

# RISKY BUSINESS



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AUGUST 2011

## From the Board Room...



At the June 20, 2011 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims and Incurred Losses Report
- Accepted the 2010 Annual Report
- Approved the PEPPIP renewal for the period 7/1/11-7/1/12
- Accepted the Actuarial Report for the year ending December 31, 2010
- Approved the 2010 Safety Awards (see the article on page 3)
- Approved the winners of the Public Risk Achievement Awards (see the insert)
- Approved increasing the per employee cost to \$10 for Safety Awards celebrations
- Approved a pay increase for the Executive Director
- Approved the Updated Contingency Plan

## FYI

People Who Need People

-Mike Hammond

On June 29, two former Kansas City budget analysts settled their discrimination lawsuit with the city for \$2.8 million. They sued the city and City Manager, alleging race and age discrimination in their dismissal and retaliation in the way their dismissal was handled. The city argued there was

no discrimination and said the dismissal was unfortunate but unavoidable at a time when 75 employees were laid off due to a tough economic period.

A jury sided with the two women and voted to award them \$2.6 million in compensatory and punitive damages. The jury found the women were treated differently and more punitively when they were let go than other employees who were laid off.

The city decided to settle the claim since the jury award did not include the attorney fees or interest payments, and the city would have been obligated to pay those fees in addition to the jury award.

Let's face it, without people, the mission of your city is all promise and no action. Because there is such an emphasis on personnel to accomplish the mission of the city, you are probably well aware of the importance of effective screening, selection, orientation and performance evaluation.

With so much at stake, from your city's reputation to the safety of your citizens and dedicated employees, why is there not a proven "system" for getting human resources decisions "right" every time? That question may be somewhat, if not totally, unrealistic. In the real world, effective human resource management may require a more personal touch rather than "system" thinking.

Because of the rapidly evolving workplace and unprecedented demands placed on public sector managers and employees, we may need to look beyond the numbers, the case studies and the too good to be true systems for managing the people who are so critical to your city's mission. A bit of creativity and willingness to try something new may be well worth the

effort.

Maybe, we should seek out talents in the workplace that include: the capacity to conceptualize a brand-new approach to a long standing issue, the ability to adapt to constantly changing circumstances and the commitment to prepare for a wide range of new possibilities. These are talents that will likely serve us well into the future. Can we adapt our workforce to embrace these talents?

You will be challenged to explore the new world of human resource management during difficult economic times, and MVRMA has resources that can assist you.

- HR Made Simple is an on-line resource library which includes thousands of forms, policies and links updated daily and ready for customization and use. In addition, it has a daily HR Task Section, HR Education Section, HR Topic Modules, Organization Profile Section and an HR Roadmap that is your virtual "to do" list based on your organization's profile. We currently have seven MVRMA members who are testing this on-line resource.
- The Supervisory Development Training Program will soon begin its 8th year. This has been one of our more successful programs. More than 270 local government employees have graduated from this comprehensive 44 hour training course spanning six weeks. It's designed to address every aspect of supervision.
- Best practices, which include an Employment Practices Checklist in HR Management and suggested model Employment Practices Policies, are available for your use in the *MVRMA Handbook*. Additionally, MVRMA (Cont. on Page 4 - See FYI)

## Counselors' Comments



Dinsmore & Shohl

### Ohio Appellate Court Rules Municipality Control of Reservoir is Proprietary Function Which Negates Sovereign Immunity

Recently, the Ohio Sixth Appellate District held that the State's sovereign immunity statute does not insulate a political subdivision from liability for property damage resulting from the political subdivision's improper management of its municipal water system. *Seiler v. City of Norwalk*, 2011 Ohio 548, 2011, Ohio App. LEXIS 474 (Ohio App. 6 Dist. 2011). In *Seiler*, the Plaintiffs alleged their properties flooded in 2006 after a storm and continued to flood as a result of the City of Norwalk's improper management of its reservoirs, namely the opening of spillway gates that allowed water to be released from the City's reservoirs. Plaintiffs asserted claims for negligence, trespass, nuisance and for a writ of mandamus compelling the City to initiate appropriation proceedings regarding the taking of their properties. The City of Norwalk filed a motion for summary judgment, which the Huron Court of Common Pleas granted on the basis that the City was entitled to sovereign immunity under R.C. Section 2744.03(A)(3) and (5) of the Ohio Revised Code.

R.C. 2744.03(A)(3) of the Ohio Revised Code provides that a "political subdivision is immune from liability if the action or failure to act by the employee...that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee." R.C. 2744.03(A)(5) of the Ohio Revised Code provides that a "political subdivision is immune from liability if the injury...resulted from the exercise of judgment or discretion in determining...how to use equipment, supplies, materials, personnel, facilities

and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith or in a wanton or reckless manner."

Despite the fairly broad grant of immunity provided by R.C. 2744.03(A)(3), political subdivisions remain liable for the negligent acts of their employees in carrying out the political subdivisions' proprietary acts.

In reversing the trial court, the Sixth District determined that the operation of a municipal water supply system is a proprietary act pursuant to R.C. 2744.03(G)(2)(c). The Court stated "there is a difference between a municipality that undertakes flood control measures with immunity even if those measures failed and a municipality that controls the flow of water through a water supply system while failing to develop flood control measures."

The Court then explained the opening of a spillway gate, the act at issue in *Seiler*, was not a discretionary act with respect to "policymaking" or "planning" for which R.C. 2744.03(A)(3) provided immunity. Rather, the Court explained that "policymaking" and "planning" were "intellectual activities that result in documentation for future use." The Court then stated that since the City had presented no evidence of a policy or plan pursuant to which the gates had been opened, R.C. 2744.03(A)(3) did not provide immunity.

The Court went on to address the trial court's ruling that R.C. 2744.03(A)(5) immunized the City's actions. In overruling the trial court, the Sixth District reasoned the act of opening a spillway gate was not a discretionary act within the meaning of R.C. 2744(A)(5). The Court explained that "immunity operates to protect political subdivisions from liability based on discretionary judgments concerning the allocation of scarce resources" and that "[immunity] is not intended to protect conduct which requires very little discretionary or independent judgment." The Court then explained that "immunity does not  
(Cont. on Page 4 - See COUNSELOR)

## The Claims File



-Craig Blair

The storms that passed through the area in April and May brought record rainfall, and several packed high winds causing serious damage. On May 25, the Dayton area suffered its most severe hail storm in more than ten years, with hail up to 3" in diameter. Many cities in the region had to deal with power outages and debris removal.

MVRMA had five members affected by the hail storm. Two cities, Bellbrook and Centerville, were hit the hardest. Bellbrook had 10 buildings and 15 autos damaged while Centerville had 5 buildings and 38 autos damaged. The total loss for all members will exceed our \$250,000 self insured retention. The balance of the damages will be covered by PEPiP.

Hopefully, all our members have catastrophic or severe weather response plans in place. If not, it would be a good time to revisit this issue in preparation for future events.

One of the first things a city should consider is emergency repairs to buildings, including tarps on roofs and boarding up windows to mitigate any further damages from water leaks. Roadways need to be cleared of debris, and all traffic control devices need to be checked for public safety concerns.

The plan should include a list of local contractors for building and auto repairs. Having a good relationship with these businesses is important because (1) there will be a trust factor that costs will be reasonable; (2) there will be a timely response and (3) more than one contractor may be needed to complete the work in a reasonable timeframe. Contractors will be overwhelmed after events like this. We are six weeks out from the hail storm, and repairs are just now beginning. It may be months before the work is completed.

MVRMA has coverage for all your autos, building and other structures. Report storm damages to MVRMA as soon as possible. We're here to help.

## Loss Control Lowdown

- Starr Markworth

With tighter city budgets and staff working harder to get everything done, often times with fewer employees, it is easy for safety to become a lesser priority. How can you improve safety when you don't have a safety director and have only a small training budget? Hopefully, there are a few tips in this article that will help you do just that.

The first step in improving safety is increasing training on a regular basis. MVRMA has several resources that are available for your use in order to reduce some of the expense. For a minimal cost to the city, MVRMA sponsors safety training throughout the year. If your city is in need of specific training, but we have not offered it recently, please contact me. We will try to accommodate your needs.

MVRMA is working with Ohio BWC, LTAP and other government agencies to offer reduced-cost or free training to our member cities. The registration

information will be sent out through email. If you would like to get on our training email distribution list, please let me know, and we will add you. You can send your email request to [smarkworth@mvrma.com](mailto:smarkworth@mvrma.com).

MVRMA also has an extensive video library with more than 300 videos/DVDs that can be borrowed by the city with only the cost of return shipping. Visit [www.mvrma.com](http://www.mvrma.com) under training and loss control to see the most up to date listing.

The second step is empowering your staff to take safety seriously. When employees feel comfortable in reporting a safety hazard, they will become safer workers.

The third step is creating a positive safety culture. When employees believe in safety for themselves and others, they perform their daily tasks in a safer manner. Working in a safe manner must become an integral part of the job, and not the exception. Some MVRMA cities sponsor annual safety events like a safety picnic or safety and health fair (Cont. on Page 4 - See LOWDOWN)

## Brokers' Beat...



One of the issues that face municipal governments is the financial support of their volunteers when they sustain an injury while participating in activities on behalf of the city. One solution is to add volunteer coverage under Workers' Compensation, which is permissible through the State Fund of Ohio. But, this option can be expensive and requires extra record keeping. Injuries to volunteers can also impact the city's overall Workers' Compensation loss experience resulting in higher premiums. Thus, many cities choose to decline the Workers' Compensation volunteer option and then ignore the issue and do nothing.

A reasonable alternative is available to the city through the purchase of accident insurance to cover some of the financial exposure for volunteer injuries. Volunteer accident insurance is

relatively inexpensive and readily available in the insurance marketplace. For volunteers who sustain injury in the course and scope of their activities with the City, these policies can typically cover medical expenses, accidental and dismemberment benefits and often pay a disability benefit if the volunteer is hospitalized or totally disabled.

There are some limitations under these policies including exclusions dealing with sickness, disease, extra hazardous activities and accidents involving the misuse of alcohol or drugs. The policies generally provide benefits excess of other valid and collectable insurance such as health insurance but will cover deductibles and co-pays. Coverage under these policies also tends to reduce benefits for individuals over the age of 70. But, overall, these accident policies tend to be inexpensive and do provide some measure of financial relief for volunteer injuries.

(Cont. on Page 4 - see ALLIANT)

## 2010 Safety Awards

Following the recommendation of the Awards Committee, the MVRMA Board recently approved the 2010 Risk Management/Safety Award winners. The Overall Award is presented to the city with the lowest dollar losses per full-time employee. A plate engraved with the winner's name and the year of the award 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.

Congratulations to the **overall winner, the City of Wyoming**, with zero losses. **The runner-up is the City of West Carrollton** with losses of \$6.49 per employee.

Departmental Awards are given to the departments with the lowest dollar losses per full-time employee. If there are several departments in each category with zero losses, the winner is determined by the department with the most employees. The 2010 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. The winners are as follows:

**Police: Sidney**

**Fire & EMS: Piqua**

**Water & Wastewater: Wilmington**

**Parks & Recreation: Mason**

**Streets & Refuse: Wyoming**

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:

*Police*

**Bellbrook, Englewood, Montgomery,  
West Carrollton, & Wyoming**

*Fire & EMS*

**Bellbrook, Englewood, Tipp City, West**  
(Cont. on Page 4 - See AWARDS)

## **2010 Public Risk Achievement Awards**

The Public Risk Achievement Awards recognize member cities which have developed creative and successful risk management programs. There are two categories: (1) Innovation in Public Risk Management and (2) Outstanding Achievement for a Public Risk Management Program. The first category acknowledges a program that is notably innovative, successful and/or well received. One winner is named, and the prize is \$1,000. The second category recognizes programs or activities that are particularly timely and effective in reducing or controlling losses. A maximum of two prizes may be awarded annually, and the winners receive \$500 each.

At the June 20 Board Meeting, the City of Springdale received a check for \$1,000 for its Aquatic Safety Assurance Program, and the Cities of Montgomery and West Carrollton received checks for \$500 for their Department Safety Audits and Use of Yaktrax, respectively. Congratulations to all three winners!

This year we received a record number eight applications for consideration. We appreciate the overwhelming response and would like to share a summary of each of the programs submitted. We have included contact information for anyone wishing additional details.

### **City of Springdale's Aquatic Safety Assurance Program (A.S.A.P.)**

To promote pool safety and reduce typical risks associated with all swimming pools, the Springdale Parks and Recreation Department created A.S.A.P. It provided a comprehensive approach to maintaining a safe community pool by elevating the safety habits and aquatic knowledge of pool staff and visitors. It included five in-service training sessions to help lifeguards stay sharp and current. Pool visitors were asked to complete a survey about what they observed while at the pool with regard to potentially unsafe or dangerous conditions and staff preparedness and vigilance. A campaign was instituted to advocate the use of United States Coast Guard approved lifejackets, and the jackets were available at no charge to non-swimmers visiting the pool. Lastly, a variety of flyers, posters and a coloring book were used to promote safe swimming habits. By including management, lifeguards and pool visitors in the process, everyone took ownership in developing a safe swimming environment. The skills learned during this program translate to safer swimming, not only at Springdale's pool, but also at other aquatic facilities and backyard pools.

Contact: Sharon Casselman, Asst. Recreation Director - 513-346-3910

### **City of Montgomery's City-wide Safety Audits**

At the city of Montgomery, safety audits are conducted on a random basis for the purpose of health, safety and fire hazard identification. The audits are conducted by the city's Employee Advisory Safety Team which is comprised of at least one member from each department. Assessments are made for compliance to applicable regulations and fire codes as well as the detection of unsafe hazards or work practices. A checklist is completed for each audit, and if a hazard is noted, a recommendation is made for corrective action. If a life safety hazard is noted, it is corrected immediately. This proactive safety management activity provides a means for identifying potential problems before they have an impact on safety. Safety audits reduce the potential for costly injuries, equipment and employee down time or lawsuits. The changes made as a result of the audits have made the City of Montgomery a safer place to work.

Contact: Ben Shapiro, Fire Department - 513-985-1633

### **City of West Carrollton's Use of Yaktrax**

After several injuries related to employees slipping on ice or snow, the City of West Carrollton purchased traction devices called Yaktrax that easily slip on boots or shoes. This product is durable, lightweight and small enough to be stored in a pocket. Yaktrax allow a user to walk or run normally. After utilizing the product, related injuries dropped from five to one, and the one injured employee admitted he was not wearing Yaktrax when he fell. The Police, Fire, Service, Building Inspection and Parks Departments now utilize Yaktrax. The cost of injury hours saved in one year paid for the product!

Contact: Teresa Brooks, Human Resources - 937-859-5183

### **City of Miamisburg's Customized Safety Plans**

At the City of Miamisburg, each city facility was evaluated for and equipped with the appropriate number and placement of fire extinguishers and first aid kits. AEDs were purchased for the Civic Center concourse, the Senior

Adult Center, the Aquatic Center and police cruisers. A safety plan diagram was developed for each office area noting primary and secondary escape routes, locations of severe weather safe zones, fire extinguishers, fire alarm pull stations, first aid kits and AEDs. These diagrams were then framed and mounted in a central, highly visible location. Diagrams were also tailored for each employee's work station. As part of the program, employees were trained to use the AEDs and fire extinguishers, and individual departmental meetings were held to familiarize employees with the plan specific to their location.

Contact: Kathy Weisgarber, Human Resources - 937-847-6465

### **City of Centerville's Identify, Plan, Execute--- Providing Community Safety**

A 2010 objective for the Centerville Police Department was to be aware of community safety conditions which require the attention of another city department or service agency. In 2010, 678 service requests were made by members of the Police Department to another agency within the city. Keeping the street lights operable, stop signs intact and debris off the roadway are a few examples of service requests. Knowing that minor details are being identified makes it easier to plan for major events such as a 5K race, a parade, a festival, a band concert or long-term construction, as well as unscheduled events like natural disasters, bomb threats, highway accidents, major fires, etc. Meetings to prepare for major events are attended by members of several city departments, and the plans they develop are part of the city's Emergency Operation Plan. These plans are National Incident Management System (NIMS) based and are reviewed annually and updated as needed. This program improves inter-departmental cooperation as well as providing safer conditions for citizens.

Contact: Capt. Mark Casey, Police Department - 937-428-4707

### **City of Centerville's Healthy Lifestyle**

The Centerville Police Department encourages all officers to adopt a healthy lifestyle by participating in its voluntary fitness and wellness program. The department has a state of the art fitness center and two certified Physical Fitness Specialists who complete an individual fitness and wellness assessment for every participant. The Specialists maintain contact with the participant, offer support and monitor his progress. A bi-annual physical fitness test is administered by the Specialists using recommended fitness tests established by the Cooper Institute. This demanding profession can affect employees in many ways. By adopting a "healthy lifestyle" the employee is given options to address his health concerns.

Contact: Capt. Mark Casey, Police Department - 937-428-4707

### **City of Centerville's Safeguarding of Personnel Records**

Prior to the establishment of a human resources department, individual departments maintained their own personnel files. These files were housed in several city-owned facilities with no consistent records management. To allow for efficient and safe storage of these records, an existing 75 square foot storage room was converted to a two-hour fire-rated enclosure. Centrally storing the personnel files reduces the number of people having access to these sensitive (sometimes confidential) records and helps ensure the city's policies regarding retention, destruction and employment inquiries are closely followed.

Contact: Ginger Yonak, Human Resources - 937-428-4714

### **City of Bellbrook's Employee Injury Packet**

In September 2010, the City of Bellbrook implemented its first comprehensive employee injury packet. The packet provides the forms and information necessary for the key participants in an injury situation: the employee, the supervisor and the administration office. The employee section includes an injury questionnaire, a medical consent form and Ohio Bureau of Workers' Compensation forms for medical providers to complete. The supervisor section includes a checklist of responsibilities, an investigation report and witness statements. The administration section includes its own checklist to insure proper procedures have been followed and the injury has been correctly reported to the Bureau of Workers' Compensation. Also included are a Return to Work Modified Duty Offer and a Salary Continuation form which may be used as needed.

Contact: Don Buczek, Administration - 937-848-4666

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## Awards (Cont./Pg. 3)

- Carrollton, Wilmington & Wyoming**  
*Water & Wastewater*
- Englewood, Indian Hill, Mason, Miamisburg, Vandalia, & Wyoming**  
*Parks & Recreation*
- Blue Ash, Indian Hill, Madeira, Montgomery, Tipp City, West Carrollton, Wilmington & Wyoming**  
*Streets & Refuse*
- Bellbrook, Madeira, Tipp City & West Carrollton**

Safety Performance Awards are presented to departments with three or more consecutive years of zero losses. Plaques for the period 2008-2010, or longer, will be presented to the following departments:

- Police*
- West Carrollton (4 years)**
- Bellbrook (6 years)**  
*Fire & EMS*
- Piqua & Tipp City (4 years)**
- Bellbrook (6 years)**  
*Water & Wastewater*
- Indian Hill (6 years)**
- Wyoming (7 years)**
- Vandalia (17 years)**  
*Parks & Recreation*
- West Carrollton (3 years)**
- