

# RISKY BUSINESS

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MIAMI VALLEY RISK MANAGEMENT ASSOCIATION



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MAY 2012

## From the Board Room...



At the March 19, 2012 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims & Incurred Losses Report
- Approved a two-year extension with Target Solutions
- Approved adding Endorsement 12-12 to MVRMA's Liability Coverage Document to clarify which municipal courts are covered
- Approved May 7 as the date for this year's Strategic Planning Retreat

## FYI

- Mike Hammond

### Managing Volunteers' Risk

Recently, there have been a number of inquiries about the use of volunteers. With a lack of resources and funding constraints, many municipalities are turning more to volunteers. Not only is this a boost to local government, but it gives the volunteers a sense of pride in their community. Volunteerism should be encouraged whenever possible, but only in tandem with good risk management.

Volunteers can become so integral to an organization's program that we may forget they are anything other than regular employees. But, like all employees, volunteers will be more receptive to a well managed program that is administered with safety in mind.

The Nonprofit Risk Center has developed an excellent online tutorial, which provides valuable information about the management of volunteer programs. It is titled "*No Surprises Volunteer Risk Management Tutorial*" and can be found at [www.nonprofitrisk.org](http://www.nonprofitrisk.org). This tutorial made the following important points I would like to share:

1. Since everyone wants to work and volunteer in a safe environment, use risk management to bolster volunteer recruitment. As you focus more on risk management, your safety activities will become points of pride.
2. Key questions you need to ask in managing volunteer risk: What could go wrong? What will we do to prevent these things from going wrong? What will we do if something goes wrong? How will we pay for it?
3. Volunteer staff selection is important. Each volunteer assignment should have a written position description that will clarify the nature of the assignment, to whom to report, the time commitment, the expectations, the prohibitions and the consequences. A volunteer application form is needed to be able to match volunteer applicants with the volunteer position description.
4. Be selective. No organization has an unlimited number of positions to fill. If you try to take everyone, it is likely you are taking some volunteers who are unsuitable or incompatible. Moreover, you may be accepting more volunteers than you can properly supervise.
5. What you see isn't always what you get. To protect your citizens, reputation and staff, establish a basic screening process that reduces risk. At a minimum, include an application review, an interview, and reference checks and background screening for high risk

positions. The goal is to get each volunteer applicant matched with the appropriate volunteer position.

6. Volunteers want to succeed. To help them do so, you need to provide direction about what you expect and what is required. You also need to spell out what is forbidden - even when it may appear obvious. A good orientation helps volunteers succeed.
7. The myth persists that you shouldn't fire a volunteer. Like their paid counterparts, volunteers may be unable to fulfill their duties. If reassignment isn't possible, or if a volunteer violates rules, it may be necessary to impose discipline. Tolerating inappropriate or difficult behavior tends to drain resources when the involvement of volunteers is meant to maximize resources.
8. Lack of supervision may expose volunteers and your organization to liability. It is important to provide the level of supervision necessary to prevent accidents, missteps and harm to others. Supervision should fit the job. For example, persons performing court mandated community service might require more supervision than volunteers picking up litter in a park. Also, volunteers using power tools or motorized equipment will require an extensive orientation and supervision.
9. Insurance is a valuable risk management strategy, but insurance does not prevent losses and no single policy addresses every risk. Various insurance products respond to different types of claims and losses. For example, medical claims for a volunteer's injury will first be covered by the volunteer's existing health care coverage. But, you might consider buying a Volunteer Accident Policy to

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## Counselors' Comments



-Surdyk, Dowd & Turner

### Ohio Supreme Court Holds That Political Subdivisions May Not Be Entitled to Immunity for Alleged Intentional Torts Against Their Employees

Recently, the Ohio Supreme Court held that intentional torts may be matters that arise out of the employment relationship between political subdivisions and their employees for purposes of R.C. 2744.09(B). *Sampson v. Cuyahoga Metro. Hous. Auth.*, ---Ohio St.3D---, 2012-Ohio-570. Accordingly, political subdivision employers may not be entitled to immunity under R.C. Chapter 2744 for intentional torts against their employees.

