

RISKY BUSINESS

May 2017

A PUBLICATION OF THE MIAMI VALLEY RISK MANAGEMENT ASSOCIATION

Inside this issue:

| | |
|----------------------|---|
| FYI | 1 |
| Loss Control Lowdown | 3 |
| The Claims File | 4 |
| Counselor's Comments | 5 |
| Broker's Beat | 7 |
| From The Board Room | 8 |

MVRMA OFFICERS

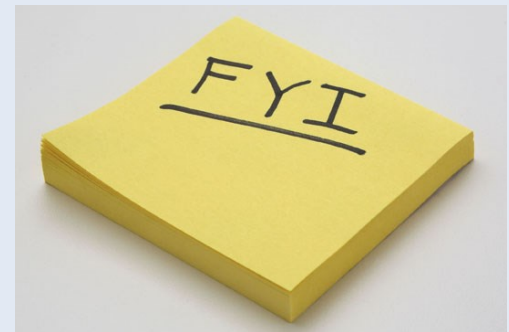
| | |
|---------------------|---------------------------|
| PRESIDENT | JOHN GREEN, TIPP CITY |
| VICE PRESIDENT..... | DINA MINNECI, INDIAN HILL |
| TREASURER..... | GINGER ADAMS, SIDNEY |
| SECRETARY | JULIE TRICK, VANDALIA |

FYI...Five Years?!

By Tom Judy

*How did it get so late so soon?
It's night before it's afternoon.
December is here before it's June.
My goodness how the time has flown.
How did it get so late so soon?*

Dr. Seuss



The passage of time fascinates me. I recall my mother, at the age of 70, telling me that the time from age 40 to 70 had seemed like a blur to her. As I now find myself in the middle of that “blur”, I am experiencing for myself the perception that time is accelerating. I was reminded of the rapid passage of time again recently when it occurred to me that my five-year anniversary at MVRMA is fast approaching. Five years? Hard to believe! So, before I blink and another five years has passed, I am going to take this opportunity to reflect on the past five years.

Five years ago, MVRMA was already a well-functioning organization benefiting from years of strong leadership from the Board of Trustees, my predecessors and a dedicated staff. However, all organizations must continually advance in order to keep pace in a quickly-changing world. I will share below just a few of the last five years' highlights.

Insurance Program

The liability limit has increased from \$10 million to \$12 million per occurrence. This action was at least partially driven by recent large law enforcement claims in the US. The commercial insurance market has generally offered favorable pricing in the last few years, making this increase in limits very cost-effective.

FYI continued

A key long-term objective of MVRMA is to distance the pool from the commercial insurance market. MVRMA's relationship with Government Entities Mutual (GEM) is a vital part of the strategy to meet that objective. GEM is a captive insurance company with sixteen member pools from all over the US. In effect, GEM is a "pool of pools." After MVRMA meets its \$500,000 self-insured retention (i.e., deductible), GEM pays the next \$4.5 million of any liability occurrence. A commercial reinsurer picks up the next \$7 million of coverage. GEM's layer has tripled over the last five years, thereby increasing the buffer layer between MVRMA and the more price-volatile commercial insurance market.

In 2015, Pinnacle Actuaries performed a special actuarial study to assess MVRMA's financial ability to meet its obligations even if catastrophic losses occur. The study determined, at a confidence level in excess of 99%, that MVRMA is sufficiently funded to meet its obligations under reasonably foreseeable circumstances. This result was a strong validation of MVRMA's claims funding structure.

Loss Control

Access to Loss Control services is a significant benefit of membership in a pool. Over the last five years, staff has added a number of self-help tools to the website including bidding/contracting templates, sample policies and a wide array of risk management best practices and checklists. A law enforcement best practices program was implemented with annual reviews of member law enforcement agencies. The SPEC program has been replaced with a next generation best practices program that was developed with significant input from key personnel and subject matter experts in MVRMA member cities. MVRMA's training program is bigger and better than ever, with programs led by some of the best presenters on a regional, and even national, level.

