

RISKY BUSINESS

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FYI... Renewal of 2017 MVRMA Liability Program

By Tom Judy

One of the great advantages of a public entity risk pool is that it is member-directed. Through the Board of Trustees, pool members have the flexibility to adapt the pool's service and coverages to meet their needs. This stands in contrast to the traditional approach in which entities purchase insurance as a commodity and find themselves at the mercy of the insurance industry.



The MVRMA Board's quarterly meeting in December was an example of the value of self-government. The actions taken by the Board included approval of the 2017 Liability Coverage Document. This document sets forth the coverages the pool provides to its members for bodily injury liability, property damage liability, personal injury liability, public officials' errors and omissions liability, unfair employment practices liability and employee benefit liability. The coverages provided are not dictated by an insurance company; rather, the MVRMA Board of Trustees makes these choices using its discretionary authority to act in the pool's best interests.

The MVRMA Liability Coverage Document is reviewed annually and revised as needed to adapt to the changing needs of our members. This review is aided by the input from our reinsurance partners, Genesis and Government Entities Mutual (GEM); the broker, Alliant; and the pool's coverage counsel.

The most significant change to the coverage document for 2017 pertains to liability coverage for the operation of unmanned aircraft systems (UAS), or drones. The Board revised the coverage for UAS to include member-owned UAS operating in compliance with the "Part 107" rules implemented by the Federal Aviation Administration in August 2016. Again, this is an example of a pool's ability to be responsive to a changing environment.

FYI continued

Other action of the Board included renewing coverage with the pool's liability reinsurers, GEM and Genesis, for 2017. GEM provides coverage of \$4.5 million excess of the pool's deductible of \$500,000 per occurrence. Genesis provides the next \$7 million of coverage excess of \$5 million. In total, the pool offers a liability limit of \$12 million per occurrence. These companies are said to "reinsure" the MVRMA Liability Coverage Document as they provide coverage based upon the terms of the MVRMA document rather than a separate commercial insurance policy. The combined premium for GEM and Genesis of about \$478,000 remains very low by historical standards due to a continuation of the "soft market" in the insurance industry.

The sum of these actions ensured the continuation of a liability program that is member-directed, responsive to members' needs and provides significant limits of coverage.

If you have questions about the MVRMA liability program, please contact the MVRMA office.

The Claims File - Winter Weather Related Claims *By Craig Blair*



It's that time of the year when the winter weather can cause certain types of claims or issues for the members. While overall it has been a mild winter so far, a couple of major storms have occurred in Dayton and further North that have created ice/black ice conditions. This led to a record number of claims reported to MVRMA for December, with the majority being related to road conditions. Accidents due to icy conditions, potholes, catch basins in disrepair, and sewer back-ups have been reported and all are related to changes in weather affecting the roads or the rain overloading the sewer systems. The combination of rain, single digit days, followed by days in the 50's is the perfect recipe for roads to deteriorate, thereby creating claims.

Although we understand it is a given that road deterioration and potholes will occur, it is our obligation to conduct "due diligence" when reviewing any claim submitted. For MVRMA to properly evaluate and determine if the city may be liable for these weather related claims, it is necessary to have the internal reports or work orders that were filed by the city's departments including information as to when the city was notified of the hazard, and when repairs were completed.

It should be noted that the legal requirement to which our cities are held in these situations is referred to as a "maintenance standard". This specifies that cities are obligated to respond and remedy the situation in a timely manner when notified of a problem.

Documentation is the key to good claims handling. Each city should have a procedure established so that all hazardous road conditions encountered by employees during the course of their workday are reported to Streets or Public Works. When an issue is reported, it should be noted in a log and work orders generated to document the resolution of the problem.

Members have strong defenses for weather related claims, therefore it is crucial that proper documentation procedures are in place.

Loss Control Lowdown—

City Drivers: Are you headed in the right direction?

