

RISKY BUSINESS



A Publication of the Miami Valley Risk Management Association
Editor: Kathy St. Pierre

4625 Presidential Way, Kettering, OH 45429 937/438-8878
<http://www.mvrma.com>

MVRMA Officers

President	M. Schlagheck, Bellbrook
Vice President	T. Judy, Sidney
Treasurer	N. Gregory, Kettering
Secretary	J. Trick, Vandalia
Ex. Director	M. Hammond

FEBRUARY 2012

From the Board Room...



At the December 19, 2011 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims & Incurred Losses Report
- Repealed the Law Enforcement Accreditation Reimbursement Policy effective 2/1/14
- Approved the 2012 subscriptions to HR Sentry with each participating member paying \$125 and MVRMA paying \$150/seat
- Approved the 2012 Liability Coverage Document
- Approved the 2012 renewal of liability coverage \$1.5M x \$500K with GEM and \$8M x \$2M with Gen RE
- Approved the 2012 renewal of crime coverage with National Union Fire Insurance Company
- Approved the 2012 Final Expenditure Budget, PCF and Objectives/Work Plan
- Approved the amended Committee Mission Statements to include the Finance Committee's responsibility to act as MVRMA's Audit Committee
- Re-elected the following officers for 2012:

President - Mark Schlagheck, Bellbrook
Vice Pres. - Tom Judy, Sidney
Treasurer - Nancy Gregory, Kettering
Secretary - Julie Trick, Vandalia
- Approved the following dates for MVRMA's 2012 Quarterly Board
(Cont. on Page 4 - See BOARD)

FYI

Lexipol

Michael Hammond

On November 22, 2010, Lexipol, America's leading provider of risk management resources for public safety organizations, officially launched the Ohio Policy Manual and Daily Training Bulletin Service. MVRMA held an informational meeting with Lexipol and member police departments on December 2, 2010 to answer questions about the Lexipol system and to further explain how their service could benefit law enforcement agencies.

Lexipol delivers its services through a unique, web-based development system with an integrated training component. It currently provides risk management resources to more than 1,263 law enforcement agencies in 14 states. There are 33 participating agencies in Ohio.

Lexipol can help police departments comply with current laws, regulations and law enforcement best practices. Its services include state-specific, customizable policy manuals that integrate solid, realistic, ongoing and verifiable training. Lexipol is recognized for its proactive approach to decreasing liability exposure backed by technical and legal expertise.

MVRMA has partnered with Lexipol by becoming a sponsoring risk management association (RMA). This partnership provides a 5% discount to MVRMA members. The fee structure is based on the number of sworn officers for each police department. The MVRMA Board allows its members to use their general reserve funds to pay the annual cost of this service.

Our goal was to have ten members using the Lexipol service by the end of

2011. We are pleased to announce that eleven MVRMA members are currently enrolled with Lexipol. Those members include: Beavercreek, Bellbrook, Blue Ash, Miamisburg, Montgomery, Piqua, Sidney, Tipp City, West Carrollton, Wilmington and Wyoming.

The Bellbrook Police Department was the first police agency in Ohio to fully implement the Lexipol system and use



the Daily Training Bulletins. Bellbrook Police Chief David Helling said, "The Lexipol system allows a police agency to be continually updated to today's demanding risk management standards. Additionally, the Daily Training Bulletins bring accurate examples of proper use and implementation of those policies for daily training for all officers." MVRMA congratulates the Bellbrook Police Department for taking proactive steps toward managing its exposure to risk by implementing the best practices in law enforcement.

It is interesting to note that several MVRMA police departments using the Lexipol system are also CALEA accredited. Lexipol's policies are cross referenced to CALEA standards. This feature allows subscribers to create an electronic list of policy sections in the Lexipol policy manual that address the specific requirements of a particular CALEA standard. This list is extremely useful when preparing for the CALEA compliance inspection.

