agreement existed between Clinton Township and Franklin County. Essentially, the Plaintiff argued that, without a mutual-aid agreement, the officer had no authority to arrest or assist an officer. The Township maintained the existence of a mutual aid agreement is irrelevant to whether an officer is on an emergency call because a mutual-aid agreement and an officer's obligation to respond to a particular dispatch are two separate, unconnected matters. The Township further argued the authority to make an arrest is different from a police officer's professional obligation to respond to a request for assistance.

The Supreme Court agreed with the Township that the term "emergency call" does not incorporate any concept of a peace officer's authority or lack of authority to act in a particular situation. Rather, immunity is granted when an officer is responding to a call to duty, which includes responding to a dispatch for assistance out of a professional obligation to do so. Accordingly, the Supreme Court held the absence of a mutual-aid agreement is not determinative of whether an  
(Cont. on Page 4 - See COMMENTS)

## The Claims File



-Craig Blair

Locally, 2011 has been a tough year weatherwise. We have experienced a major hail storm, numerous high wind events and record rainfall. In the last issue of *Risky Business*, we reported how our members were affected by these events and how coverage through MVRMA applied. But, what is the city's responsibility to its residents when these weather events occur?

Most major storms will generate 2-3" of rainfall during a 1-2 day period and may be accompanied by high winds. Storm water systems are expected to handle this type of event. However, this year, we had as much as 3-5" of rain in a 4-6 hour period, which lead to storm sewers becoming surcharged and overflowing. This situation lead to sewer back ups and hazardous road conditions from the "ponding" water.

It should be noted the legal requirement for these situations is a "maintenance standard," meaning cities are to respond in a timely manner when put on notice of a problem. Cities are expected to pump water away from roadways, if possible, and put up warning signs, cones or other types of barriers to alert oncoming traffic.

When a back up occurs in a resident's home, the city is again expected to respond in a timely manner, pump away water, if possible, and clear any debris washed into the system from the storm  
(Cont. on Page 4 - See CLAIMS)



Kathy St. Pierre, Administrative Assistant, and Mark Schlagheck, MVRMA President, accepted the Award with Distinction for Excellence in Financial Reporting for the Year Ended 2010, from Nicole Beckwith, Western Ohio Liaison to the Auditor of State's Office.

## Loss Control Lowdown

- Starr Markworth  
Annual SPEC Program Completed



(L to R: D. Bruck, Miamisburg; M. Schlagheck, Bellbrook; J. Trick, Vandalia; D. Couch, Indian Hill; J. Hanson, Montgomery and J. Thamann, Springdale, received SPEC Awards at the September Board Meeting.)

The annual Safety Performance Evaluation Checklist (SPEC) program is a tool used to determine where MVRMA members are excelling and where improvement is needed in areas of safety and loss control. The criteria were established using insurance and loss control industry "best practices." Each summer, during site visits with the Loss Control Manager, members provide documentation to demonstrate compliance with the accepted

standards.

Periodic updates are necessary to keep MVRMA's SPEC program current. In 2010, the program experienced an extensive overhaul. Golf courses, recreation centers and refuse departments were added, and the public transportation section was enhanced. The evaluations completed in July and August employed this updated program.

The annual SPEC awards were presented at our September Board Meeting. The Ascension Award, given to the municipality with the most improved overall percentage of SPEC compliance, was presented to the city of Springdale, with a 14.21% improvement. The Pinnacle Award, given to the city with the best overall percentage of compliance, was presented to the

following eight communities: Bellbrook, Centerville, Village of Indian Hill, Mason, Miamisburg, Montgomery, Vandalia and Troy. All of our Pinnacle winners had 100% compliance with the new standards.

Thank you to the member cities for their cooperation and dedication to proactive risk management practices. Please contact the MVRMA office for assistance in implementing any recommendations.

## First in Ohio

A recently completed road project at the **City of Montgomery** included installation of a natural gas fueled generator traffic signal back-up system. Whereas battery systems can operate traffic signals for three hours after loss of electrical power, the natural gas powered generator will allow traffic signals to remain in operation for an unlimited length of time. This is the first use of this system in Ohio and will serve to provide fast, safe operation of the signal for travelers during power outages.

## Be Prepared

When someone's injured at work, you don't want to waste time searching for bandages or pain relievers. Keep a first aid kit accessible and well stocked with the supplies you'll need in the event of an accident. Time is of the essence, so include these items: Adhesive bandages of assorted sizes - at least 25, sterile gauze pads, adhesive cloth tape, antibiotic ointment, antiseptic wipes, OTC pain relievers, eyewash, cold compress, blanket, scissors, tweezers, thermometer, disposable gloves, and a first aid instruction booklet.