By Starr Markworth



What is the leading cause of work related injury deaths in the U.S.? The answer may surprise you. It's not machinery accidents, exposure to harmful substances, fire or falls. It is motor vehicles accidents.

According to the National Highway Traffic Safety Administration, on-the-job vehicle accidents each year caused 22,000 deaths from 2003-2014 and 360,000 injuries. These incidents cost employers more than \$60 billion annually in property damage, medical costs, disability and life insurance payments, in addition to the cost of lost productivity and hiring and training new or temporary replacement workers.

Given the high incidence of fleet accidents and their often-devastating consequences, it is vital to minimize drivers' risks. The best way to achieve this is to create a city-wide driver safety culture. The city's driver safety philosophy should be evident at the start, before a job candidate accepts a new position. Safety-conscious organizations require candidates and current employees to meet specific criteria regarding driving. This criterion should include regular checks of employee motor vehicles records to ensure employees are good drivers and an active driver training program.

Driver selections should go beyond checking that the individual has a valid license. A license simply makes it legal for one to drive, but not necessarily suitable to represent your city behind the wheel. It is management's responsibility to establish criteria for the selection of drivers and to follow through with the enforcement of the established criteria. The city may desire to have a written policy defining acceptable "point" limits and possible sanctions, which may range from counseling or remedial training to discharge.

Liability should also be taken into consideration. Are you being negligent if you allow a city employee with a poor driving record to drive one of your city vehicles and they are involved in a motor vehicle accident?

It is crucial to understand that the standard is not whether the employer knows it has put people at risk; it is whether the employer should have known. Most states impose liability when an employer knew or should have known that an employee was unfit to drive a vehicle, or that a vehicle was unsafe. This means that companies must be able to show that they did everything they reasonably could to prevent accidents; otherwise actions you did or didn't take might be construed as negligent entrustment.

Given the high incidence of fleet accidents as well as the personal and monetary stakes involved, no organization can afford to view driver safety as an option.

MVRMA recommends that at a minimum, an annual check of driving records be conducted by all MVRMA member cities using the Ohio Bureau of Motor Vehicles to obtain the Motor Vehicle Records of all employees. You can access the driving abstract of all employees through this link: <http://www.bmv.ohio.gov/more-records-driverab.aspx>. The Ohio BMV has a free online tool through the link above that you can utilize to obtain employee driving records.

MVRMA also recommends annual driver training programs for police and fire employees and heavy vehicle driver training for all operators at least every 3 years. These courses are offered every spring and fall and are open to all MVRMA members.

Please contact me at 937-438-8878 or by email at smarkworth@mvrma.com with any questions or to discuss specific driver training for your city.

The Use of Unmanned Aircraft Systems (drones)

As the use of Unmanned Aircraft Systems (UAS or drones), becomes more prevalent, it is important to understand rapidly changing regulations and the potential risk. Failure to adhere to or comply with regulations may compromise or threaten aircraft safety, property and the safety and/or welfare of the surrounding community. The following guidelines should be considered for an organizations UAS/drone use policies and are based on suggestions from the FAA as well as a review of districts and governmental entities policies from across the country.

Regulations

The Federal Aviation Administration (FAA) regulates the airspace over the United States. Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground.

The FAA's final rule for small, unmanned aircraft (Part 107) went into effect on August 29, 2016. It provides specific safety regulations for unmanned aircraft drones weighing less than 55 pounds that are conducting non-hobbyist operations, (business users).

