# RISKY BUSINESS

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## A Financially Strong Pool

*By Tom Judy*

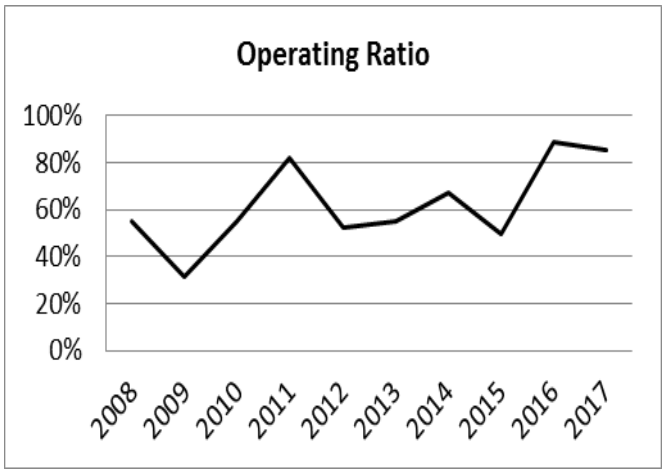
Financial well-being is easy to take for granted. Many of us have gone through lean times, especially in our early adult years, but hopefully those days are now but a distant memory for us more "mature" folks. The typical pattern is we struggle financially when we first venture out on our own, then eventually we get our feet under us and build a strong and stable financial base for retirement. At least that's how it is supposed to go. Often, life intervenes in the form of job loss or illness and causes us to regret our failure to properly plan for the unexpected.

## Articles



A similar financial cycle applies to a self-insurance pool. The formative years are often spent accumulating sufficient capital. At the end of this growth period, however, a well-managed pool should be positioned to withstand even the most significant claims loss activity. That is MVRMA's story. Through a combination of conservative loss year funding, full funding of the Shock Loss Fund, and the ceding of risk to our reinsurance partners, MVRMA has become a financially mature and stable pool.

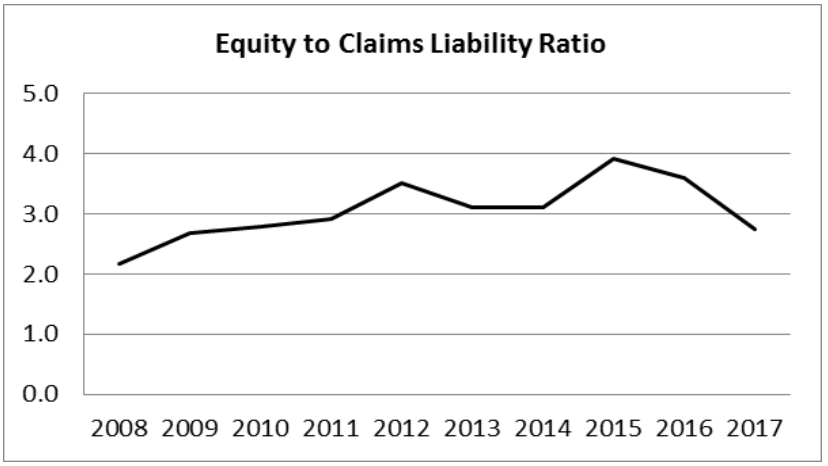
Just as we should never take our personal financial health for granted, we must remain vigilant to maintain MVRMA's financial strength. It is not uncommon to hear of a pool that is in dire straits because of inadequate funding, failure to charge adequate rates, or general financial mismanagement. To avoid such a fate, it is important for an organization to regularly monitor its financial position and performance. Each year, MVRMA prepares a financial benchmarking report of financial trends and comparisons with similar pools. Below we will discuss just a couple of the key measurements from the analysis of the 2017 financial statements.




***Operating Performance:***

The Operating Ratio is a comparison of the organization's expenses – net of investment income – as a percentage of revenue. In short, an operating ratio of less than 100% means the pool is taking in more than it is spending and the pool's operations are adding to members' equity. The graph demonstrates the sizable variability from year to year in MVRMA's expenses as claims expense can fluctuate widely. However, despite this variability, MVRMA's operating ratio has been below the 100% threshold consistently for the past ten years. For this reason, the pool is able to refund large amounts of unused loss funds to its members with interest – over $18 million since the pool was formed in 1988.

