

RISKY BUSINESS



A Publication of the Miami Valley Risk Management Association
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FEBRUARY 2011

From the Board Room...



At the December 20, 2010 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims & Incurred Losses Report
- Approved the 2011 Liability Coverage Document
- Approved the 2011 renewal of liability coverage \$1.5M x \$500K with GEM and \$8M x \$2M with Gen RE
- Approved the 2011 renewal of crime coverage with National Union Fire Insurance Company under Option 2, which increases the limit of liability to \$2M per occurrence for employee theft, forgery or alteration, computer fraud and funds transfer fraud
- Approved the 2011 Final Expenditure Budget, PCF and Objectives/Work Plan
- Awarded MVRMA's banking, credit card and depository services agreement to Huntington National Bank
- Elected the following officers for 2011: President - Mark Schlagheck, Bellbrook Vice Pres. - Tom Judy, Sidney Treasurer - Nancy Gregory, Kettering Secretary - Julie Trick, Vandalia
- Approved the following dates for MVRMA's 2011 Quarterly Board Meetings:
 - Monday, March 21
 - Monday, June 20
 - Monday, September 26
 - Monday, December 19

FYI

Tips for Reducing Mistakes

Michael Hammond

I recently read an article that was written by Melanie Lockwood Herman, Executive Director of the nonprofit Risk Management Center. In this article, she offered several risk management tips for reducing mistakes. As I weighed her suggested tips, it occurred to me that we could all benefit from implementing these ideas. She suggests that mistakes often times remain "dirty little secrets," yet human behavior and organizational culture tell us that humans will always be prone to error. If we fail to look beyond the person associated with the mistake, we will miss an opportunity to prevent its reoccurrence and strengthen our organization.

As we begin the new year, consider the following tips developed by Herman as you reflect on how to change a "blame and shame" culture to one that is driven by the commitment to fix what needs fixing.

Encourage dissent. Bring employees who disagree with a proposed strategy to the front of the room. Explore the reasons for dissent and listen intently to those with the courage to speak up.

Resist the urge to bury mistakes. The fear of being blamed for a costly mistake leads to cover ups while increasing the odds that the mistake will be repeated. Praise, rather than punish employees who bring mistakes to the forefront, especially when they identify their own errors and do so in a timely manner.

Think risk. The optimism bias leads us to expect that things will turn out better than likely. Remember, it is possible and advisable to consider downside risk without sinking into despair. By giving

some thought to the possibility of a bumpy road, twists and turns and undesired outcomes, you will be in a stronger position to manage what happens, whatever happens.

Look for root causes. It's easy to find fingerprints on mistakes. Instead of blaming, look for the systemic reasons and causes. It's possible the error resulted from convoluted or contradictory instructions. The mistake may have been due to an unrealistic expectation that someone would follow a list of precise, sequential steps while multitasking.

Look for ways to simplify policies and procedures. Simplification is an inexpensive way to reduce mistakes and resistance. We all have encountered policies that are not followed precisely because staff members have a hard time understanding what is expected. Rewrite policies so they are most likely to be understood by new employees and veterans alike.

Add the topic of mistakes to the agenda. Consider exploring miscalculations at your next staff meeting. To get the discussion going, ask:

- What was the biggest mistake or miscalculation we made this year?
- Do you have a clear understanding of what went wrong?
- What is required to better understand how, when and why things do not turn out as we hoped they would?

Recognize that culture change is required to shift from blaming to fixing broken systems and practices. It's neither productive nor practical to terminate the employment of every person who makes a mistake. A commitment to reflecting on how and why mistakes occur is less expensive (Cont. on Page 4 - See FYI)

Counselors' Comments



Dinsmore & Shohl

Ohio Supreme Court Upholds Minimum Length of Service Requirements for Maternity Leave

Recently, the Ohio Supreme Court held that companies do not engage in discrimination if they terminate pregnant employees who take a leave of absence prior to meeting a minimum length of service requirement. *McFee v. Nursing Care Management of America, Inc. dba Pataskala Oaks Care Center* (2010), 126 Ohio St. 3d 183.