The following are links to the UAS Final Rule:

[Summary of the Small UAS Rule](#) (PDF)

[Small UAS Advisory Circular – How to Use the Rule](#) (PDF)

[Complete Text of the Small UAS Rule](#)

Guidelines outlined by the FFA for COA may be found at the following link: [FAA COA](#)

Potential Legal Issues for Drones

Following is a list of the possible legal ramifications related to the operation of drones:

- Physical injury to persons and property resulting from the unsafe operation of a drone;
- The invasion of the personal privacy of the occupants of private residences in the vicinity of a school vicinity, or the personal privacy of employees;
- The failure of an operator to comply with local operational standards, regulations, and laws, such as notifying an airport control tower of drone operations within 5 miles of the airport;
- The violation of the National Air System regulations by operating a drone above authorized altitudes;
- Maintenance and storage of data and information, including images, captured via drone use
- Unauthorized breach of drone technology systems, including data and information storage and control systems;

Minimizing Risks Associated With Drone Operations

The first step is to develop and implement policies, regulations and protocols with clear, comprehensive operational parameters. It will also be important to make sure organizations work closely with “end-users” to acquire drones appropriate for the intended use.

Broker's Beat Continued

Those performing risk management functions should be included early on in the acquisition process so that the necessary and appropriate adjustments to insurance policies can be obtained before drone operations begin.

Additionally, the following three links are beneficial as a reference by illustrating the Do's and Don'ts of UAS flying pictorially and also the various types of No Drone Zone signage examples for designated prohibited areas, and should be reviewed by any staff and/or students operating or considering operating UAS/drones.

<http://www.faa.gov/uas>

http://www.faa.gov/uas/publications/media/27231_FAA_KBYF_lores.pdf

http://www.faa.gov/uas/no_drone_zone/

Regulation Summary Table

The following table summarized the rules for operating an unmanned aircraft depend on why you want to fly:

The rules for operating an unmanned aircraft		
	Fly for Fun	Fly for Work
Pilot Requirements	No pilot requirements	Must have Remote Pilot Airman Certificate Must be 16 years old Must pass TSA vetting
Aircraft Requirements	Must be registered if over 0.55 lbs.	Must be less than 55 lbs. Must be registered if over 0.55 lbs. (online) Must undergo pre-flight check to ensure UAS is in condition for safe operation
Location Requirements	5 miles from airports without prior notification to airport and air traffic control	Class G airspace*
Operating Rules	Must ALWAYS yield right of way to manned aircraft Must keep the aircraft in sight (visual line-of-sight) UAS must be under 55 lbs. Must follow community-based safety guidelines Must notify airport and air traffic control tower before flying within 5 miles of an airport	Must keep the aircraft in sight (visual line-of-sight)* Must fly under 400 feet* Must fly during the day* Must fly at or below 100 mph* Must yield right of way to manned aircraft* Must NOT fly over people* Must NOT fly from a moving vehicle*

*These rules are subject to waiver.

Broker's Beat Continued

The rules for operating an unmanned aircraft		
	Fly for Fun	Fly for Work
Example Applications	Educational or recreational flying only	Flying for commercial use (e.g. providing aerial surveying or photography services) Flying incidental to a business (e.g. doing roof inspections or real estate photography)
Legal or Regulatory Basis	Public Law 112-95, Section 336 – <i>Special Rule for Model Aircraft</i> FAA Interpretation of the Special Rule for Model Aircraft	Title 14 of the Code of Federal Regulation (14 CFR) Part 107

Counselors' Comments By Dinsmore & Shohl



State Governments and Private Industry Expand Parental Leave Rights

By: Michael B. Mattingly

The United States is unique among industrialized nations in not requiring employers to provide employees paid family leave, instead mandating that large employers provide up to 12 weeks of unpaid leave pursuant to the Family and Medical Leave Act (FMLA). While there have been sporadic efforts at the federal level to expand family leave rights beyond those provided by the FMLA, those efforts to date have stalled, and the gap is being filled at the state and local levels or from private employer initiative.

In March 2015 at the federal level Congressional Democrats proposed the Family and Medical Leave Insurance Act¹ (FMLI) requiring that employers offer workers approximately two-thirds of their normal pay when taking up to 12 weeks off to care for newborns, elderly parents, a sick spouse or themselves for medical issues. The FMLI calls for funding both by workers and employers through use of an additional payroll tax. Under the FMLI both workers and employers would pay 0.2% of the worker's wages. Since its introduction, the FMLI has not gained traction and has not made it out of House or Senate committees.

