

# RISKY BUSINESS



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## From the Board Room...



At the June 21, 2010 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims and Incurred Losses Report
- Approved the 2010 SPEC program with the understanding a new law enforcement section will be added later
- Approved funding (\$1,375) for five paid memberships to HR Sentry, an online HR resource
- Accepted the 2009 Annual Report
- Approved the PEPPIP renewal for the period 7/1/10-7/1/11 with a \$250,000 SIR
- Accepted the Actuarial Report for the year ending December 31, 2009
- Approved the 2009 Safety Awards (see the article on page 3)
- Approved the winners of the Public Risk Achievement Awards (see the insert)
- Approved a 2% pay increase for the Executive Director
- Approved the Updated Contingency Plan/Interim Program Management Procedures

*To accomplish great things, we must not only act, but also dream, not only plan, but also believe.*  
-Anatole France

## FYI

### Underground Storage Tanks

-Michael Hammond

Periodically, we are contacted about providing liability coverage for Underground Storage Tanks (USTs). These contacts normally occur in response to completing the application for certification of coverage and the annual fee assessment statement for being an owner of an underground storage tank for petroleum products. The Bureau of Underground Storage Tank Regulations (BUSTR) requires that owners/operators of USTs demonstrate financial responsibility.

Financial responsibility is similar to mandatory automobile insurance. Like owners of automobiles, owners and operators of petroleum underground storage tanks must assure they have the financial ability to pay for damage their USTs may cause. In other words, if you own or operate USTs in Ohio, you must ensure, in ways that are specifically spelled out in the Ohio Administrative Code, that there will be money available to help pay for the costs of third-party liability claims, and the necessary corrective actions resulting from a leak from your tank. These costs may include cleaning up leaked petroleum, correcting environmental damage, supplying drinking water or compensating people for personal injury or property damage.

Local and state government agencies must comply with the financial responsibility rules. To satisfy Ohio's financial responsibility requirements, all petroleum UST system owners and operators must do **two** things:  
1. Participate in the Ohio Financial Assurance Fund to obtain coverage above a deductible amount. The

standard deductible is \$55,000; **owners of six or fewer tanks may pay a higher premium to obtain a reduced deductible of \$11,000.**

2. Demonstrate financial responsibility for the amount of the deductible by using one of several options cited in the Ohio Administrative Code. There are six financial responsibility options that any tank owner may use. In addition, there were four mechanisms added to the OAC in 1994 for use only by the State of Ohio or political subdivisions. These are listed as options 7-10 on section "IV. Financial Responsibility" of the application. It is one of these four options you will most likely want to consider.

The four additional options for political subdivisions include: bond rating test, political subdivision financial test, political subdivision guarantee and political subdivision fund. The specific requirements concerning the use of all ten mechanisms are set forth in the OAC rule 1301:7-9-05, and brief descriptions of each mechanism are included in the *Financial Responsibility Guide* available from BUSTR.

Since your choice of a financial mechanism is important, you may want to consult with more than one person for help or advice. You will need to have the financial responsibility mechanism in place at all times. Please keep in mind that MVRMA's liability coverage document does not provide coverage for USTs. Petroleum is considered a pollutant and therefore excluded.

For complete details and instructions on financial responsibility for underground storage tanks, please visit the Ohio Department of Commerce, Division State Fire Marshall website.

## Counselors' Comments



Dinsmore & Shohl

### Search of Police Officer's Text Messages Reasonable

On June 17, 2010, the Supreme Court of the United States unanimously determined that a City's review of a police officer's text messages on a city-owned pager was reasonable under the Fourth Amendment, thereby reversing a Decision from the Ninth Circuit in which the Appellate Court determined that (1) the officer had a reasonable expectation of privacy in his text messages; and (2) the City's search of such text messages was not reasonable under the Fourth Amendment. *City of Ontario v. Quon* (U.S. 2010), Case No. 08-1332, 2010 WL 2400087.

In so holding, the Supreme Court considered whether a City violated the Fourth Amendment Rights of a SWAT officer when the City audited the officer's text messages sent on a pager the City owned and issued to the officer. The City had an official policy stating that "[u]sers should have no expectation of privacy or confidentiality when using" City computers, which was subsequently extended to text messages. A non-policy making lieutenant announced that the City had no intent to audit the messages. Thereafter, other City officials audited the messages and then allegedly disciplined the officer for sending sexually explicit messages while on duty.

