

# RISKY BUSINESS

November 2015

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A PUBLICATION OF THE MIAMI VALLEY RISK MANAGEMENT ASSOCIATION

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## FYI... Refunds to Members

By Tom Judy

The MVRMA Board of Trustees closed Loss Year 22 (2010) at the September 21, 2015 meeting. This was another happy reminder to MVRMA's members that they are "owners" of the Association and benefit from its financial success. The closure of LY 22 authorized the refund to the member cities of that loss year's balance of approximately \$1,132,000. This follows the refund of about \$1,152,000 earlier this year from the closure of LY 21 (2009).

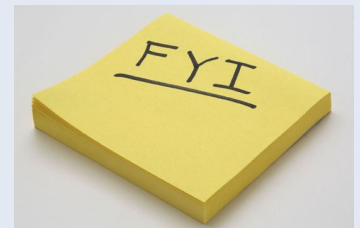
Each year, the MVRMA annual budget establishes a loss funding amount to be set aside to pay claims that will occur in the upcoming year. The amount of loss funding is determined by a study prepared by an independent actuary. This study is based upon data that includes the pool's claims loss experience and industry loss experience. These loss funds are contributed by the member cities as part of their annual contribution to the pool. Once all claims and suits for a particular loss year have been resolved – typically after 5 to 7 years – the remaining funds are returned to the members, with interest.

The loss funding contributions by the members for LY 22 and LY 21 were \$2,450,000 and \$2,400,000, respectively. The total of \$2,284,000 refunded for those years represents about 47% of the amount contributed. This refund percentage is consistent with the pool's historical performance.

The surplus reserves are refunded in the same proportion as they were contributed by each member. MVRMA's Surplus Loss Reserve Distribution Policy requires that each member's share be deposited into the member's General Reserve Fund account. The member has the option to receive the amount as a cash refund within 30 days of the closure of the loss year, or maintain it in the General Reserve Fund. Members' General Reserve Fund monies earn interest and can be refunded in cash in January of each year or applied against any outstanding MVRMA invoice.

We encourage members to keep some portion of their monies on deposit in the General Reserve account to help offset any unexpected increases in their annual contribution amount. This approach will allow the members to stabilize their funding from year to year. Currently, we are enjoying a soft insurance market with lower insurance cost. However, if the insurance market hardens and prices increase, members will be able to use their General Reserve account to buffer those increases as well as any contribution increases caused by adverse loss experience of the member.

We are pleased that our members are able to benefit from the closure of another Loss Year and enjoy one of the many advantages of MVRMA membership.





### **Changes Possible to Standards of Civil Liability for Police Officers Involved in High-Speed Pursuits**

Police officers are called upon for many situations that arise within the scope of their responsibilities and sworn duties. Perhaps the most recognized duty of officers is to enforce the law and to make arrests in proper cases. In carrying out this duty, however, officers often find themselves in situations where suspects are willing to risk their lives and the lives of others and fight or flee apprehension. In these situations, officers are forced to make split-second decisions on whether to pursue these suspects, which can lead to high-speed pursuits. These pursuits can be dangerous and oftentimes result in injury to the officers, suspect or innocent members of the public.

For nearly 25 years, Ohio's police officers have been afforded great protection from civil liability when these pursuits resulted in death or injuries to a third party. Ohio's trial and appellate courts have made it clear that an officer's duty is to enforce the law and make proper arrests – not to allow the suspect to escape because of the fear that the flight may take a course that is dangerous to the public at large. Ohio's courts have consistently followed what is known as the “no proximate cause” rule: that when a police officer pursues a fleeing violator and that violator injures a third party as a result of the chase, the officer's pursuit is not the cause of those injuries, except where the circumstances indicate the officer engaged in extreme or outrageous conduct. The reasoning behind this rule is clear. The proximate cause of an accident in such a situation is the reckless driving of the fleeing suspect, despite that a pursuit by officers may have contributed to the suspect's reckless driving.

Although the “no proximate cause” rule has been followed without exception in the trial and appellate courts, the Ohio Supreme Court had never taken a stance on this long-standing principle – until now. In August, the Ohio Supreme Court decided it will hear an appeal challenging the “no proximate cause” rule in the case *Argabrite v. Neer*.