At issue in *McFee*, was the employment policy of Pataskala Oaks Care Center ("Pataskala Oaks"), which mandated that an employee would not be eligible for leave for any purpose until after one year of service. Eight months into her employment, the plaintiff, *McFee*, requested leave on account of a health issue related to her pregnancy. While on leave, Pataskala Oaks terminated *McFee's* employment due to her absence before she was eligible for leave. *McFee* then filed a charge of pregnancy discrimination with the Ohio Civil Rights Commission ("OCRC").

The OCRC found that Pataskala Oakes' policy constituted unlawful sex discrimination. On review, the Court of Common Pleas held that the policy was not discriminatory, while the Fifth District Court of Appeals reversed the judgment. The Ohio Supreme Court subsequently reversed that decision, concluding that both the Court of Appeals and the OCRC misread Ohio's sex discrimination law. According to the Ohio Supreme Court, "the General Assembly intended to ensure equal treatment for employees affected by pregnancy, but not to impart greater rights or preferential treatment to employees affected by pregnancy."

While Ohio Administrative Code 4112-5-05(G)(2) prohibits an employee's termination under a policy that provides sufficient leave for temporary disability

due to pregnancy or a related medical condition, Ohio Administrative Code 4112-5-05(G)(5) provides that women cannot be penalized for taking time off work for childbearing, *if they are eligible* to do so. These two code provisions must be read in harmony so that "when a woman *qualifies for leave*, the leave provided for childbearing must be reasonable." By interpreting these provisions together, the Ohio Supreme Court found that Pataskala Oaks' policy was not discriminatory since all employees who did not meet the service requirement could be terminated.

With this ruling, Ohio law now mirrors the Federal Pregnancy Discrimination Act, which does not require preferential treatment for pregnant employees. In light of this decision, employers are not required to waive eligibility requirements, nor are they required to provide pregnancy/maternity leave if no other leave is provided to employees. However, if an employer does provide leave benefits, the employer must ensure that any minimum length of service requirement for an employee to take a leave of absence is applied uniformly and consistently to all employees.

A Brush with Honest Abe

President's Day is February 21. In honor of that holiday, we present the following anecdote about everyone's favorite, Abraham Lincoln.

During the Civil War, a Union soldier was given the assignment of delivering a stack of reports to the War Department. He was in a hurry to finish the job so he wouldn't miss his train back to camp, and running up the stairs he ran straight into a tall, bearded man coming slowly down.

The soldier immediately realized that he'd collided with President Abraham Lincoln.

Embarrassed and fearing the president's anger, he stammered one apology after another until Lincoln finally stopped him with a smile and said, "One apology is sufficient. I wish the whole army would charge like that."

The Claims File



- Craig Blair

MVRMA members have benefited greatly because of the pool's excellent claims history. Not only have insurance renewals in recent years been flat or slightly reduced, but more than \$7 million from closed loss years has been refunded to the membership.

At this time each year, we believe a review of the previous year's claim activity is beneficial to keep us on the right track. In 2010, MVRMA had 331 reported losses, which is fewer than recent years. However, it's severity (amount paid) not frequency that is of greater importance, and it's too early to predict how 2010 will fair in that respect. Last year, there were 14 lawsuits filed against our members, which is down for the second year in a row. Of the nine closed lawsuits, defense counsel had four (44%) dismissed and settled five (55%). The percentage of dismissed lawsuits was unusual because 65% of our cases generally get dismissed.

Subrogation Report

Subrogation, filing for reimbursement against third parties that damage city property, is one of the services provided by MVRMA. With the current economy and the loss of tax revenue for many of our members, collection from negligent third parties is more important than ever. Please refer to the Subrogation Policy in the *MVRMA Handbook* if you have questions. The chart below shows the recent history of subrogation activity:

Loss Year	Claims Per Year	Average Collected
2000-09	39	\$2,572
2010	32	\$3,650

Safety: Safety is understanding; it is an attitude of mind. It is not necessarily a simple following of rules or directions.

