

RISKY BUSINESS

A PUBLICATION OF THE MIAMI VALLEY RISK MANAGEMENT ASSOCIATION

February 2015

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FYI...Membership Survey; Strategic Planning *By Tom Judy*

MVRMA members recently participated in a survey to provide feedback on their satisfaction with the pool and offer their opinions on the pool's direction. This survey was done in anticipation of MVRMA's triennial Strategic Planning Retreat later this year. The results indicated the membership is generally very satisfied with the pool's success and activities; however, some issues were raised that will create good discussion at the Strategic Planning session.

Members were asked to rate the pool's success achieving each of its 6 goal statements.

Loss Control: The membership gave an average rating of 4.2 on a 5-point scale for the pool's success in reducing and preventing losses through the establishment of loss control policies, procedures and practices. Comments included, "I appreciate the effort to focus on risk management basics." Some comments pointed out that, while the pool can disseminate best practices and provide training opportunities, it is still the responsibility of each member to practice good loss control.

Risk Management: The pool's success in providing professional risk management support, services and training efforts was given an average 4.6 score. Typical comments were "I can count on MVRMA to offer and promote a variety of training opportunities" and "I appreciate your providing guidance on contract recommendations for insurance and indemnification."

Asset Protection: The membership gave a perfect 5.0 score on the objective of providing stable insurance protection with predictable and stable cost levels, maintaining sufficient financial reserves and purchasing reasonably-priced insurance products. The comments were unanimous in designating this area as a strength of the pool.

Recognition of Excellence: An average score of 4.1 was given to the success in recognizing the efforts of member cities for excellence in risk management. Several comments indicated a confidence that 2014 changes to the award program would lead to improvement.

Communication: The membership assigned a score of 3.9 to the success in providing membership with an innovative means of communication as it relates to risk management issues. In general, the comments reflected satisfaction with communication with specific mentions of the newsletter and website. Several comments

FYI cont...

questioned whether “innovative” means of communication was an appropriate standard and expressed that it is difficult to meet such a standard.

Membership Development: A score of 3.7 was given to the success in evaluating opportunities to selectively expand membership to include compatible professionally managed municipalities. Most of the comments reflected satisfaction with the marketing plan changes adopted by the Board in 2014. A typical comment was “The recent changes to the membership development policies will allow the Executive Director to be more responsive when potential new members express interest in MVRMA.”

Members were asked to give their comments on the following questions:

What are the key strengths of MVRMA? The most commonly cited strengths were the staff, financial stability, and value-added services. One member summed it up as follows:

“As MVRMA has matured, it has become the financially strong and stable organization that its founders envisioned. MVRMA returns all unused funds back to its members, including any interest earned on those funds, as loss years are closed out. In addition, MVRMA offers many value-added services, including a claims/litigation management program that incorporates analysis of claims data to identify trends where training can be targeted to reduce future loss experience. MVRMA also provides extensive loss control consulting and training designed to improve the organization's claims experience. In addition, toward this objective, MVRMA conducts the Safety Performance Evaluation Checklist (SPEC) as well as the Police Best Practices for risk management. Again, with loss control in mind, MVRMA provides review and recommendations relative to bidding and contracting activities. MVRMA also acts as a clearinghouse for risk management information.”

What are the primary weaknesses of MVRMA? Among the relatively small number of weaknesses identified were the geographic concentration of the membership, lack of diversity of membership and the potential effects of staff turnover due to the small staff size.

What untapped opportunities should MVRMA take advantage of? Several suggestions received only single mentions, including increased interaction between cities and continuing selectivity in marketing.

What are the 3 most important current and/or future challenges MVRMA faces? The most commonly mentioned challenge was the risk of regional disasters, including weather-related events, due to the geographic proximity of the members. Also mentioned more than once were the issues of growth versus status quo and the potential for turnover in staff at MVRMA and the member cities.

Even when there is a high level of satisfaction with an organization’s performance and outlook, it is healthy to set aside time to consider its strategic priorities. The date of the MVRMA Strategic Planning Retreat will be announced soon. I encourage all members to be represented at this important session.

2015 MVRMA Board Meeting Dates

Monday, March 16
Monday, June 15
Monday, September 21
Monday, December 21

9:30 AM, MVRMA Offices

2015 MVRMA Board Officers

President: Nancy Gregory, Kettering
Vice President: John Green, Tipp City
Treasurer: Janine Cooper, Englewood
Secretary: Julie Trick, Vandalia

CONGRATULATIONS!

The Claims File

By Craig Blair



The 2014 calendar year was MVRMA's 26th year and overall it is off to a good start. The reason I say it is "off to a good start" is that there is a 2 year statute of limitations to file a claim or lawsuit in the State of Ohio. We can expect another 15 to 20 claims from 2014 to be reported in 2015. History shows that 5 to 7 claims will be in the form of lawsuits against our members. We received 7 lawsuits filed against our members in 2014.