In many cases, using Lexipol results
(Cont. on Page 4 - See FYI)

Counselors' Comments



Dinsmore & Shohl

U.S. Supreme Court Rules 4th Amendment Requires Warrant for GPS Tracking

On January 24, 2012, the U.S. Supreme Court unanimously held that the Government's attachment of a GPS device to a suspect's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search" requiring a warrant under the 4th Amendment. *United States v. Antoine Jones*, 2012 U.S. LEXIS 1063.

In *Jones*, the Government obtained a search warrant permitting it to install a GPS tracking device on a vehicle registered to the suspect's wife. The warrant authorized the installation within 10 days in the District of Columbia, but agents installed the device on the 11th day and in Maryland. The Government then tracked the device for 28 days. It subsequently secured an indictment of Jones and others on drug trafficking conspiracy charges. The District Court suppressed the GPS data obtained while the vehicle was parked at Jones' residence, but held the remaining data admissible asserting Jones had no reasonable expectation of privacy when the vehicle was on public streets. Jones was convicted. The D.C. Circuit reversed the decision, concluding that admission of the evidence obtained by warrantless use of the GPS device violated the 4th Amendment.

The Supreme Court affirmed the D.C. Circuit's decision. While unanimously agreeing on the holding in the case, the justices split 5-4 over how far to take the warrant requirement. The majority focused its attention on the historical connection between 4th Amendment jurisprudence and common-law property rights, specifically, the law of trespass. Meanwhile, the minority focused its attention on the reasonable expectation of privacy test espoused in *Katz v. United States*, 389 U.S. 347, 351

(1967).

In reaching its conclusion, the majority first examined the language of the 4th Amendment which provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated." It then acknowledged that a vehicle is an "effect" as that term is used in the 4th Amendment. See also *United States v. Chadwick*, 433 U.S. 1, 12 (1977). The majority then explained that in this case, the Government physically installed the GPS device on private property for the purpose of obtaining information. It then concluded that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search" within the meaning of the 4th Amendment. The majority went on to say that "[w]hatever new methods of investigation may be devised, our task, at a minimum, is to decide whether the action in question would have constituted a "search" within the meaning of the 4th Amendment" and "[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area, such a search has undoubtedly occurred."

While agreeing in the decision, the minority explained that it would have based the decision to require a warrant for attachment of a GPS device on a "reasonable expectation of privacy" analysis, rather than on what it described as "18th-century tort law." In its concurring opinion, the minority explained that the emergence and availability of new technologies permitted the monitoring of a person's movements (i.e., CCT video, toll-road collection systems, roadside assistance devices, stolen vehicle locator devices, and smartphones equipped with GPS tracking tools), "will continue to shape the average person's expectations about the privacy of his or her daily movements." While acknowledging that (Cont. on Page 4 - See COMMENTS)

The Claims File



-Craig Blair

This column has dealt with many issues, but one that crops up from time to time is what employees should do when involved in an accident. While some of this information might seem like common sense, it bears repeating.

- 1) Safety first. If there are injuries, call for the police and request a medic unit. Then try to comfort the injured parties and advise them to remain as still as possible until help arrives.
- 2) If no one is hurt, an exchange of information is standard practice. "Auto ID Cards" should be provided in all city vehicles for this purpose. These cards include information about who insures the city (MVRMA) and who to contact to discuss the potential claim.
- 3) The employee should be instructed not to discuss or make a statement about the accident to anyone other than the police, even if the cause is obvious.
- 4) Whenever possible, the employee should use his cell phone to record in pictures the damage to the vehicles and their position before they are moved.
- 5) Later the same day, the employee should write a report for his supervisor detailing what occurred. This report should be required even if the accident was a minor fenderbender or no damage was noted at the scene. We get a few injury claims every year, and even an occasional lawsuit, where no damage was noted the day of the occurrence.
- 6) The employee's report should be forwarded to MVRMA the next day, even if the police report has not been completed. MVRMA will handle the claim at this point. It's important that MVRMA make contact as soon as possible with the other party to advise him how the claim will be processed.