This Section 1983 action ensued, and the Court determined based (in part) on the Court's previous decision in *O'Connor v. Ortega* that the City did not violate the officer's Fourth Amendment rights by searching the officer's text messages. *O'Connor v. Ortega* (U.S. 1987), 480 U.S. 709, 107 S.Ct. 1492. In *O'Connor*, the Supreme Court recognized that some workplace privacy for public employees exists, but determined that a search is nevertheless reasonable when it is conducted for a "non-investigatory, work-related

purpose" or for the "investigation of work-related misconduct" so long as the search is "justified at its inception" and "the measures adopted are reasonable related to the objectives of the search and not excessively intrusive in light of" the circumstances giving rise to the search.

Here, the *Ontario* Court determined that: (1) the search of the text messages was legitimate as it was ordered to determine whether the allotment was sufficient to meet the City's needs; (2) the scope of the search was reasonable because reviewing the transcripts was an efficient way to determine whether certain overages were work-related; and (3) the review was not excessively intrusive as the City reviewed only two months of messages and no off-duty messages. Moreover, the Court determined that it was unreasonable for the officer to assume that his messages were in all circumstances immune from scrutiny where there was an official policy indicating that the officer had no expectation of privacy pertaining to the text messages and the officer was specifically told that his messages could be audited.

In addition, and perhaps most notably, the Court specifically declined to issue "[a] broad holding concerning employees' privacy expectations vis-a-vis employer-provided technological equipment," on the basis that such a decision "might have implications for future cases that cannot be predicted." As such, and with no "bright line" rule to apply regarding standards pertaining to electronic privacy in the workplace, the precedential value of this case might well be limited. Rather, the Court has tipped its hand that any future analysis may be fact sensitive and ultimately depend on the specifics of the City's official privacy policy and the enforcement of such policy. Therefore, in our assessment, it is essential that municipalities develop, implement and consistently apply a reasonable policy regarding the city's ability to monitor and regulate electronic messages in the workplace.

## The Claims File



-Craig Blair

Annually, in preparation for the coming year's budget, the Claims Department updates the loss experience for each member and compiles these numbers for the loss exhibit provided at the September Board Meeting. In order to accomplish this task, I will be meeting with our defense counsel regarding all open lawsuits and be conducting claims audits with each member city. As always, total incurred losses have the greatest effect on a member's pool contribution since this factor is weighted three times.

An update of the pool's overall loss experience for the last five years for all lines of coverage: property, liability and auto, revealed that 43% of all claims are due to auto related losses. These claims constitute about 32% of total incurred losses. Important to note, however, is that 50% of these claims are considered "preventable accidents." (Rear-end and backing losses are two examples.) These "preventable accidents" are significant as they represent 40% of the total incurred for auto.

During my upcoming audits, I will attempt to identify those member cities whose losses fall into the "preventable" category and discuss with them how controlling such claims can reduce their annual pool contribution. One remedy available to all members is the driver training offered through MVRMA's Loss Control Department.

### Thank you!

*Gratitude is the memory of the heart.*

Jean Baptiste Massieu

Thanks for the many flowers, cards and most especially your prayers during the past few weeks. My heart has many memories.

Kathy

## Loss Control Lowdown

- Starr Markworth

Entering underground areas can be extremely dangerous, but you probably weren't aware that just approaching the opening can be dangerous.

Lighter than air toxic gases can catch an approaching employee totally unaware, and the result can be tragic. It is possible to be engulfed in an oxygen deficient gas cloud as the below ground access portal lid is removed.

It takes only seconds to be overcome, and there may be no warning of any kind. The employee may become almost instantaneously unconscious, possibly resulting in his death.

It is extremely important to think and carefully plan out the approach to any underground access. In areas where there are adjacent industrial facilities, it is imperative that considerations are given to the likelihood of dangerous toxins being present.

It is important to protect yourself and your co-workers by learning the safe

practice approach when dealing with a below ground access opening. Become acquainted with the hazards and how to safely overcome the dangers associated with them.