***Capital Sufficiency:***




Annually, MVRMA engages an actuary to determine the pool's liability for unpaid claims. The actuary considers not only claims that have been reported but also estimates the liability for claims that have been incurred but not yet reported. The actuary estimated the pool's claims liability to be about $3.7 million as of December 31, 2017. That seems like a big number, but the question is whether MVRMA's balance sheet is strong enough to absorb this liability. The graph below answers that question and the answer is a favorable one. This graph compares the equity on MVRMA's balance sheet to the unpaid claims liability. At the end of 2017, the pool's equity was about $10.3 million, or about 2.7 times the claims liability. This is an indicator of considerable balance sheet strength as a ratio of greater than 1 is considered desirable. You may note that the ratio has decreased somewhat from its high point of 3.9 in 2015. This decrease is primarily due to two factors: 1) decreases in equity from the return of funds to members from loss year refunds, and 2) an increase in the claims liability due to some recent claims activity. However, despite these factors, this remains a very good indicator of significant financial strength.

*A complete financial benchmarking report is available upon request.*

# Loss Control Lowdown...

## Playground Safety

*By Starr Markworth*

Member city parks and recreation departments spend large amounts of money annually to develop and maintain play spaces because they provide positive places for children to be outside, active and social.

While most professionals agree playgrounds are needed, these spaces have risks. Across the country, more than 200,000 children under age 14 are seen in emergency rooms annually for injuries that occur on playgrounds. According to the Consumer Product Safety Commission (CPSC), 75 percent of those injuries happen on public playgrounds. Because of these statistics, the CPSC has developed playground-safety guidelines to combat the most typical injuries related to falls, design problems and maintenance issues.

Studies describing how children play and use playground equipment are continuously reviewed to make changes to the guidelines as well as to reduce injury incidences.

As parks and recreation departments continue to invest in play spaces, there must also be continued maintenance and evaluations. The more a playground is used, the more likely it is to incur problems. For example, playground surfacing is worn away by shoes, swing chains wear out, and nuts are loosened from bolts. Weather also affects equipment–paint chips, metal rusts, and plastics crack. Evaluations should be conducted by trained, certified playground inspectors who know where to look for problem areas. Once issues are identified, they must be fixed. Therefore, it is recommended that there be a playground maintenance plan and a certified playground evaluator on staff.

To get started, follow these tips for implementing playground safety initiatives:

1. Identify any equipment within the agency's jurisdiction that has caused a reported injury due to poor maintenance, lack of repairs or poor design that does not comply with CPSC guidelines and ASTM standards. If the cause of the injury has not been corrected, remove the equipment.

2. Remove any existing playground equipment that is not recommended for use on public playgrounds in the CPSC guidelines and ASTM standards, including:

- Heavy animal-figure swings
- Multiple-occupancy swings (excluding tire swings)
- Rope swings
- Swinging exercise rings and trapeze-bar swings
- Swinging gates
- Giant strides (Maypole).

# Loss Control Lowdown...Continued

For added protection:

• Cover or replace exposed concrete footing
• Remove cement landing pads in use zones
• Evaluate older playground equipment for the presence of toxic substances.

3. Ensure that adequate surfacing material exists below each piece of playground equipment. It has been widely documented that almost 70 percent of all playground injuries can be avoided or minimized by providing soft landing materials.

4. Identify any tall equipment that requires a landing surface that exceeds the maximum fall height of the underlying protective surfacing material. Agencies should strongly consider removing any equipment that is deemed unsafe due to height.

5. Adjust playground borders and/or when possible relocate equipment to accommodate CPSC and ASTM Layout and Spacing Guidelines (use zone requirements).

6. Identify and repair areas of non-compliance on playground equipment by beginning or improving a regular playground-inspection and maintenance program. A major playground-equipment manufacturer study alleges that more than 30 percent of playground accidents are caused by inadequate maintenance practices by operators. Inadequate maintenance inspections and lack of follow-up corrective procedures are common causes of playground accidents. The resulting lack of inspections or poor documentation may be a basis for legal action against a public agency.

7. Conduct a comprehensive playground safety audit of each playground site to determine the adequacy of its compliance with the CPSC handbook and the current ASTM standards. This audit will assist agencies developing playground replacement schedules by identifying and prioritizing serious areas of non-compliance in existing playground equipment and park/playground sites as a whole. The results of the audit will also identify some conditions that are correctable by agency staff as well as those that may be abated by contacting manufacturers for retrofit upgrades.