In *Sampson*, the Cuyahoga Metropolitan Housing Authority (hereinafter "CMHA") received an anonymous tip that CMHA employees were misusing CMHA gasoline credit cards to fuel their own personal vehicles. CMHA investigated the claim and the Cuyahoga County prosecutor eventually gave CMHA police approval to arrest Sampson and 12 other CMHA maintenance employees for theft in office and felony misuse of credit cards. The arrests were executed in a public fashion at a maintenance department meeting, with news media already on site filming the arrests. Sampson was terminated when a grand jury indicted him. On the eve of trial, it became known that the prosecutor had failed to subpoena a representative of the credit card company to testify regarding the credit card records. Accordingly, the charges against Sampson were dismissed. Sampson was eventually reinstated to his former position with full restitution of his seniority and lost wages and benefits.

As a result of the arrest, Sampson filed suit against CMHA raising various intentional tort claims, including abuse of process and intentional infliction of emotional distress. CMHA maintained

that it was entitled to the general grant of immunity pursuant to R.C. 2744.02(A)(1). Whereas, Sampson contended that R.C. 2744.09(B) applied to except his claim from immunity because the intentional torts constituted a "matter that arises out of the employment relationship." Accordingly, the Supreme Court had to determine whether an intentional tort can arise out of the employment relationship.

This issue was complicated by a long-standing principle first announced by the Supreme Court in *Blankenship v. Cincinnati Milacron Chems, Inc.*, 69 Ohio St.2d 608, 433 N.E.2d 572 (1982). In applying *Blankenship* in a later case, the Supreme Court stated:

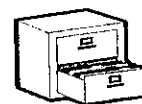
When an employer intentionally harms his employee, that act effects a complete breach of the employment relationship, and for purposes of the legal remedy for such an injury, the two parties are not employer and employee, but intentional tortfeasor and victim.\*\*\*The [employee's] lawsuit has no bearing upon any question relating to employment.

*Brady v. Safety-Kleen Corp.*, 61 Ohio St.3d 624, 634, 576 N.E.2d 722 (1991). Thus, CMHA argued that an intentional tort cannot arise out of the employment relationship according to *Blankenship*.

The Supreme Court noted that the principle announced in *Blankenship* was the result of a balancing of interests under the Workers' Compensation Act: workers relinquish their common-law remedies in exchange for a more certain recovery, while employers relinquish common-law defenses in exchange for a more limited liability. Thus, the Court refused to read the *Blankenship* principle into the Political Subdivision Tort Liability Act because no such interests were present. Accordingly, the Court noted that the plain statutory language as the exception to immunity as written must apply. Therefore, the Court held that when an employee of a political subdivision brings a civil action against the political subdivision alleging an

(Cont. on Page 4 - See COMMENTS)

## The Claims File



-Craig Blair

In 2011, the reinsurance marketplace was dominated by catastrophic losses. From earthquakes in New Zealand, earthquakes and tsunamis in Japan, flooding in Bangkok, wind losses in the United States and Hurricane Irene, catastrophic property losses range in value from \$75 billion to \$100 billion worldwide. As a result, the property market shows definite signs of hardening in terms of pricing.

While our members were not affected by earthquakes or tsunamis, five members were hit by a major hail storm in May 2011, with estimated damages of more than \$1,000,000.

Unfortunately, in 2011, another member had a Boiler & Machinery claim for one of its gas turbines. The final cost for that claim was \$1,084,871.

As a result of the general hardening of the property market and the two large claims mentioned above, MVRMA anticipates a 25% increase in its July 1, 2012 property renewal.

As you can see, MVRMA's claims significantly affect its rates at renewal, sometimes with a positive impact, and other times with a negative punch.

To get a better perspective on 2011, as a whole, the following review is provided: There were 378 reported losses, which is just slightly above our 10-year average. There were 17 lawsuits filed against our members, which is about 30% more than the last few years. The number of lawsuits, however, only tells part of the story. Severity (amount paid) is actually the defining factor, but only time will tell in that regard.