MVRMA has worked with retired Miamisburg Fire Captain and safety professional Billy Ring to develop a custom designed below ground hazards course for our member cities. This course has been designed to provide awareness to any employees who may have the opportunity to remove manhole covers on any type of sewer in your city. The course provides three hours of classroom training as well as one hour of hands-on training. Many of our members have worked through MVRMA to coordinate training on site at their cities, thus making the program convenient and cost effective.

To quote Billy from one of the classes, "Don't have your name and 'dead' used in the same sentence."

Please contact me if you would like to coordinate this program for your employees.

information. However, the more immediate needs that are required with most privacy breaches are 1) forensic expert services, 2) privacy notification cost, and 3) credit monitoring expenses. In addition to these expenses, the Cyber Liability coverage should also pick up inadvertent loss of private information from sources other than your computer and network systems.

Another distinct area of Cyber Liability coverage is media content where the liability coverage includes third party claims or actions resulting from information that your City posts on its website or network. This coverage will pay for claim expenses, defense costs and damages.

So far, we have discussed third party coverage, however, Cyber Liability coverage typically picks up first party or property coverage for damages to your computer and network data from cyber attacks. In addition, the coverage also includes business interruption (Cont. on Page 4 - See ALLIANT)

## 2009 Safety Awards

Prior to the June Board Meeting, the Awards Committee meets to determine the Risk Management/Safety Award winners that will be presented to the full Board for approval at that meeting. To be eligible for an award, a member city must have completed one full year of membership.

The Overall Award is presented to the city with the lowest dollar losses per full-time employee. A plate engraved with the overall winner's name and the year of the awards is added to a plaque which rotates to the winning city. The city may then display the plaque for one year. The runner-up city is presented with a smaller plaque honoring its accomplishment.

Congratulation to the 2009 winners. **The overall winner is the City of West Carrollton** with zero losses. The **runner-up is the City of Tipp City**, also with zero losses, but fewer employees.

Departmental Awards are given to the departments with the lowest dollar losses per full-time employee. Generally, there are several departments in each category with zero losses so the winner is determined by the department with the most employees. The 2009 Departmental Winners will receive a plaque, and their employees will be treated to a breakfast or other celebration in their honor, or they may choose to receive \$250 toward any safety related training that would benefit the department. Individual certificates will be provided for each employee of these departments. The winners are as follows:

**Police: Centerville**

**Fire & EMS: Miamisburg**

**Water & Wastewater: Sidney**

**Parks & Recreation: Blue Ash**

**Streets & Refuse: Springdale**

We would also like to recognize the other departments with zero losses.

Except for the plaque, these departments will receive the same benefits as the winning departments. Congratulations to the following zero-loss departments:

(Cont. on Page 4 - See AWARDS)

## Brokers' Beat...



There has been a great deal of discussion during the last year in the insurance world about Cyber Liability. Alliant was able to include Cyber Liability coverage in this year's renewal of MVRMA's property insurance. So that MVRMA members may better understand this coverage, we are providing the following explanation.

While Cyber Liability covers a number of exposures that are associated with your computer and network systems, the largest exposure addressed by the coverage is the breach of private information released inadvertently from your computer or network systems or the breach of private information that is obtained from these systems through a cyber attack. The privacy portion of the Cyber Liability coverage allows for third party suits or actions that are associated with the release of private

## 2009 Public Risk Achievement Awards

The Public Risk Achievement Awards were added to the Safety Awards Program to honor members with creative and successful risk management programs. There are two categories for these awards. The first category is for Innovation in Public Risk Management. This award recognizes programs that are notably innovative, successful and/or well received. The winner will receive \$1,000. The second category is Outstanding Achievement for a Public Risk Management Program. It recognizes risk management programs that are particularly timely and effective in reducing or controlling losses. The winner will receive \$500. Congratulations to the 2009 winners! At the June 21 Board Meeting, the City of Bellbrook received a check for \$1,000 for its Safety Day Lunch, and the City of Englewood received a check for \$500 for its IT Disaster Recovery Enhancements. Following are excerpts from their applications:

### City of Bellbrook's Safety Day Lunch

**Description:** The city of Bellbrook sponsors an annual Safety Day each October which highlights the City's commitment to safety, as well as community, among employees. Lunch is provided by the City while employees from all departments provide material for the program. It is the City's belief that community among employees plays an important part in safety as many jobs are done as a team. After lunch, the Police, Fire and Service Departments each give a 30-minute presentation on safety in their area of expertise on a topic of their choosing. This encourages teamwork and safety discussions. Presentations include Power Point slideshows and videos.