8. Formalize maintenance policies and procedures.

9. Establish a long-term action plan to upgrade playground sites, and which is reflected in the agency's capital-equipment replacement program, existing staff resources and maintenance/repair budget.

If you would like more information- the CPSC handbook and the ASTM standards on playground surfacing can be great resources.

If you are interested in becoming a certified playground safety inspector, visit https://www.nrpa.org/certification/CPSI/ to obtain more information.

# Broker's Beat - Event Cancellation Coverage

Any scheduled event runs the risk that something will occur that prevents it from taking place. Should you have to cancel, postpone or reschedule a special event held at a City venue – such as a concert, 5K spirit run, fireworks show or other live event - due to circumstances out of your control, event cancellation policies can cover the out-of-pocket expenses of putting on the event and loss of revenue/profits.

Potential claim scenarios that could force the cancellation of an event include:

- Fire at the venue or surrounding areas that prevent access or closure of all or part of the venue
- Flooding at the venue or surrounding areas that prevent access or closure of all or part of the venue
- Power failure at the venue or surrounding areas that prevent access or closure of all or part of the venue
- Act or threat of terrorism at the venue or surrounding areas that prevent access or closure of all or part of the venue if purchased
- Windstorm
- Outbreak of a communicable disease at the venue
- Adverse weather at the venue
- Public transport strikes which prevents people from getting to the venue or the local authority closes the show due to safety reasons

Event cancellation insurance can provide your City with peace of mind should the unexpected happen and securing a quote for event cancellation is fairly easy. There is an application that needs to be filled out with some basic information including:

- Description of the event
- Basic event budget details
- What you wish to insure (expenses only or expenses and gross revenue)
- If the event includes a performance, details about the performer

For more information on event cancellation coverage and to receive a quote, contact Alliant Insurance Services. Note: Event cancellation coverage is different than special events coverage which is also available via the Alliant special events program.

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## Counselor's Comments

# Ohio Supreme Court Expands Political Subdivision Immunity for the Repair of and Removal of Obstructions from Public Roads

In trio of cases decided over the last decade – the latest on June 5, 2018 – the Ohio Supreme Court has construed Ohio Revised Code Section 2744.02(B)(3), which removes a political subdivision's immunity for the "negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads…." The Court's most-recent pronouncement expands protections for political subdivisions but also cautions that they must remain vigilant in ascertaining the condition of their public roads.

***Howard v. Miami Twp. Fire Div.***

In 2008, the Court decided *Howard v. Miami Twp. Fire Div.* In *Howard*, the Court considered what constituted an "obstruction" in view of the General Assembly's 2003 amendment to Section 2744.02(B)(3). 119 Ohio St.3d 1, 2008-Ohio-2792, 891 N.E.2d 311, ¶¶ 19-24. Prior to its amendment, the statute required political subdivisions to "keep public roads … in repair, *and free from nuisance*…." Former R.C. § 2744.02(B)(3) (emphasis added). The Court held the General Assembly "purposely replaced the phrase 'free from nuisance' with 'other negligent failure to remove obstructions.'" *Howard*, 2008-Ohio-2792, ¶¶ 25, 26. Noting that "obstruction" is not defined in the statute, *id*., ¶ 19, the Court looked to the dictionary definition and found it included notions of an actual blockage and of "hindering and impeding—concepts that do not necessarily require a complete blockage." *Id*., ¶ 22. The Court previously held the latter concepts, such as "a defective tree limb threatening to fall on a public roadway, but not actually on the roadway, could constitute a nuisance under R.C. 2744.02(B)(3) and that a political subdivision's duty of care extended beyond merely removing obstructions from public roads." *Id*., ¶ 28 (citing *Harp v. Cleveland Hts.*, 87 Ohio St.3d 506, 512, 721 N.E.2d 1020 (2000)).

The Court held that the 2003 amendment, however, could not support *Harp's* broad interpretation. "[W]e discern a legislative intent to limit political-subdivision liability for roadway injuries and deaths. The General Assembly, in furtherance of its goal, used the word 'obstructions' in a deliberate effort to impose a condition more demanding than a showing of a 'nuisance' in order for a plaintiff to establish an exception to immunity." *Id*., ¶ 29. Therefore, the Court held an "'obstruction' must be an obstacle that blocks or clogs the roadway and not merely a thing or condition that hinders or impedes the use of the roadway or that may have the potential to do so." *Id*., ¶ 30.