Subrogation activity completes the claims picture for 2011. These claims constitute about 30% of all open claims. The following report details my subrogation efforts on behalf of the membership:

		Avg. collected
2001-2010	88 claims	\$1,735
2011	94 claims	\$2,640

## Loss Control Lowdown

-Starr Markworth

### What's Holding You Back?

Recent headlines in 2011, about a Dayton prisoner who died after escaping from a cruiser by breaking out the back window and jumping off a bridge, raise questions about prisoner security and safety.

There are numerous liability concerns when transporting prisoners, and police departments across the country have been sued and paid millions. Prisoners who were not secured with seatbelts have been injured; prisoners have escaped and stolen the patrol unit; patrol cars have been struck by another motorist while the prisoner was not restrained, resulting in injury.

In an attempt to increase officer and prisoner safety, last fall the City of Bellbrook Police Department purchased the Laguna Ready Buckle System for all of its cruisers. In support, Chief Dave Helling states, "The key advantage of this system is that officers can safely secure prisoners in the back seat - even the uncooperative ones. Previously, officers would have to lean across the prisoner to secure the seatbelt. Officers in that position

were vulnerable to all types of assaults. This simple change can secure the prisoner and keep the officers safe!"

The innovative Ready Buckle prisoner restraint seatbelt system for law enforcement vehicles is geared to improve officer safety while securing prisoners. It also reduces the liability to the city by reducing the likelihood of injuries to unbuckled prisoners.

The traditional restraint systems require the officer to reach across the suspect to secure the seatbelt buckle. This action not only exposes the officer to injury but also increases the likelihood of attack while exposing his/her weapon. Due to this risk, many times officers choose not to restrain uncooperative or violent prisoners with the seatbelt. This non-action increases the liability to the police department and the city if the prisoner is injured during transport.

The Ready Buckle System is designed to keep officers out of harm's way. The belt is secured to the front cage or side posts when not in use; otherwise, it fully retracts to rest against the seat belt. The Ready Buckle System protects the officer while restraining the prisoner. To secure the suspect, the officer simply unclips it from its resting hook and  
(Cont. on Page 4 - See LOWDOWN)

## Brokers' Beat...



One of the policy enhancements that is included under the MVRMA Property Program is Building Laws, Demolition Cost and Increased Cost of Construction coverage. Collectively, this group of coverages is referred to as Law & Ordinance coverage.

When a building suffers extensive damage (typically by fire), government authorities will step in and impose numerous restrictions and requirements on disposition of the damaged building. These restrictions and requirements could mandate the demolition of undamaged portions of the structure and also extend to the rebuilding process of a replacement structure.

The Law and Ordinance coverage can be divided into three categories. The first category deals with the undamaged portions of a structure. Local authorities may require that undamaged portions of a partially destroyed building be razed. While it is obvious that the portion of the building damaged by fire will be covered, it is less obvious that the value of the undamaged portion, that is being demolished because of a government mandate, would be covered without enhancements to the standard property policy. The second category of Building Law coverage is the actual cost of demolition operations to undamaged portions of the building. Again, unless the property policy has been endorsed with Law and Ordinance coverage, the demolition costs would not be covered. The last area deals with the replacement of the structure. As you go through the planning and permit process for new construction of the replacement building, there are a number of government agencies that will impose new building code requirements. To cite a few examples, elevators, ramps and upgraded bathroom facilities may be required to comply with current ADA statutes.  
(Cont. on Page 4 - See ALLIANT)

## Practice

### "Good Housekeeping" on the Job

Good housekeeping isn't just for the home. Your workplace needs more than an occasional once-over or an annual spring cleaning. Enlist every member of your workforce in keeping it clean and free of hazards. Pay attention to these areas in particular:

1. Walkways - Keep hallways, aisles and stairs clear of obstacles.
2. Lights - Replace burned-out bulbs immediately. Make sure all areas have adequate illumination.
3. Floors - Clean up spills or moisture immediately. During winter months, place water-absorbent mats in high-traffic areas near your entrance.
4. Trash - Garbage should go into trash cans and be disposed of regularly and often. Don't let waste pile up.
5. Stacks - If you stack boxes, barrels or other containers, make sure they're on a firm foundation and not likely to fall over and injure someone.
6. Equipment - Perform regular maintenance on all workplace tools and equipment. Train workers to put tools away securely when they're not in use.
7. Kitchen - Food should be stored safely, and your kitchen and common areas cleaned often to eliminate dirt and germs.
8. Glass - Clear away any broken glass right away. Don't let employees touch glass or anything sharp with their bare hands - use a broom and dustpan and gloves for safety.