Improved Technology

A key focus has been on using technology to improve efficiency and to enhance member services. New technology infrastructure was installed to enhance efficiency and give staff the ability to access information from remote locations. The website has become more interactive, offering members on-line capability to register for training, report claims, request certificates of insurance and access on-line training videos. The quarterly newsletter is now distributed electronically, enabling us to reach a wider audience within our member cities. We have transitioned from a library of training videos in DVD format to on-line videos; this is a more cost-effective and convenient way to keep a fresh inventory of training offerings. The 16-year old claims software was replaced with a web-based software that has led to greater claims processing efficiency and enhanced reporting capabilities.

Relationships

I began this column on a philosophical note and will end it the same. (After all, aren't we "mature" people expected to stroke our chins and say wise things?) Time can indeed sneak up on us. The tragedy is when we let it happen without telling those around us how much we appreciate them. Let's all resolve to take a little of that precious time today to do just that. Toward that end, I want to say that a rewarding part of my MVRMA experience thus far is the relationships with trustees and staff. I appreciate your friendship and support.

*Loss Control Lowdown—
You're Much More Likely to be Killed
by Lightning than By a Terrorist*

By Starr Markworth



Now that I have your attention, here are some shocking facts about lightning.

Spring and Summer are the peak season for one of the nation's deadliest weather phenomena—lightning. A single stroke of lightning has 125,000,000 volts of electricity. That's enough power to light a 100-watt light bulb for more than 3 months, and clearly enough to seriously hurt or to kill someone.

According to the NOAA, over the last 20 years, the United States averaged 51 annual lightning strike fatalities, placing it in the second position, just behind floods, for deadly weather deaths. In the US, between 9% and 10% of those struck die, for an average of 40 to 50 deaths per year.

Each year, thousands of homes and other properties are damaged or destroyed by lightning. It accounts for more than a quarter billion dollars in property damage annually in the United States.

From 2010-present, the MVRMA member cities have experienced 31 separate incidents of lightning strikes resulting in over \$310,000 worth of property damage.

A risk management approach to lightning safety must assume the facility will be struck by lightning. A lightning protection system is a risk management technique that is used to identify properties more susceptible to lightning strikes and mitigate the damages that could be caused by lightning strikes.

A lightning protection system provides a means by which this discharge may enter or leave earth without passing through and damaging non-conducting parts of a structure, such as those made of wood, brick, tile or concrete. A lightning protection system does not prevent lightning from striking; it provides a means for controlling it and preventing damage by providing a low resistance path for the discharge of lightning energy.

Some properties have a higher risk of lightning damage. When considering installation of a lightning protection system, you may want to assess this risk. A risk assessment guide for determining lightning loss for all types of structures can be found in Appendix I of the National Fire Protection Association's Lightning Protection Code, NFPA 780.

Lightning is responsible for more deaths and property loss than tornadoes, hurricanes and floods combined, but of these violent forces of nature, lightning is the only one we can economically afford to protect ourselves against.

*The Claims File - MVRMA's Claims Process /
By Craig Blair Immunity Offsets*



In a previous article we covered what is required from our members when a claim is reported in order to make a determination on liability. In this issue we will review MVRMA's procedures for properly handling your claim and discuss the benefits of governmental immunities.

The Claims Reporting Policy defines which claims are reportable and paid through MVRMA:

All third party (damages to other parties) claims, regardless of the dollar amount.

First party (damages to city property) claims, including auto physical damage, if the loss exceeds or potentially exceeds \$1,000.

Reported claims are managed under the guidelines set forth in Ohio Revised Code (ORC) 2744. This section of the code, which outlines the rules that apply to claims against tax-supported public entities, was established to protect the tax dollars with which they are entrusted. These protections are often referred to as "governmental immunities" or "sovereign immunities". Therefore, it is important for members to report any claim as soon as possible so MVRMA can make contact with the third party to explain the claim procedure.

While ORC 2744 covers a broad spectrum of city functions and provides many of our legal defenses, the best example would be when a city vehicle is involved in a minor automobile collision, and a city vehicle rear ends another vehicle. The city would be held liable, but under 2744.05 it is allowed the offsets of available coverage. As a result, the damaged third party would be required to process the claim through their own insurance first and MVRMA would pay for anything not covered. This may include the deductible and rental car coverage if not provided by their insurance. For any injury claim for which the city is liable, it would be allowed the offsets paid by the automobile insurance medical coverage or health coverage. Since the claim falls under ORC 2744, insurance companies doing business in Ohio cannot surcharge or raise the rates on the third party's policy.