**Cost of Initiating and Maintaining Program:** \$300 for a hand-held video camera (one time expense); \$150 in food for approximately 35 employees (recurring expense); time and wages for employees preparing the presentations varies.

**Program's Cost Effectiveness:** The Safety Day program has been cost effective because the City spends a nominal amount of money in food and equipment to bring together a majority of our employees for an enjoyable and positive opportunity to stress the importance of safety. The program has encouraged employees to be safety-minded in their work and has given them an understanding of how they have contributed to the City's past years of zero losses and lower insurance costs. After sharing the safety benefits of certain equipment, that equipment has been shared across departmental lines contributing to the cost effectiveness of the program.

**Program Innovation:** The program is innovative because it encourages each department to be creative in presenting safety awareness to their peers. The program also encourages employees to practice speaking in front of larger audiences and gives them a chance to showcase talents they may otherwise not be able use in their regular employment duties.

**Benefits for Others Adopting this Program:** Other members would benefit from adopting this program because it is an easy way to encourage safety; it is cost effective and is adaptable to each city. We all operate differently and this program allows for creativity in making it your own. There are few better ways to encourage safety among employees than to have them be the educators. When they are the ones sharing the message, you know they understand it and take ownership of safety in their respective areas.

**Other Benefits:** In particular, benefits derived for the City have been a stronger relationship between management and line employees. Employees across the City are able to see that management truly cares about safety in the workplace by using this lunch as a way to communicate that message. It also lets management see line workers present their knowledge of safety. Line workers sometimes do not realize the impact that safety has on the financial condition of the City; therefore, at this lunch every year, management has the opportunity to communicate the value of safety when it comes to insurance premiums and the cost of doing business. Line workers have commented that it makes them feel more responsible when they can see where safety plays a part

in the financial health of the city and is a team effort for all departments.

## City of Englewood's IT Disaster Recovery Enhancements

**Description:** Information technology personnel have improved the City's disaster recovery capabilities by implementing a backup data center. If a catastrophe, such as a fire, damaged critical technology infrastructure at the government center rendering it inoperable, server operations such as email, departmental record keeping, and police and fire mobile data applications could be restored in a matter of hours via the backup data center located in a remote fire station. Data is synchronized in real time between the two locations so the threat of losing irreplaceable data is all but eliminated.

**Cost of Initiating and Maintaining Program:** First year costs: \$42,000 for server hardware and software licensing. Annual operating costs: \$5,500 for software support

**Program's Cost Effectiveness:** The servers purchased for this project have an expected minimum lifetime of seven years. By consolidating data and workloads, the city has been able to decommission seven physical servers. It is estimated that the city has saved \$20,400 in expected server replacement costs during the next seven years. Additionally, by reducing the number of servers, this project has reduced electricity usage and is expected to save \$3,500 in utility costs. The remaining expenses are justified because of the cost of reducing the risk of lost data and lost employee productivity.

**Program Innovation:** This method of protecting data and reducing downtime in an emergency is not a new idea in the private sector. The public sector, smaller organizations in particular, continues to trail the private sector in adopting new technologies. As technology improvements and competition continue to drive down prices, advanced technologies such as virtualization and geocustering become more affordable to smaller organizations. This project is innovative because it applies advanced disaster recovery and data protection practices in a manner that is affordable and manageable for a small organization.

**Benefits for Others Adopting this Program:** The more dependent an organization is on technology, the more it can stand to benefit from disaster recovery strategies that reduce computer downtime and prevent data loss. By replicating data in real time, the potential for data loss is greatly reduced compared to traditional tape backup methods that run once a night. For members relying on nightly tape backups to protect critical information, a server failure at 5 p.m. could result in the loss of an entire business day's worth of information and employee effort. Englewood's disaster recovery solution limits the amount of data that can potentially be lost to approximately five minutes worth.

**Other Benefits:** In addition to the data protection enhancements, this solution improves the city's ability to provide critical information to public safety personnel in the field. Police and fire vehicles are equipped with laptops and data connections that allow them to access information and communicate with dispatchers and other officers. Many of these services are provided by servers at the Englewood government center. This disaster recovery solution gives the city the ability to transition critical public safety applications to the standby server located at the remote fire station in less than two hours with minimal loss of data. This project keeps public safety personnel working effectively in the field even in the event of a failure or disaster in the government center server room.