## Brokers' Beat...

We have traditionally provided an update on the insurance industry market conditions in the fall edition of *Risky Business* and will continue that custom with the following article.

First quarter industry results for 2011 were impressive, with industry capital and surplus reaching an all time high at \$565 billion, along with a sustained premium growth trend of 2.6% and an industry combined ratio that rose slightly to 103.3. However, these results do not entirely reflect the numerous catastrophes that took place in the first half of the year. There was the New Zealand earthquake, the Japan earthquake and tsunami, the Australia floods and several serious weather related events in the United States. The most recent estimates place the insured value of these events at \$60 billion, more than four times the ten year average.

Preliminary results for the second quarter have been released and reveal a modest capital and surplus reduction to \$559 billion. This modest decrease still reflects incomplete booking of catastrophic losses and benefited from better than expected investment earnings. It is anticipated that the industry capital and surplus will retreat to somewhere in the neighborhood of \$525 billion at the end of the third quarter as cat loss activity continues to be booked and third quarter financial losses are posted. The third quarter will also reflect higher than normal monsoonal activity in Asia along with Hurricane Irene losses which are estimated to be three to four billion dollars.

Alliant results for our July 1 renewals suggest that liability rates were essentially flat and property rates were flat to up 5%. However, where individual property accounts had loss issues, premium rates increased as much as 25% to 30% along with increases in retentions. While we see a (Cont. on Page 4 - See ALLIANT)

For safety is not a gadget but a state of mind.  
-Safety Author Eleanor Everet

## FYI (Cont./Page 1)

Dealing with indemnity and insurance requirements can be tedious.

Requesting, obtaining and verifying insurance can be bothersome, and generally, a contract is completed without incident. However, when an incident or claim does occur, all those aggravating efforts prove worthwhile.

Remember, you never want to be at fault for the expense of a claim that could have been transferred to a third party's insurance company. So, while it may be tempting to ignore indemnity and insurance requirements and accept whatever is provided, consider it a measure of due diligence that could result in significant savings for your city.

If the third party tells you his insurance agent can not get the required additional insured language, what can you do? In many instances, the agent hasn't actually approached the insurance company and is just trying to discourage your request. You may need to speak directly to the agent about your insurance requirements. If that doesn't work, contact MVRMA for assistance, or alternatively, inform the third party that you can not complete the arrangement because of the inability to accomplish the risk transfer.

## Alliant (Cont./Pg. 3)

market place that has deteriorating numbers and is a bit hard for property, we do not foresee the disappointing property results spilling over to the liability market place. In order to see a dramatic change in the current market conditions, greater underwriting losses and corresponding capital and surplus declines (around \$100 billion) would have to occur, tighter reinsurance markets would have to emerge and/or a noticeable change in underwriting discipline would have to take place. These traits are either not present or only marginally present in the current market place.

Thus, we see flat liability rates, slightly higher property rates and larger property rate increases for accounts

with loss issues continuing into 2012.

## Claims (Cont./Page2)

water. Front line employees responding to these situations have their hands full and should not be expected to answer questions from residents and should never agree to pay for any loss. They should instead refer all questions and concerns to MVRMA. Their supervisor should then email or fax a report of the incident to the Claims Manager as soon as possible. Liability can be assessed to the city only if it committed a negligent act which caused the overflow or sewer back up.

Generally speaking, storms would not qualify as negligent acts. However, if the city had been performing roadwork or other repairs that affected the storm drainage system, the city may be held liable. If the work was contracted to an outside company and a loss occurred, MVRMA would subrogate the claim to the contractor. As a general rule, all potential claims should be forward to MVRMA for review.

**Reminder:** As a member of PRIMA, MVRMA has access to a variety of sample documents and information related to risk management topics. Just contact Ms. Markworth with your risk management-related question or issue, and she will request all available information from the PRIMA Cybrary website.

## Coming Events

**November 9**

Giving and Receiving Feedback  
MVCC  
8:30-11:30 am

**December 19**

MVRMA Quarterly Board Meeting  
9:30 am  
MVRMA Offices  
Holiday Luncheon  
11:30 am  
Kohler Banquet Center  
4572 Presidential Way

**November 24-25**

**December 26**

**January 2**

MVRMA Office Closed

## Comments

### (Cont./Pg. 2)

officer is on an emergency call outside of his jurisdiction. For political subdivisions, the opinion most likely means that peace officers may respond to a call to duty beyond their jurisdiction, pursuant to a professional obligation, without fear of civil liability for allegedly negligent conduct.

Surdyk, Dowd & Turner Co. L.P.A. represented Clinton Township in this appeal before the Ohio Supreme Court.

Happy Holidays from Santa and the four MVRMA reindeer,  
Mike, Craig, Starr and Kathy