-Garry Richards

Loss Control Lowdown

- Starr Markworth

MVRMA's Multi-Media Library

One of the value-added services MVRMA provides to its members is the Multi-Media Library. The library currently consists of more than 325 videos/DVDs as well as 18 CD-ROM programs that are available to member cities at no charge.

The purpose of the library is to provide additional information to supplement the members' in-house training efforts. The library covers a broad range of public sector safety and management issues. When possible, programs are purchased that are specific to public entities or certain services that our members provide.

Funds are budgeted annually for the purchase and upgrade of additional materials.

Recommendations from member cities of topics to include are encouraged and utilized in the planning of future purchases. Currently, we are in the process of adding new materials in the DVD format and replacing outdated and broken VHS videos with DVDs.

Some of the new DVDs recently added to the library include: First Aid Safety, Welding, Respiratory Protection, Traffic Control Thru Work Zones, Hand and Power Tool Safety, Scissor Lifts, Strains and Sprains, Forklift Safety, MSDS Information, Driven to Distraction II, Back Safety for Landscape and Maintenance Workers and The OSHA Lead Standard.

The most current MVRMA Multi-media Library listing can be found at www.mvrma.com under Training and Loss Control. A Video Request Form can be downloaded, or requests can be made by phone 937-438-8878 or by email smarkworth@mvrma.com. Please allow 3-5 days for delivery of these materials and limit your requests to three videos/DVDs. MVRMA assumes the cost of delivering the materials via the US Postal Service, and the member cities are responsible for returning the

materials to the MVRMA office.

PRIMA Cybrary

All MVRMA members have access to the PRIMA Cybrary, a service provided by the Public Risk Insurance Management Association (PRIMA).

The PRIMA Cybrary is your members-only resource for a variety of sample documents and articles that every risk manager needs, covering such topics as:

Requests for Proposals,
Job Descriptions,
Transportation & Vehicle Safety,
Emergency Services/Disaster Recovery,
and much more.

Use this resource as a starting point for all of your risk management related projects. Documents in the PRIMA Cybrary have been contributed by risk management professionals in public entities. Find out what worked for them and get a head-start on your next project.

Please contact the MVRMA if you are looking for sample documents and would like the MVRMA staff to research the PRIMA Cybrary for you.

What's Happening

Has your city or one of your departments started a new program or done something else innovative? Have you recently been recognized for an outstanding achievement? We are looking for "success" stories to feature in *Risky Business*. Please send us a short description about your new program, best practice or special achievement, and then, look for your story to be featured in our next edition. Don't delay - our next issue will be published in May.

Congratulations to the City of **Vandalia** which was recently selected as one of "Dayton's 15 Best Places to Work" by the *Dayton Business Journal*. The city will be honored at a banquet in March and will be featured in an upcoming article.

Brokers' Beat...



In our August 2010 *Risky Business* article, we detailed information about cyber liability, and in this article and some future articles, we will highlight in more detail some of the specific Cyber Liability coverage issues. While the typical cyber liability coverage form will respond to the financial damages of third parties, it typically excludes first party crime coverage for the insured's money and securities from computer fraud. In this article, we will focus on the first party computer fraud exposure for money and securities and address the specific coverage that MVRMA offers its members for this exposure.

Computer Fraud is one of the coverage parts included in the MVRMA crime policy. In this policy, it is defined as loss of money and securities resulting directly from the use of any computer to fraudulently cause a transfer from inside the premises or banking premises to a person (other than a messenger) outside those premises or to a place outside those premises. The policy goes on to define money as currency, coins and bank notes in current use and having a face value, and securities as negotiable and nonnegotiable instruments or contracts representing either money or property.

The tricky part of the Computer Fraud coverage comes from the definitions of premises and banking premises. Both definitions have an historical basis for use in conjunction with robbery, burglary and theft of the physical aspects of money and securities and do not seem to lend themselves to the cyber world. A premises is defined as the interior of that portion of any building the insured occupies in conducting business. While the premises part of the coverage seems pretty straight forward, the definition of a banking premises is less so. A banking premises is defined as the interior portion of any building (Cont. on Page 4 - See ALLIANT)

FYI (Cont./Page 1)

and more productive in the long run. **Be an example.** Leaders who willingly and honestly admit mistakes set the right tone in an organization, while those who bury their own errors or blame others, send a potentially dangerous message. If we expect employees to step forward and admit their mistakes, we will need to step up first.