***Bibler v. Stevenson***

This case concerned a 2011 automobile accident in Findlay, Ohio. The defendant motorist "failed to stop at a stop sign at the intersection of Wilson Street and East Sandusky Street in Findlay. … She … claim[ed] that she did not see the stop sign because it was blocked by tree foliage." *Bibler v. Stevenson*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424, ¶ 1, *reconsideration denied,* 148 Ohio St.3d 1429, 2017-Ohio-905, 71 N.E.3d 299. But whether the stop sign was obstructed was not at issue in *Bibler*. The narrow question before the Court was whether the stop sign was part of the "public road" for purposes of Section 2744.02(B)(3), although the court of appeals held that it was not. *Id*., ¶ 3. The lower court looked to R.C. § 2744.01(H), which excludes "traffic control devices" from the definition of "'[p]ublic roads … unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices [OMUTCD]." *Bibler v. Stevenson*, 3rd Dist. No. 5-14-29, 2015-Ohio-3717, 38 N.E.3d 952, ¶ 20, *rev'd*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424. The court of appeals held the OMUTCD did not mandate the stop sign and, although R.C. § 4511.65 did, since it was applying R.C. § 2744.02(B)(3), the court held the sign was not part of a "public road"; therefore, Findlay was immune. *Id*., ¶¶ 13-14, 30.

The Supreme Court reversed. While it agreed that the OMUTCD did not mandate the stop sign, it held:

> The OMUTCD does not exist in a vacuum. It is a creature of the Revised Code, it is subservient to the Revised Code, and it necessarily incorporates the Revised Code. … That the relevant version of the OMUTCD did not explicitly state that the placement of stop signs at intersections involving through highways is mandated does not cause R.C. 4511.65 to disappear or somehow become other than mandatory.

*Bibler*, 2016-Ohio-8449, ¶ 15. Therefore, for a stop sign located similarly to the subject sign in Findlay, the Court concluded there is no distinction whether or not the sign is mandated by the OMUTCD – the sign is part of the "public road" and a political subdivision must keep the sign in repair and free from obstruction to maintain Chapter 2744 immunity.

# Counselor's Comments...Continued

***Pelletier v. Campbell***

Following *Bibler*, it was logical to believe that the Supreme Court had increased a political subdivision's burden to maintain immunity under R.C. 2744.02(B)(3) by removing the OMUTCD requirement where the traffic control device was mandated by statute. It was wise counsel, therefore, that a political subdivision regularly scrutinize its traffic control devices, particularly signs, to assess necessary repairs and to eliminate anything that obscured them. While still advisable, the Court significantly eased a political subdivision's obligation in *Pelletier v. Campbell,* Slip Opinion No. 2018-Ohio-2121 (June 5, 2018). *Pelletier* also involved an automobile accident at an intersection, this time in Campbell, Ohio:

Pelletier was driving down Sanderson Avenue … when she came to the intersection with 12th Street. Traffic on Sanderson Avenue is controlled by a stop sign, while traffic on 12th Street has the right-of-way and no stop sign. According to Pelletier, she did not see the stop sign because trees or large bushes in the "devil strip"—what the parties call the grassy area between Sanderson Avenue and the sidewalk—blocked it from her view. Although she saw the intersection, she did not slow down, brake, or look for other vehicles on 12th Street before proceeding through it. As a result of her failure to yield the right-of-way, she collided with another vehicle entering the intersection on 12th Street.

*Id*., ¶ 4. Pelletier "testified that she previously had never traversed this intersection." *Pelletier v. Campbell*, 7th Dist. No. 15 MA 0220, 2016-Ohio-8097, 75 N.E.3d 779, ¶ 2, *rev'd,* Slip Opinion No. 2018-Ohio-2121. Subsequent measurements revealed "the stop sign was 34 feet, two inches from the foliage in the devil strip." *Pelletier*, 2018-Ohio-2121, ¶ 6.