MVRMA provides coverage and defense for our members' lawsuits if they fall within the coverage parameters of the MVRMA Liability Coverage Document. Typical lawsuits include those related to auto accidents, injuries that occur on city property, employment practices, police actions or various other claims of negligence. Currently there are 18 open lawsuits, 11 of which pertain to law enforcement. That proportion is not unexpected due to the high risk exposure of law enforcement. Historically, 65% of the lawsuits have been dismissed; however, over the last few years that figure has trended down slightly.

There were 373 claims reported in 2014. This number is slightly above the 10-year average, but it raises no true concern. General liability accounted for 40% of the total claims. Most lawsuits would fall within this category. Auto claims and commercial property claims were 33% and 27% of the total, respectively. All these percentages are consistent with past years.

Finally, there are subrogation claims (reimbursement from 3rd parties that damage city vehicles or property). A total of 93 subrogation claims were handled last year at the request of MVRMA members, with over \$93,000 recovered for the members. Subrogation claims are the only type that members are not required to report to MVRMA, but most members prefer MVRMA to handle the paperwork, sale of salvage (if needed), and to work with the other insurance companies regarding the payment.

Counselors' Comments

By Gary Becker, Dinsmore & Shohl, LLP



Ohio Supreme Court Says "No" to Post-Retirement/Post-Voluntary Resignation Temporary Total Compensation

The Ohio Supreme court recently issued its unanimous opinion in *State, ex rel. Floyd v. Formica Corp.*, 2014-Ohio-3614, ruling that where a claimant voluntarily retires from the workforce following an injury, he or she becomes ineligible for a new period of temporary total disability while recovering from a post-retirement surgery. Even more recently the Ohio Supreme court determined in *State, ex rel. Hildebrand v. Wingate Transport, Inc. et al.*, 2015-Ohio-167, that an employee voluntarily removes himself from the workforce, and thus, is ineligible for a period of temporary total disability where the employee voluntarily quits his job following a disagreement with his employer that is unrelated to his injury, on the same day that the employee reported to work with a note from his doctor restricting him to modified duty.

The facts in the Floyd case were critical to the Court's decision to uphold the Industrial Commission's denial of the Claimant's request for temporary total compensation. Mr. Floyd had been injured at work in March, 2000. He eventually returned to work in a light duty assignment which ended in January, 2001. Mr. Floyd then began receiving temporary total compensation and, at age 63, began receiving Social Security retirement benefits effective April, 2001. After undergoing surgery in the claim in November, 2010, Mr. Floyd applied for a new period of temporary total compensation.

The Industrial Commission denied the request, finding that Mr. Floyd was no longer in the workforce in November, 2010, having retired in 2001 and not having searched for employment since that time. In the Floyd decision, the Supreme Court upheld the denial of temporary total compensation, stating: "Because temporary-total-disability compensa-

Counselors' Comments cont...

tion is intended to compensate an injured worker for loss of earnings while the industrial injury heals, a claimant who is no longer part of the workforce can have no lost earnings.”

The Court went on to clarify that even where a departure from the workforce is injury-induced, a claimant still becomes ineligible for future periods of temporary total where he or she has foreclosed the possibility of future employment by abandoning the entire workforce. In Mr. Floyd’s case, the Court relied upon the Claimant’s decision to apply for Social Security retirement benefits, and the lack of evidence of any job search since 2001, to find that he had already abandoned the workforce prior to this 2010 surgery, and was therefore ineligible for a new period of temporary total compensation.

Similarly, the Hildebrand Court analyzed the definition of Temporary-total-disability compensation, which as set forth above, is only intended to compensate an injured worker while they are temporarily unable to return to the duties of their former position of employment because of a workplace injury. Because temporary-total-disability compensation requires a causal connection between the inability to work and the industrial injury, the Hildebrand Court determined that a worker’s voluntarily departure from employment for reasons unrelated to his industrial injury (i.e., a verbal argument with his employer that had nothing to do with his injury, and just happened to occur shortly after he reported to work with a note from his doctor restricting him to modified duty), is not causally related to his industrial injury, and thus the employee is not entitled to temporary-total-disability compensation.

Both of these cases represent conservative interpretations of how workers’ compensation benefits should be paid and hopefully signal that further employer-friendly decisions will be forthcoming.

Loss Control Lowdown

By Starr Markworth

Update on Hazard Communication Standards

OSHA updated its hazard communication standard to align with international standards in 2012. The first deadline was by December 1, 2013- by which all employers must have trained employees on how to read GHS formatted labels and SDSs. Changes to labels are probably more substantial, however, employees need to understand where to find information on the SDS. Training on the carcinogen and dusts standards must be in place by June 1, 2016.

The Hazard Communication Standard (HCS) is now aligned with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This update to the Hazard Communication Standard (HCS) provides a common and coherent approach to classifying chemicals and communicating hazard information on labels and safety data sheets. Once implemented completely, the revised standard will improve the quality and consistency of hazard information in the workplace, making it safer for workers by providing easily understandable information on appropriate handling and safe use of hazardous chemicals. This update will also help reduce trade barriers and result in productivity improvements for American businesses that regularly handle, store, and use hazardous chemicals while providing cost savings for American businesses that periodically update safety data sheets and labels for chemicals covered under the hazard communication standard.