As you begin the process of implementing plans for 2011, I invite you to consider using Herman's tips listed above as a means to reducing mistakes and strengthening your organization. Since MVRMA is in the business of paying on behalf of members for wrongful acts and accidents that occur, these tips present an opportunity to prevent a recurrence of mistakes and to strengthen us for the uncertainty that lies ahead.

Alliant (Cont./Pg. 3)

occupied by a banking institution or similar safe depository. In researching the banking premises definition, it appears it probably does not include stock brokerage firms or other financial institutions that are not banks. In viewing the state of the financial services industry today, many financial institutions have evolved into businesses that may not meet the specific definition of a bank. The premises may house a bank branch in one area with other functions, such as insurance, stocks and bonds sales and administration, in other areas of the building. In that situation, would the entire financial institution be classified as a bank? The policy language is not clear and the interior of the a bank may be best defined by the federal or state laws that apply to the banking institution where the covered loss occurs.

In view of the vague and chaotic nature of these definitions and the possibility of adverse interpretation, we suggest that you review the vendors that have possession of your money

and securities to determine if they fall within the definition of banking premises. Given the age of consolidation of financial services, if you are unable to determine a vendor is a bank, we suggest you review the operations and contracts of these vendors to confirm their operations have computer fraud controls in place and that contract provisions and insurance are in place to protect and readily replace your money and securities in case the cyber controls should fail.

Keeping You Legal

Probably 99% of our members' employees drive vehicles, and many drive city vehicles as part of their job description. But, whether you're a newbie behind the wheel or an experienced veteran, it's always a good idea to review certain traffic laws. Some of the laws listed below are old standards, but several are new laws that were enacted within the last couple years:

Driver's License/Vehicle Registration

Renewals - A \$20 late fee is assessed if either your driver's license or vehicle registration is renewed more than seven days beyond the expiration date.

Booster Seats - Any child who is at least four years old but not older than eight and is traveling in a vehicle must be properly restrained in a booster seat.

Lights - Lights must be displayed

- Between sunset and sunrise
- During any period of rain, snow, fog or other unfavorable atmospheric conditions regardless of the time of day
- At any time when natural light does not make it possible to see objects clearly 1,000 feet ahead
- Whenever windshield wipers are used

School Buses - When the bus driver activates four amber lights, he is preparing to stop. Other drivers are required to stop when the school bus comes to a full stop. When a school bus is stopped on a street with fewer than four lanes, all traffic approaching from either direction must stop at least 10

Coming Events

February 23

Word/Excel Training
1:00-4:00pm
MVCC

March 2

Hot Topic - Healthcare Reform
11:30 am Lunch Meeting
Heatherwoode Golf Course

March 21

MVRMA Quarterly Board Meeting
9:30am
MVRMA Offices

March 29-31

OBWC Safety Congress
Columbus Convention Center

April 7

Customer Service (2 sessions)
8:30-11:30am
12:30-3:30pm
MVCC

feet from the front or rear of the bus and remain stopped until the bus begins to move or the bus driver signals motorists to proceed. If a school bus is stopped on a street with four or more lanes, only traffic proceeding in the same direction as the bus must stop. **Move-over Law** - When a driver approaches a stationary public-safety vehicle, an emergency vehicle or road-service vehicle displaying the appropriate visual signals by means of flashing, oscillating or rotating lights, he shall do either of the following: If the driver is traveling on a highway of at least two lanes that carry traffic in the same direction as the stationary vehicle, the driver shall proceed with caution and if possible, change to the lane not adjacent to the stationary vehicle. If the driver is not traveling on a highway as described above, the driver shall proceed with caution and reduce the speed of his vehicle until he has passed the stationary vehicle.