Pelletier sued Campbell for injuries she sustained in the mishap. She claimed the city "fail[ed] to maintain the devil strip to ensure that the stop sign was visible to approaching traffic caused her injuries." *Id*., 2018-Ohio-2121, ¶ 5. Specifically, she asserted Campbell "had a duty to remove the foliage and to maintain the stop sign so that it was visible to motorists approaching the stop sign." *Pelletier*, 2016-Ohio-8097.

The city moved for summary judgment, arguing it was immune notwithstanding R.C. 2744.02(B)(3). The trial court denied Campbell's motion for summary judgment and the Seventh District Court of Appeals affirmed. Based on *Howard* and succeeding appellate court cases, the city argued it could be liable for failing to remove an obstruction "'*only* if the plaintiff demonstrates that the public roadway was literally obstructed or clogged.'" *Id.,* ¶ 18 (emphasis in original). The court of appeals rejected this contention:

[Campbell's] interpretation of these cases is too narrow. None of these cases involve mandatory traffic control devices and are thus distinguishable. … Whether or not the failure to remove the foliage here was an obstruction which Appellant was obligated to remove presents a question of material fact for the trier of fact to resolve. Id3

Regarding its alleged failure to keep public roads (the stop sign) in repair, Campbell cited the Supreme Court's decision in *Heckert v. Patrick*. There, the Court construed a statute that imposed a duty on county commissioners to keep county roads "in proper repair." 15 Ohio St.3d 402, 406, 473 N.E.2d 1204 (1984). The Court held the commissioners' duty concerned "only … the deterioration or disassembly of county roads and bridges" and did not extend to "obstructions or interferences … unrelated to the conditions of the roadway." *Id.,* 406, 407. Therefore, Campbell asserted it had no duty where the stop sign was not "damaged, deteriorated, or disassembled." *Pelletier*, 2016-Ohio-8097, ¶ 19. The court of appeals overruled this argument, again noting "none of the cases [including *Heckert*] relied upon by [Campbell] involve a traffic control device," and concluding, "[w]here, as here, a mandated traffic control device (which is considered to be, by definition, a public road) no longer serves its purpose because of some extraneous factor, it may be in need of repair as contemplated by R.C. 2744.02(B)(3)." *Id.,* ¶¶ 19, 22.

The Supreme Court reversed. Initially, it found "[b]ecause the language of R.C. 2744.02(B)(3) is plain and unambiguous, it must be applied, not interpreted." Pelletier, 2018-Ohio-2121, ¶ 2. Turning first to the issue of keeping public roads in repair, the Court commented that, since the phrase "in repair" is not defined, it would look to the dictionary definition, *i.e.*, "'the state of being in good or sound condition.'" *Id.,* ¶ 19 (quoting *Webster's Third New International Dictionary* 1923 (2002)). Applying the definition, the statute, and *Heckert's* limitations on the duty to repair, the Court stated:

Accordingly, whether a stop sign is in repair depends on its physical condition, and nothing in R.C. 2744.02(B)(3) supports the appellate court's holding that a traffic-control device is not in repair when it "no longer serves its purpose" due to "some

## Counselor's Comments...Continued

extraneous factor." … Had the General Assembly intended to impose liability for something extraneous to the public road (such as foliage along it), it could have done so expressly. It did not, and a court may not rewrite the plain and unambiguous language of a statute under the guise of statutory interpretation.

*Id*., ¶ 20. There was no evidence that the stop sign itself was "deteriorated or disassembled" or not in proper repair. The Court held "the only conclusion that may be drawn from the evidence in the record, which includes photographs of the stop sign from different angles, is that the sign was in repair at the time of the accident."

*Id*., ¶ 21. The Court then turned its attention to the city's alleged failure to remove an obstruction. The Court adhered to its holding in *Howard* "that the duty to remove obstructions from public roads under R.C. 2744.02(B)(3) extends only to an obstacle that blocks or clogs the roadway and not merely a thing or condition that hinders or impedes the use of the roadway or that may have the potential to do so." *Id*., ¶ 24 (internal citation and quotation marks omitted). But the Court stated *Howard* did not completely solve the issue of:

[w]hen does a political subdivision have a duty to remove a potential obstruction from a mandatory traffic-control device that is part of the public road? Accordingly, although the parties focus on the meaning of the term 'obstructions' as we construed it in *Howard*, that word must be read in the context of the whole provision creating the duty to remove obstructions *from* public roads.
*Id*., ¶ 25 (emphasis in original). Since the word "from" was not defined, the Court again consulted *Webster's*: "'[F]rom' is 'used as a function word to indicate the source or original or moving force of something: as * * * (4) the place of origin, source, or derivation of a material or immaterial thing * * * <took a dime [from] his pocket> * * *.'" *Id*., ¶ 26 (quoting *Webster's Third New International Dictionary* 913 (3d Ed.2002)). To explicate the dictionary usage, the Court quoted the D.C. Circuit. "'[O]ne who states that a man 'took a dime [from] his pocket' could only be understood to mean that the dime originated from a specific location on a specific person.'" *Id*. (quoting *Natl. Assn. of Clean Water Agencies v. Environmental Protection Agency*, 734 F.3d 1115, 1125 (D.C.Cir.2013)).

The Court concluded that, to trigger the duty to remove an obstruction from the public road, "the obstruction must originate in a specific location: the public road. And because the word 'from' denotes a specific place, it cannot refer to conditions that are only near or in the vicinity of public roads." *Id*., ¶ 27. Thus, a political subdivision's duty to remove obstructions "pursuant to the statutory definition of 'public roads,' … includes only obstructions *that are on* a roadway, on a bridge, or on a mandated traffic-control device." *Id*. (emphasis added). The Court, therefore, held Campbell was immune because "the stop sign was in repair, because it was in good or sound condition and was not deteriorated or disassembled. And *because the foliage was not on the stop sign, the city had no obligation to remove it from the devil strip*." *Id*., ¶ 33 (emphasis added).

Chief Justice O'Connor penned a partial concurrence and dissent. The Chief Justice agreed that Pelletier failed to establish that the stop sign was not in good repair; however, she disagreed with the Court's holding that an obstruction must exist "on" a mandated traffic control device before a duty arises to remove it. *Id*., ¶¶ 38-40 (O'Connor, C.J., concurring in part and dissenting in part).

[T]he majority focuses almost exclusively on the meaning of the word "from," and barely considers the word "obstruction." The definition of "obstruction" is "something that obstructs or impedes" or "a condition of being clogged or blocked." *Webster's Third New International Dictionary* 1559 (2002). The definition of "obstruct" is "to be or come in the way of." *Id.*

The majority interprets the statute to require a plaintiff to establish that an obstruction is "on" a traffic-control device in order to create a risk of liability, but there is no question that an object can obstruct or block a traffic-control device without literally being on it. The majority effectively rewrites the statute by interpreting the word "from" to mean "on" based on a single definition of the word "from" that the majority selects out of multiple offerings in a dictionary.

*Id*., ¶¶ 37-38. In fact, the Chief Justice stated the majority's analogy to removing a dime from one's pocket to decide the case "simply does not make sense. Interpreting the statute to require that the obstacle literally touch the traffic-control device nearly eliminates blocked traffic-control devices from the liability exception because of the low likelihood that a traffic-control device will have an obstruction physically on it." *Id*., ¶ 40. In addition, she commented that the General Assembly could have used the word "on" if it intended to limit the scope of immunity but did not.

## Counselor's Comments...Continued

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Finally, Chief Justice O'Connor accused the majority of ignoring practical reality and legislative history.

Every driver in Ohio is concerned with the practical question whether a stop sign can be seen clearly from the road. From the perspective of a driver, it does not matter whether foliage touching a stop sign renders it unviewable or whether a tree growing two feet in front of it, but not touching it, does. Either way, the sign is impossible to see—thereby creating a dangerous situation. The majority … believes there is a difference between obstructing a stop sign with foliage from a tree planted two feet away and not touching it and foliage from a tree planted two feet away and actually touching it—even if under both scenarios, the stop sign is equally obstructed.

*Id*., ¶ 41. Citing testimony before the General Assembly and the Court's precedent concerning the 2003 amendments, the Chief Justice commented:

[T]he General Assembly's two key motivations … were to avoid liability for lawsuits brought against political subdivisions for nuisances rather than true obstructions and to provide immunity to political subdivisions that had not been at least negligent in failing to remove obstructions. As evidenced by the General Assembly's decision to continue including certain traffic-control devices in the definition of "public roads," the … amendments did not eliminate liability for a city's negligent failure to remove obstacles obstructing mandatory stop signs, and there is no evidence that legislators intended to add a requirement that the obstacle be touching the public road.