Remember, most parties involved in these accidents are local tax payers, and they expect to hear from someone representing the city.

Please share this information with anyone who drives city vehicles.

Loss Control Lowdown

- Starr Markworth
PRIMA Cybrary

All MVRMA members have access to the PRIMA Cybrary, which is 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 that every risk manager needs, including requests for proposals, job descriptions, risk management annual reports and much more!

Use this resource as a starting point for all of your risk management-related projects. All of the 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 office if you are looking for sample documents and would like staff to research the PRIMA Cybrary for you.

In addition to the resources available in the PRIMA Cybrary, MVRMA staff are always willing to survey the other members for sample policies, procedures or other information. Just let us know, and we will email your request to the membership.

For more information, please contact Loss Control Manager Starr Markworth, smarkworth@mvrma.com.

Brokers' Beat...



As many of you are aware, Alliant publishes an Insurance Requirements in Contract Manual (IRIC Manual). This extensive resource has insurance requirements that should be included in contracts for vendors and contractors. However, this manual is very detailed and does not highlight the basics. The list below should be helpful in a review of basic insurance requirements that should be included in your city's standard vendor/contractor contract.

- 1) Require that your city is endorsed as Additional Insured on the vendor's/contractor's Commercial General Liability insurance.
 - 2) Require that the Additional Insured endorsement includes not only your city, but officers, officials, employees and volunteers as well.
 - 3) Require that the Additional Insured endorsement be primary and non-contributing with other insurance.
 - 4) Require that Employers' Liability/ Stop Gap coverage is endorsed as a part of the vendor/contractor Commercial General Liability coverage.
 - 5) Require that the Commercial General Liability policy be as broad as Insurance Services Office (ISO) form CG 0001.
 - 6) Make sure that you receive a copy of the actual endorsements outlined above in addition to the Certificate of Insurance.
 - 7) Require that the Automobile Liability policy be as broad as Insurance Services Office form CA 0001 and includes or is endorsed to include your city, officers, officials, employees and volunteers as insureds.
 - 8) Require Workers' Compensation insurance as required by the State of Ohio.
 - 9) Include language in the contract that obligates vendor/contractor to grant a waiver of any right of subrogation which any insurer of the vendor/contractor may acquire against your
- (Cont. on Page 4 - See ALLIANT)

Miami Valley Fire District

Contributed by Dody Bruck, Assistant City Manager, Miamisburg

In an historic agreement, Miamisburg City Council and Miami Township Trustees voted to merge fire departments and form a joint fire district to serve both communities.

Administrators and fire chiefs from the jurisdictions along with a newly appointed Board of Fire District Trustees, have been working on various operational issues, policies and procedures for the new agency.

"Of course, it is critical that the outstanding fire and emergency medical services provided to our community be maintained, but at the same time, we have to be cost conscious," said Mayor Dick Church, Jr., who once served as a volunteer firefighter in Miamisburg.

"We're confident that this new joint fire district will help our two governments control costs into the future while continuing to provide the service levels expected by our residents."

The City and Township studied the concept of a joint fire district for several years prior to the groundbreaking vote. A jointly appointed Interim Fire Commission (IFC) worked closely with City and Township administrators and fire chiefs to lead the study effort.



"It is reassuring that we are combining two capable and talented departments, rich in individual tradition," Miami Township Trustee Charles Lewis said. "As we move forward together, I expect nothing but a continued level of excellence that will serve as an example for this region and our state."

The resolution adopted by City Council and Township Trustees gives oversight of the new fire district to the Board of Fire District Trustees.