Similarly, a Republican-backed effort to amend the Fair Labor Standards Act (FLSA) through passage of the Family Friendly and Workplace Flexibility Act³ (FFWFA) would allow for paid family leave, albeit through a different mechanism. The FFWFA would allow hourly employees in the private sector to bank compensatory time, accrued at a rate of 1.5 times their regular hourly rate, for any work completed over 40 hours in a work week in lieu of overtime pay. This compensatory time could then be used as paid family leave in the future. Federal employees currently enjoy similar arrangements. Similar to the FMLI, the FFWFA has not made it out of the Senate Committee on Health, Education, Labor & Pensions.

Counselors' Comments Continued

Finally, President Donald Trump supports six weeks of paid leave for mothers. His plan would give women whose employers do not offer paid leave the ability to collect six weeks of unemployment when they have a child. However, Trump's plan may be dead on arrival in the Oval Office given marked criticism from both sides of the aisle. In the absence of federal action, individual state governments and private employers have begun to act. To date, three states — California, New Jersey and Rhode Island — currently offer six or more weeks paid family and medical leave. There are also efforts in multiple other states, including Minnesota, Connecticut, Hawaii, Illinois, Indiana, Missouri, Oklahoma and Vermont, to get some form of paid family leave laws on the books. For instance, New York will join California, New Jersey and Rhode Island, effective Jan. 1, 2018, after passing the Paid Family Leave Benefits Law during the 2016 session. New York's plan, the most generous state law plan to date, will allow most workers in New York to take 12 weeks in a 52-week period to care for a new child or ailing family member.

In the private sector, many large companies are embracing paid benefits. For example, later this month American Express (Amex) will expand its paid parental leave policy for mothers and fathers to 20 weeks at full pay, plus another six-to-eight weeks for women who give birth and require medical leave. Full-time and part-time employees who have worked at Amex for at least a year are eligible. In taking this step, Amex joins a growing list of companies that have made their parental and family leave policies more generous in the past two years, including IKEA, Etsy, Spotify, Netflix, Adobe, Twitter, Google, Johnson and Johnson, Facebook, Goldman Sachs, Reddit, Bank of America, and Yahoo.

While the move toward paid leave may not be coming from federal action, the topic of paid leave certainly is on the doorstep, either due to state or local action or to changing industry norms.

2015 Pinnacle and Ascension Award Recipients



At the December holiday luncheon, the MVRMA Board recognized Pinnacle Award recipients Beaver Creek, Wyoming and Sidney and Ascension - most improved recipient Tipp City.

Pictured L-R: John Green, Tipp City; Mark Cundiff, Sidney; Bill Kucera, Beaver Creek; Wyoming, not pictured.



Congratulations to Indian Hill Finance Director, Scott Gully who recently achieved the GFOA's Certified Public Officer (CPFO) designation. To date, there are less than 700 individuals who achieved this designation nationwide and only 16 in Ohio. Three of those 16 - Ginger Adams of Sidney, Janine Cooper of Englewood and Scott Gully are part of the MVRMA family.

Calendar of Events



Upcoming Training Events

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

Upcoming Training

- Jonathan Downes -Risk Management for Public Safety: Police and Fire and ADA/FMLA: Managing Leaves and Accommodations in Public Safety
February 15th - Centerville Police Training Room
- Forklift Certification
April 13th - Blue Ash

Upcoming Board Events

Board Meeting

March 20, 2017 9:30 AM

MVRMA Office

From The Board Room

Actions taken at the December 2016 Board meeting included approval of:

- 2017 Liability Document
- 2017 Liability and Crime Coverage Policies
- 2017 Budget
- 2017 MVRMA Officers
- AGRiP Advisory Standard Recognition Application
- Code of Conduct Policy Amendments
- Asset Inventory and Control Policy