The *Argabrite* lawsuit originated in Montgomery County. Miami Township officers pursued a fleeing suspect along streets in Miami Township and Washington Township with the involvement of Montgomery County Sheriff Deputies. The pursuit ended when the suspect drove his vehicle into the opposing lane of traffic and crashed head-on into an oncoming vehicle driven by the plaintiff in the case. The suspect was killed, and the plaintiff was seriously injured. She subsequently filed a negligence action against the five officers and deputies involved in the pursuit. The Montgomery County Common Pleas Court and the Second District both followed long-standing legal precedent and held that the officers could not be liable in the case because their actions, which could not be characterized as extreme or outrageous, were not the proximate cause of the plaintiff's injuries. Rather, the reckless or wanton driving of the suspect caused plaintiff's injuries.

What does this mean for police officers and the political subdivisions for which they serve? The Court will examine the “no proximate cause” rule and will either determine that it remains good law in Ohio or reject the rule and set a standard that would likely afford less protection under civil law to officers who pursue fleeing suspects. As it stands, the “no proximate cause” rule sets a standard that affords officers significant protection. Although Ohio's rule is similar to the standard set by federal courts under the United States Constitution, only a minority of states adhere to the “no proximate cause” rule or other similar standard.

In closely examining this well-established rule in Ohio, the Ohio Supreme Court will also likely consider the effects that any lower standard for liability would have on law enforcement officers, agencies, and the public they serve. The overall importance of apprehending criminals as swiftly as possible is obvious, thus eliminating the possibility of continued criminal acts. Police officers are faced with situations that call for fast action, and they are confronted with conflicting obligations. Officers have a duty to restore and maintain lawful order, while not increasing disorder. They are required to act decisively and utilize restraint, while their decisions must be made swiftly, under tremendous pressure, and without the luxury of deliberation. In making a decision to engage in a pursuit of a suspect, officers must balance on one hand, the need to stop a suspect and demonstrate that flight from the law is no way to freedom, and, on the other hand, the high-speed threat to motorists and bystanders. Exposing police officers to greater liability for the unexpected actions of fleeing suspects may cause greater harm to the general public. Instead of acting instinctively, law enforcement officers may pause and choose a course of action that presents the least amount of exposure to a courtroom rather than acting instinctively as they are trained to do.

The Ohio Supreme Court's decision in *Argabrite* will ultimately set the standard for the liability of officers involved in high speed pursuits that result in injuries to third parties. If the Court abandons the “no proximate cause” rule and sets a lower standard of liability for officers, such change could have wide-sweeping effects on law enforcement agencies, potentially affecting policies and training within departments. In addition, a change to this standard would likely increase the exposure of municipalities and other political subdivisions in defending these officers in civil suits. Thus, given the potential effects the Ohio Supreme Court's decision in *Argabrite* will have on law enforcement agencies and political subdivisions across the State, this case is one to watch in the coming year.

## Loss Control Lowdown

By Starr Markworth

On Wednesday October 14th, The Public Works Officials of Southwest Ohio hosted their 28<sup>th</sup> Annual Snowplow Roadeo at the City of Mason Sports Park.

The Snowplow Roadeo Committee meets regularly throughout the year to gain the support of vendor sponsors and to plan the all-day snowplow roadeo. The committee is made up of city, county, township and village officials from various communities and included several officials from MVRMA cities.

This event brings together some of the best snowplow drivers in southwest Ohio. Over 50 drivers from 23 jurisdictions competed in the road course designed by MVRMA's own Mike Trader from the City of Mason Public Works Department.

The course is set up to challenge drivers to test their skills in real life situations. The driver must successfully navigate a cul-de-sac, maneuver around parked cars and mailboxes, weave through a serpentine and then pick up and move a barrel to a loading dock.

Four MVRMA Member City employees placed in the top 10 drivers: Scott True, Kettering Service Department, placed 9<sup>th</sup>; Glen Janson, Mason Public Works placed 7<sup>th</sup>; Matt Westfall, Mason Public Works placed 6<sup>th</sup>.

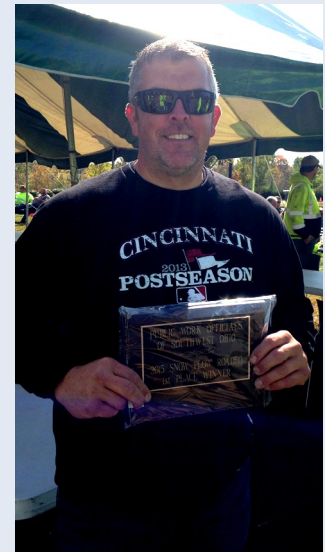
This year's Snow Plow Roadeo winner was Doug Hardyman, Street Serviceman I, from the City of Kettering. Doug is also a graduate of MVRMA IAPD Heavy Vehicle Driver Training held last June.