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## Awards (Cont./Pg. 3)

### Police

Bellbrook, Indian Hill, Madeira,  
Montgomery, Piqua, Tipp City, West  
Carrollton, Wilmington

### Fire & EMS

Bellbrook, Blue Ash, Englewood, Piqua,  
Tipp City, Vandalia, West Carrollton

### Water & Wastewater

Bellbrook, Indian Hill, Miamisburg, Tipp  
City, Vandalia, West Carrollton,  
Wilmington, Wyoming

### Parks & Recreation

Centerville, Indian Hill, Madeira,  
Montgomery, Sidney, Springdale, Tipp  
City, West Carrollton, Wyoming

### Streets & Refuse

Madeira, Tipp City, West Carrollton,  
Wyoming

Safety Performance Awards are presented to departments with three or more consecutive years of zero losses. Plaques for the period 2007-2009, or longer, will be presented to the following departments:

### Police

West Carrollton (3 years)  
Bellbrook, Indian Hill & Madeira (5  
years)

### Fire & EMS

Piqua & Tipp City (3 years)  
Bellbrook (5 years)

### Water & Wastewater

Bellbrook & Indian Hill (5 years)  
Wyoming (6 years)  
Vandalia (16 years)

### Parks & Recreation

Springdale & Tipp City (5 years)  
Montgomery (9 years)  
Madeira (15 years)

The Standard of Excellence Award is given to cities with \$100 or less per employee. Plaques were presented to these cities at the June 21 Board

Meeting. The following cities were the 2009 recipients:

Madeira (\$0/employee)  
Tipp City (\$0/employee)  
West Carrollton (\$0/employee)  
Blue Ash (\$15.24/employee)  
Kettering (\$34.37/employee)  
Bellbrook (\$47.71/employee)  
Centerville (\$48.56/employee)  
Miamisburg (\$89.78/employee)  
Piqua (\$91.17/employee)

Public Risk Achievement Awards were added to the program this year. Please see the insert for more information.

**Congratulations to all our 2009 winners!**

## Alliant (Cont./Pg. 3)

and extra expense from cyber attacks. However, this first party coverage will probably not respond to situations where your data and software are not backed up and data reconstruction is required. It is a really good idea to test your backup procedures and systems periodically to ensure they are 100% effective. Typical Cyber Liability coverage also includes coverage for cyber extortion threats.

While some coverage mentioned above may be duplicated by existing MVRMA liability and property coverage, there are other cases where MVRMA will exclude Cyber Liability coverage. Privacy notification, credit monitoring and forensic expert expenses are examples of coverage that would probably be excluded under MVRMA's current liability coverage structure. Destruction of data and software from a cyber attack where physical damage might be questionable is another area where the MVRMA property coverage might not respond. Cyber extortion would certainly not be covered by either the property or liability program. However, all things considered, the addition of Cyber Liability to the MVRMA insurance program will definitely serve to broaden member coverage.

## Coming Events

### August 16-18

AGRIP Institute for Management and Leadership  
Blaine, WA

### September 27

MVRMA Quarterly Board Meeting  
9:30am  
MVRMA Offices

### September 30

Trenching & Excavation  
8:30am-3:30pm  
City of Springboro

### October 19

Open Records (2 sessions)  
8:30-11:30am  
12:30-3:30pm  
City of Mason

### October 18-20

AGRIP Governance & Leadership Conference  
Nashville, TN

## Be Smart When Driving with Your Smart Phone

A recent CareerBuilder survey found that 54% of people check their smart phones while driving

In a University of Utah study of driving and talking on the phone, only 2.5% of test subjects were able to do both safely. For the other 97.5%, the ability to hit the brakes quickly was slowed by 20%, and the tendency to drive too slowly to keep up with traffic rose by 30%. CareerBuilder.com offers these tips:

**Turn off your phone when driving.** Pull over if you need to talk.

**Set priorities.** Discuss the situation with your employer and your family so everyone understands you can't always be connected

**Have a backup.** For work, leave an out-of-office voicemail message with contact information for colleagues who can assist callers.