… Accordingly, to the extent that an obstacle is actually blocking a traffic-control device from the view of a driver at all distances in which it would be effective, I would hold that a political subdivision may be liable for negligently failing to remove the obstruction, pursuant to R.C. 2744.02(B)(3).

*Id*., ¶¶ 44, 45.

**Conclusion**

Without question, the Supreme Court's *Pelletier* decision eased the scrutiny a political subdivision must exercise to ensure that its mandated (whether by the OMUTCD or by statute) traffic control devices are in repair or free from obstruction. The Court affirmed that a traffic control device is "in proper repair," pursuant to R.C. 2744.02(B)(3), if the device itself is not deteriorated or disassembled. A periodic review of these devices should be sufficient to confirm whether they remain in repair. The Court's limitation of the statute's requirement that a political subdivision must "remove obstructions from public roads" to occasions where the obstruction is "on a roadway, on a bridge, or [in this instance] on a mandated traffic-control device" concurrently reduced a political subdivision's obligation to remove foliage and other obstructions that are not on the road itself and increased a plaintiff's burden to remove immunity.

Nevertheless, Chief Justice O'Connor's concerns about the decision's effect on the practical realities of motor vehicle drivers must be considered. The majority's bright-line rule notwithstanding, may a traffic control device become obstructed without foliage actually touching the device? In *Pelletier*, the foliage was nearly three feet from the stop sign yet plaintiff claimed her view of the sign was obstructed. Nevertheless, "photographs of the stop sign from different angles [showed] that the sign was in repair at the time of the accident," 2018-Ohio-2121, ¶ 21; therefore, it is apparent that the sign was not completely obstructed. What if the foliage was three inches from the sign but not touching it? May a stop sign become completely unobservable yet unobstructed because the obstruction is not "on" the sign? For these reasons, the General Assembly may opt to revisit its amendments to R.C. 2744.02(B)(3), particularly considering recent efforts to restrict political subdivision immunity under R.C. 2744.02(B)(1)(a). See H.B. 419.

In any event, best practices, in view of *Pelletier*, dictate that Members should continue to regularly inspect their intersections that are controlled by mandated traffic-control devices and trim foliage or remove obstructions that are closer than three feet from the device and to determine whether their traffic control devices are in proper repair.

## Counselor's Comments...Continued

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[1] Maintenance and repair of public roads are governmental functions, R.C. 2744.01(C)(2)(e), for which political subdivisions are otherwise immune, R.C. 2744.02(A).

[2] The parties did not dispute that the OMUTCD mandated the stop sign. *Pelletier*, 2018-Ohio-2121, ¶ 18.

[3] In her partial concurrence and dissent, Chief Justice O'Connor found the Seventh District's "question of material fact for the trier of fact to resolve" comment curious. "[C]ontrary to the decisions of the trial and appellate courts below, I would conclude that the trial court, not the jury, is responsible for resolving the immunity question. That it is necessary to consider the facts in order to determine whether the city negligently failed to remove an obstruction does not transform the immunity question into one that cannot be answered by the court." *Pelletier*, 2018-Ohio-2121, ¶ 46 (O'Connor, C.J., concurring in part and dissenting in part) (internal citations omitted).

[4] Judge William H. Harsha of the Fourth District Court of Appeals, sitting for Justice Mary DeGenaro, joined in the partial concurrence and dissent.

[5] House Bill 419, which the House Civil Justice Committee approved unanimously on May 16, 2018, would restrict the definition of "emergency call" in R.C. 2744.01(A) to "a call to duty involving any reported or observed inherently dangerous situations that demand an immediate response on the part of a peace officer." The current statute includes "a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer." The Supreme Court interpreted the current wording, particularly the terms "including, but not limited to" to "find that the phrase 'inherently dangerous situations' places no limitation on the term 'call to duty.'" *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, ¶ 14. The Court expressed, "*Had the General Assembly intended to limit an emergency call to only those situations that were inherently dangerous, it could have expressly imposed that limitation*. … Accordingly, we hold that an 'emergency call' as defined in R.C. 2744.01 (A) involves a situation to which a response by a peace officer is required by the officer's professional obligation." *Id*., ¶ 15 (emphasis added).. If the House and Senate concur, an "emergency call" necessary to retain immunity under R.C. 2744.02(B)(1)(a), will require that an officer respond to an "inherently dangerous situation." It would then be questionable, for example, whether a political subdivision could maintain immunity for a mishap involving an officer conducting a traffic stop for a moving violation.