The Board will soon be selecting a fire chief to lead the district on a day-to-day basis. Its funding will be derived from existing fire resources, including levies, general funds and fees. Miami Township will assume a 53% share of the budget, while the City will assume a 47% share. City Council and Township (Cont. on Page 4 - See FIRE DISTRICT)

Board (Cont./Page 1)

Meetings: March 19, June 18,
September 24 and December 17

Fire District (Cont./Page 3)

Trustees are required to approve the district's budget annually.

There will be five stations to serve the district, including a new station on Wood Road being constructed by the Township. Employment has been offered to current firefighters from both departments.

A representative from the governor's office commended both jurisdictions for their commitment to cooperative government.

FYI (Cont./Page 1)

in cost avoidance for CALEA accredited departments by reducing the time a sworn officer will have to devote to updating policies. Beaver Creek Financial Administrative Services Director Bill Kucera said, "After discussion with the Police Chief, it was determined we would like to join Lexipol as a supplement to our accreditation. With budget cut-backs and reorganization, we realize that keeping up with current issues is time consuming, and we like the idea of having regular updates driven from an outside source. Thank you again for your efforts in identifying the need and orchestrating a relationship that should aid us in reducing our overall risk and liability."

Having good policies is critically important to a police department, but their value is lost if the officers don't have a working knowledge of their application. The Daily Training Bulletin is integrated with the policy manual to deliver scenario based training. Each department can customize the Daily Training Bulletins to address department-specific topics that reinforce approved policies and procedures. Lexipol also archives departmental training records to provide an invaluable resource in defense of litigation or personnel matters.

It is our hope that other member police departments will see the value in

using Lexipol for assistance with policy development, updates and training.

If you would like to know more about how Lexipol can benefit your police department, contact MVRMA.

Alliant (Cont./Page 3)

city by virtue of the payment of any loss under such insurance.

10) Include language in the contract that states the limit requirements are the minimum requirements, and if the vendor/contractor has higher limits than the minimum requirements, the city is entitled to the benefit of the higher limits.

We encourage you to review the insurance requirements in your city's standard vendor/contractor contract and incorporate the above requirements as necessary. If additional information is needed for special situations, you can access the current version of the IRIC Manual (Version 7.4.1 May 2011) on Alliant's website, www.alliantinsurance.com by clicking on Specialty Industries. The manual can be downloaded from the right side of the page under IRIC. As always, Alliant is available to address specific questions, concerns and exceptions to the standard requirements addressed above.

Comments (Cont./Page 2)

Congress and most state legislatures have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes, the minority asserted that the legislature is better "situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way." Under that premise, the minority expressed its belief that, in the meantime, "the best [the Court] could do...was to apply existing 4th Amendment doctrine and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated."

The minority explained that "[u]nder this approach, [the] relatively short-term monitoring of a person's movements on

Coming Events

February 8

Elected Officials Training
8:00 am - 3:00 pm
Heatherwoode Golf Club

March 19

MVRMA Quarterly Board Meeting
9:30 am
MVRMA Offices

March 27-29

BWC Ohio Safety and Health Congress
Columbus Convention Center

public streets accords with expectations of privacy that our society has recognized as reasonable. Citing *United States v. Knotts*, 460 U.S. 276, 281-282 (1983), the minority further explained that "the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy." It reasoned that "society's expectation has been that law enforcement agents and others would not - and indeed, in the main, simply could not secretly monitor and catalogue every single movement of an individual's car for a very long period." While not attempting to identify with precision the point at which the tracking of a vehicle becomes a search, the minority explained that "where uncertainty exists...the police may always seek a warrant."

The Court's opinion in the *Jones* case settled a split between the circuits as to the constitutionality of warrantless GPS tracking of a suspect's vehicle, but many questions remain. Barring action by Congress, or the state legislatures, the Supreme Court will likely be invited to weigh in on the use of GPS tracking again in the near future. In the meantime, law enforcement agencies should obtain search warrants prior to obtaining geolocational data via GPS devices, regardless of whether the data is obtained by installing the device on a vehicle or through accessing that data by some other non-physically intrusive manner.