This considerably reduces the effect of the expense for accidents. The insurance industry's average for an automobile damage claim is approximately \$3,400 per accident. In 2016, 35% of all claims reported to MVRMA were auto-related, and the average paid for third party claims was \$1,567. This data provides a clear indication of the savings provided by ORC 2744 to our members.



***Broader Definition of “Public Roads”
In Ohio Political Subdivision Immunity Statute***

Generally, pursuant to R.C. Chapter 2744, political subdivisions are not liable for injury or death to persons in connection with the political subdivision’s performance of a governmental or proprietary function. However, R.C. § 2744.02(B)(3) provides exceptions to that general grant of immunity, including one for the “negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads.” Recently, a decision by the Supreme Court of Ohio broadened the definition of “public roads,” making it easier for plaintiffs to establish that a political subdivision is exempt from immunity under R.C. § 2744.02(B)(3).

Bibler et al. v. Stevenson et al.

The Third District Court of Appeals recently considered the issue of political subdivision immunity under R.C. § 2744.02(B)(3) in *Bibler v. Stevenson*, 38 N.E.3d 952, 959 (3d Dist. 2015). There, appellee Stevenson failed to stop at a stop sign at an intersection in Findlay, Ohio, and collided with appellants Bibler. *Id.* at 954. Stevenson claimed that she was unable to see the stop sign because it had been blocked by tree foliage. *Id.* The Biblers filed suit against Stevenson for failure to stop, as well as the City of Findlay for failing to ensure that the stop sign was visible. *Id.* The Third District Court of Appeals upheld the trial court’s determination that the City of Findlay was entitled to political subdivision immunity, based on several factors. *Id.* at 954, 959.

First, the Third District noted that, in order for the City of Findlay to be exempt from immunity, the stop sign at issue in that case must be considered part of the “public road.” *Id.* at 956. Under R.C. § 2744.01(H), the term “public roads” does not include traffic control devices (such as stop signs), unless the device is mandated by the Ohio Manual of Uniform Traffic Control Devices (“OMUTCD”). *Id.* at 956-57. Next, the Third District reviewed the OMUTCD, which specifies that “[s]tandards using the word ‘should’ are considered to be advising, but not mandating, the particular signage or other device.” *Id.* at 957. Finally, the Third District found that the stop sign at issue was regulated by a section of the OMUTCD that used the word “should,” meaning that it was not mandated by the OMUTCD and, therefore, did not fall under the meaning of “public road.” *Id.* Accordingly, the Third District upheld the trial court’s determination that R.C. § 2744.02(B)(3) did not apply and the City of Findlay was entitled to immunity. *Id.*

However, on December 29, 2016, the Supreme Court of Ohio reversed the Third District’s decision. *Bibler v. Stevenson*, Slip Opinion No. 2016-Ohio-8449. The Court agreed with the Third District that the main issue was whether the stop sign was mandated; however, the Court relied on R.C. § 4511 to ultimately reach a different conclusion as to the mandatory nature of the stop sign at issue. *Id.* at ¶¶ 11-12. The Court noted that, pursuant to R.C. 4511.11(A), local authorities and their jurisdictions shall maintain traffic control devices “in accordance with the department of transportation manual of uniform system of traffic control devices[.]” *Id.* at ¶ 13. The Court further stated “[o]ne of the requirements of R.C. 4511.01 through 4511.76 is the requirement in R.C. 4511.65(A) for the mandatory erection of stop signs (or some other traffic-control device) at intersections involving through highways[.]” *Id.* at ¶ 16. The Court noted that the stop sign at issue was located at an intersection involving a through highway and, therefore, reasoned that the stop sign was mandated. *Id.* at ¶¶ 17-18.