# The Claims File…

*Craig Blair*

The reporting of claims to the pool is a key responsibility of MVRMA members. MVRMA's deductible is $2,500 per claim. The $2,500 deductible serves as a financial tool to protect the loss reserve fund from being depleted by smaller "fender bender" type claims. Even though the member deductible is $2,500, there are different thresholds for the reporting of claims. The pool requires all liability losses (damages to other parties) to be reported and paid by MVRMA regardless of amount. Also, all first party losses (member property) over $1,000 must be reported and paid through MVRMA. These reporting thresholds act as a risk management tool to help identify trending areas where training may be needed to help control small losses from becoming large losses.

Another reason for the reporting of claims is to properly allocate the pool's costs among its members. The members' loss experience is triple-weighted in the Pool Contribution Formula (PCF) which determines the amount each member pays to the MVRMA program each year. As a result, this practice serves as a way to hold the members accountable to the pool for risk exposures.

While these policies may seem inconvenient, or restrictive at times, they are an integral part of the reason the MVRMA program has been a success for our members for the last 30 years.

# 2017 Award Recipients


At the June meeting, the MVRMA Board recognized members cities for their outstanding performance in controlling losses for the 2017 loss year.

Standard of Excellence Award

The City of Beavercreek, Bellbrook, Village of Indian Hill, City of Montgomery and City of Piqua were presented with the Standard of Excellence Award for incurring losses less than $100 per employee in 2017. Bellbrook received special recognition as the Overall Winners for achieving the lowest losses per employee.

Standard of Excellence Award Winners Pictured (L-R) Dina Minneci, Village of Indian Hill, Bill Kucera, City of Beavercreek, John Crowell, City of Montgomery, Melissa Dodd, City of Bellbrook - Overall Winner. Not pictured, City of Piqua.

**Department Zero Losses**

The Board recognized the following departments that achieved zero losses in 2017:

| DEPARTMENT | CITY |
|---|---|
| Fire | Bellbrook, Blue Ash, Englewood, Montgomery, Springdale, Tipp City, Troy, West |
| Police | Beavercreek, Bellbrook, Indian Hill, Montgomery, Piqua, Sidney West Carrollton, |
| Parks and Recreation | Beavercreek, Indian Hill, Madeira, Mason, Montgomery, Piqua, Springdale, Tipp City, Vandalia, Wyoming |
| Water/Wastewater | Bellbrook, Mason, Sidney, Tipp City, Vandalia, Wyoming |
| Streets/Refuse/PW | Blue Ash, Tipp City |

| DEPARTMENT | CITY/CONSECUTIVE YEARS |
|---|---|
| **Fire** | Springdale (4), Wilmington (4) |
| **Police** | Indian Hill (3), Piqua (3) |
| **Parks and Recrea-** | Indian Hill (4), Montgomery (17), Tipp City (4), Vandalia (4), Wyoming (9) |
| **Streets** | Tipp City (3) |
| **Water/Wastewater** | Bellbrook (5), Mason (8) |

# Calendar of Events

## Upcoming Training Events

- **Forklift Training**
  Indian Hill - August 7th
- **Becoming a Chameleon Communicator/What Every Supervisor Should Know...But Doesn't**
  Mason: Municipal Center, August 9th
- **Sexual Harassment Training for Employees and Supervisors**
  Centerville: Police Department Training Room, September 20th and 27th
- **Driver Safety Training** - TBA

## Upcoming Board Events

**Committee Meetings**

Risk Management - September 4th 10:30 AM  Finance - September 4th 1:30 PM

**Board Meeting**

September 17th - 9:30 AM

## *From The Board Room*

Actions taken at the June 18th Board meeting included:

- Approved Target Solutions 3 year contract renewal
- Accepted 2017 Annual Report
- Accepted Pinnacle 12/31/17 actuarial report
- Approved 7/1/18 property renewal with the addition of active shooter program
- Approved 2018-19 property coverage document
- Approved Line of credit with Huntington Bank
- Approved 2017 standard of excellence and Zero loss year awards