There are additional requirements that will go into effect in 2015 and 2016 that will have an effect on member Cities.

- June 1, 2015 – By this date, chemical manufacturers and distributors should have completed their reclassification of chemicals and be shipping GHS formatted SDSs and labels with their shipments. By this time too, a majority of your library will have turned over.
- December 1, 2015 – Distributors have an additional 6 months beyond the June 1, 2015 date to pass along manufacturer labels and SDSs in the older formats. However, beyond December 1, 2015, all SDSs and labels in the U.S. should adhere to HazCom 2012 provisions.
- June 1, 2016 – By this date employers should be fully compliant with HazCom 2012. That includes making any necessary updates to their HazCom program, training employees on any newly identified chemical hazards (identification

Loss Control Lowdown cont....

of new hazards is likely during the reclassification process chemical manufacturers undertake), and updating safety data sheets libraries and secondary labels.

Looking at the deadlines, one key obligation for employers, which may have already become apparent to you, is that incoming SDSs will need to be checked against the older MSDSs to see if there are any new hazards or precautions. Why? It is likely that some of the chemicals you have used for years, on which all of your employees have already been trained, will by the end of the transition have new hazards or changes to handling recommendations that will then require updated training. As you know, employees must be trained on all of the hazards of the chemicals to which they are exposed.

To comply, it will help if you have a system in place for catching new changes to safety data sheets. For example:

- Have a designated employee in charge of the transition to GHS.
- Take an inventory of your current SDSs and chemicals.
- Make sure your employees, especially those on the front lines where MSDSs are likely to first enter the facility are on the lookout for updated SDSs.
- When a new safety data sheet comes in – have a system in place for comparing it to the earlier version, making note of any relevant changes.
- Plan/execute training.
- Update your MSDS library / archive old MSDSs.

OSHA says the new standards will prevent an estimated 43 workplace deaths a year nationally.

For a more information on the regulation: visit <https://www.osha.gov/dsg/hazcom/HCSFactsheet.html>

Please contact Loss Control Manager Starr Markworth, smarkworth@mvrma.com or 937-438-8878 with any questions or suggestions.



Brokers' Beat

Cyber Security Risk Management

Public entities keep a wide range of information about people – tax records, social security numbers, health records, addresses and driver's license numbers. As a result, public entities are a prime target for cyber-attacks. The 2014 Verizon Data Breach Investigative Report cited that of the 63,437 security incidents that were reported, the Public Sector accounted for 47,479 or about 74.8 % of those incidents. An added component to this is security technology used by public entities is often outdated and budget constraints may make it harder to upgrade.

So what can your entity do to help avoid a cyber attack in the future? Included below are a number of risk management measures your organization can implement to help avoid a Cyber Security Breach:

- Encrypt sensitive data. The cost of data encryption services has dropped considerably over the years.
- Create management guidelines for records and information. Classify information as public, for internal use or confidential so that sensitive data is properly identified and protected.
- Assess network security regularly using a third party and fix the vulnerabilities discovered.
- If your entity collects credit card payments, it is important to perform a Payment Card Industry Data Security Audit to ensure regulatory compliance.
- Establish in house privacy policies with your IT department and share those regularly with employees.
- Have a breach response plan in place that will allow your organization to react quickly to an attack.

In addition to these measures, it is important to educate your employees on common methods hackers will use

Brokers' Beat cont...

to access your systems. Among the most common are intercepted passwords, phishing emails, cookie hacking, and fake wireless networks. As part of this education, procedures you can implement to mitigate these risks include using unique passwords and changing them regularly, raising awareness of common phishing email traits such as misspelling or grammatical errors, deleting your cookies or using software that protects them, and using caution when connecting to a public Wi-Fi only using known networks.

Many people think it is not a matter of if, but a matter of when their organizations will be the victim of a cyber security attack. As a result, MVRMA has secured an insurance policy providing coverage for each member covering costs associated with a security breach. Included in this program is a suite of breach response services you can access in the event your entity experiences a cyber security attack.

Upcoming Events

Please continue to check our website, mvrma.com for upcoming training dates:

Conducting Performance Evaluations
03/03/15, 8:30-noon
City of Centerville, Police Department

MVRMA Strategic Planning Retreat, TBA

Board Meeting
03/16/15, 9:30 AM

From The Board Room

Actions taken at the December 15, 2014 Board meeting included:

- Approved 2015 Liability Coverage Document
- Approved 2015 Liability Reinsurance Renewal with GEM
- Approved 2015 Crime Renewal
- Approved 2015 Budget, Objectives and PCF
- Approved Amending Section 125 Plan (FSA)
- Approved Huntington Bank Investment Agreement and NFS Resolution
- Approved 2015 Nominations for Board Officers
- Approved changes to Personnel & Compensation policy