Counselors' Comments Continued

The Court further acknowledged that the OMUTCD failed to properly align with the language of R.C. § 4511.65. *Id.* However, the Court held that the purpose of the OMUTCD is simply to instruct political subdivisions as to how to comply with statutes, and the OMUTCD “does not undermine the underlying empowering statutes.” *Id.* Consequently, the Court held that the stop sign at issue in *Bibler* was mandatory and, thereby, part of the “public road.” *Id.* at ¶ 20. Consequently, the Court held that the City of Findlay was “not immune pursuant to R.C. § 2744.02(B)(3) and is potentially amenable to liability.” *Id.* Based upon this finding, the Court remanded the case back to the trial court for a determination as to whether the stop sign was, in fact, not in repair, or negligently obstructed. *Id.*

Effect of *Bibler v. Stevenson*

Although the Supreme Court of Ohio’s decision in *Bibler* does not completely undermine the law established by past cases, it does allow for a broader definition of “public roads.” This makes it easier for courts to find that R.C. § 2744.02(B)(3) applies to exempt a political subdivision from immunity under R.C. § 2744. Specifically, the Court’s decision in *Bibler* indicates that, even when a stop sign, or other traffic control sign, is not deemed mandatory under R.C. § 2744 or the OMUTCD, courts are still justified in finding that the signage is mandatory based on the language of R.C. § 4511.65. When a sign is considered mandatory, it is part of the “public road,” and, as stated in R.C. § 2744.02(B)(3), a political subdivision can be liable for negligent failure to remove an obstruction to a “public road.”

However, it is important to note that Justice Lanzinger wrote a dissenting opinion to the decision in *Bibler*, and stated that R.C. § 2744.01(H)’s definition of “public roads” only mentions the OMUTCD, and makes no mention of R.C. § 4511.65. *Bibler*, at ¶ 27. Contrary to the majority decision, written by Justice Pfeifer, Justice Lanzinger reasoned that courts should not be able to use R.C. § 4511.65 as a basis to exempt political subdivisions from immunity under R.C. § 2744.02(B)(3) because it is never mentioned in R.C. Chapter 2744.

In sum, although the Court’s decision in *Bibler* may make it easier for courts to find that political subdivisions are exempt from immunity due to R.C. § 2744.02(B)(3), it is apparent that there is disagreement among the Supreme Court justices regarding this issue, and the *Bibler* decision was certainly not unanimous. However, in order to avoid additional costly litigation and possible liability resulting from the Supreme Court of Ohio’s recent decision, political subdivisions should make every effort to ensure that stop signs, and other traffic control devices are not obscured by tree foliage, or other obstructions.

Risk Management for Volunteers

Volunteers are a valuable resource to your City; however, they are not without risk. Establishing an effective risk management program for volunteers can minimize the risk associated with volunteer programs at your City and creates a safe environment for your citizens to participate in community events.

The liability (risk) associated with volunteers can be narrowed down to four key areas: injury to the volunteer; injury/damage to a third party; damage to City property/injury to a City employee; and reputational risk. Coverage and immunities can provide protection to your City for the risks associated with volunteers.

Safety volunteers are covered under workers' compensation in Ohio and non-safety volunteers can be added to your workers compensation policy, but are not automatically covered. Volunteer Accident Insurance is an alternative that provides accident and health coverage for volunteers that get injured while participating in an organizations sponsored activities, including direct travel to and from said activities.

Regular governmental immunities would apply for the actions of your volunteer and volunteers are included in the definition of a covered person in the MVRMA liability coverage document providing coverage for covered third party liability claims as a result of the actions of your volunteers.

Property insurance will cover property damage to City property for a covered peril and workers' compensation will cover an injury to a City employee.

Notwithstanding the coverage and immunities discussed above, proper risk management is always the best approach. Following are some basic risk management techniques for managing volunteers:

- Require a volunteer application to screen volunteers
- Do background checks to screen volunteers
- Consider age requirements
- Confirm the volunteer is qualified to perform their task
- Provide training as necessary
- Have safety procedures
- Get a release of liability

After the June Board of Directors meeting Alliant will elaborate on effective risk management for volunteers.

Calendar of Events



Upcoming Training Events

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

Upcoming Training

- Forklift Certification
May 8th through May 12th, Kettering
- Chainsaw Training
May 23rd and 24th, Location TBD
- Trenching and Excavating Training
May 25th, Location TBD
- Conducting Evaluations
June 21st, Springdale

Upcoming Board Events

Board Meeting

June 19, 2017 9:30 AM

MVRMA Office

From The Board Room

Actions taken at the March 2017 Board meeting included approval of:

- Cash and Investment Policy revisions