## FYI (Cont./Page 1)

provide excess coverage over the volunteer's personal coverage. Accident policies pay claims regardless who is at fault.

If you are considering a volunteer program or have questions about your existing volunteer program...*Should volunteers be asked to sign a waiver of liability?...Are volunteers covered if they cause an accident while driving a city vehicle?...Is there coverage if a volunteer is named in a lawsuit against the city?...you should plan to attend the MVRMA Hot Topic Luncheon: Managing Volunteers on May 24. It will be held at the City of Mason Municipal Center Community Room from 11:30-2:00. Attorney Joe Mordino, partner with Faulkner and Tepe, LLP, will be the guest speaker.*

Remember, the goal of risk management is to improve performance by acknowledging and controlling risks. It's about protecting and conserving your resources and providing services sensibly. It puts you, not the risks in charge.

## Comments

### (Cont./Page 2)

intentional tort, that civil action may qualify as a "matter that arises out of the employment relationship" within the meaning of R.C. 2744.09(B).

Importantly, the Supreme Court found that this case clearly arose out of the employment relationship because the employer alleged that the employee had stolen from the employer by using the employer-owned gasoline credit cards for personal use. However, the Court noted that conduct alleged to have been committed by an employee against a third party with no relationship to the employer may not bring forth sufficient facts arising out of the employment relationship. For political subdivisions, this opinion most likely means that intentional torts by employees against political

subdivision employers will be analyzed on a case-by-case basis to determine if the torts truly arose out of the employment relationship.

## Alliant (Cont./Pg. 2)

Automatic fire sprinkler systems may be required by local authorities as a part of new safety codes, and new roofing material may also be required as a part of new safety regulations. All of these requirements will cause increased building expense, and it only gets greater with the age of the destroyed building. These increased expenses would normally not be covered under a standard fire policy unless the policy has been endorsed with Law and Ordinance coverage. The MVRMA property policy includes coverage for all three of the categories discussed above, up to \$25,000,000 each occurrence, and the coverage also extends to Boiler & Machinery Breakdown.

## Lowdown (Cont./Page 3)

snaps it into the seat buckle near the car door.

The officer needs to use only one hand and does not risk back injury from bending into the vehicle or over the prisoner. Once the prisoner is removed, the belt fully retracts. The officer then engages it on the hook, and it is ready for the next passenger.

The ease of use and officer safety with this device leads to restraining all suspects, thereby reducing liability to police departments and the city. It also reduces any potential liability due to injuries resulting from unbelted prisoners.

For more information, visit Laguna's website and view the video clip on the Ready Buckle System: <http://blutube.policeone.com/police-products-videos/935831028001-laguna-3p-using-the-ready-buckle/>

## Coming Events

Strategic Planning Retreat

**May 7**

9:00 am - 3:00 pm

Centerville Police Station

Chain Saw/Chipper Safety

**May 9** - City of Kettering

**May 23** - City of Centerville

**May 30** - City of Vandalia

Driver Training

**May 10-11**

**May 17-18**

Hot Topic Luncheon

Managing Volunteers

**May 24**

11:30 am - 2:00 pm

Mason Municipal Center

Community Room

Committee Meetings

MVRMA Office

Awards Committee - **May 29**

1:00 pm

Finance Committee - **June 4**

10:00 am

Risk Management Committee

**June 4**

2:00 pm

Fall Protection

**June 14**

MVCC

MVRMA Quarterly Board Meeting

**June 18**

MVRMA Office

Meth Lab Training - Ohio BCI

**July 10**

**July 12**

Locations to be announced

For more information on the training

listed here, contact

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