The Snowplow Roadeo is an excellent training opportunity in preparation for the upcoming snow and ice season. Many participating departments conduct their own departmental snowplow roadeo to determine which employees earn the privilege of representing the city at the SW Ohio Snowplow Roadeo.

The Roadeo allows drivers to see some of the new techniques available for combating snow by vendors that are set up during the competition. One of the most beneficial outcomes of this event is that drivers are able to network with other agency drivers and share information and challenges.



Pictured: Mike Trader Judging Drivers



Pictured: Doug Hardyman, Winner



## Insurance Market Update

We reported last year that the Property & Casualty commercial insurance market was stable and the outlook was favorable. That trend has continued into 2015 and we expect more of the same in 2016. Catastrophic claims continue to be well below the average for the past ten years, but Hurricane Joaquin and other catastrophic events across the globe are a reminder that catastrophic losses can hit at any time.

Based on 2015 first quarter results released by the Insurance Information Institute, the industry is running a Combined Ratio of 96%. Essentially, for every premium dollar collected the insurance industry is paying out .96 cents in expenses and claims; an underwriting profit. Policyholder Surplus is at a record high, \$672.4 Billion as of 6/30/15. All signs continue to point to an improved market.

However, weather extremes (El Nino, flooding in South Carolina), catastrophic loss and investment earnings are areas of concern for commercial insurance carriers. Due to persistently low interest rates, investment income fell in 2012, 2013 and 2014 which could be cause for concern if the industry were to begin experiencing more losses.

## *Brokers' Beat Cont...*

Looking ahead, we see the marketplace as being essentially flat for January renewals and the expectation is that rates will remain flat to slightly down into 2016. This is barring an increase in claims severity and/or any industry changing events (i.e. hurricane, new legislation, court decisions, insurer insolvency) between now and when coverage renews. Certain lines of coverage will see modest decreases (CAT exposed property experiencing 10-15% rate reductions), while others such as commercial automobile liability and employment practices liability continue to see price increases.

## *The Claims File*

*By Craig Blair*



The claims department sometimes receives requests from members to compare claims data for departments within their city to other similar MVRMA members for the purpose of benchmarking. Although we have a small sample size of 20 members and members of various sizes, we find that we can often get useful information by comparing multi-year claims data per a “claims driver” such as the number of employees or number of titled vehicles. Both of these are factors used in the premium calculation formulas and are a baseline for the members when comparing themselves with similar MVRMA cities. Typically a 5 or 10 year timeframe is used for analysis and can also be compared to the overall pool figures.

Auto losses are relatively easy to benchmark. These are the most common losses in a municipal insurance pool due to the nature of services cities provide. Controlling preventable auto accidents, such as backing, rear-end, and one-car non-weather related incidents, can become a component in managing premiums as claims loss data is a large factor in determining the contribution amount each member pays to the MVRMA program each year.

Data for preventable auto accidents can be compared by member from year to year and can be compared to total auto losses. While severity (average cost per claim) can be a volatile number, claims frequency is a more useful figure to work with from a risk management perspective.

Preventable accident frequency can be controlled through establishing internal reporting policies and training. We recommend members either establish an internal training program and/or require employees to regularly attend the MVRMA yearly driver training sessions.

As members are preparing their budgets for next year, benchmarking data can provide useful information and aid members in determining loss areas for their city to focus on and set training goals for the upcoming year.

# Calendar of Events



## *Upcoming Training Events*

Please continue to check our website, [mvrma.com](http://mvrma.com) for upcoming training dates:

### Harassment Training

November 17, 2015

Fort Piqua Plaza

### Safety Related Training—Date and Location TBD

Back Safety & Lifting Technique

Snow and Ice Control

## *Upcoming Board Events*

### Board Meeting

December 21, 2015, 9:30 AM

MVRMA Office

Christmas Luncheon to follow after meeting

Kohler Catering and Banquet Center

## *From The Board Room*

Actions taken at the September 21, 2015 Board meeting included approval of:

- New SPEC concepts
- Financial audit and CAFR for 12/31/14
- 2016 Loss Funding Study
- 2016 Preliminary Budget
- Property Coverage Document
- Closure of loss year 22 (2010)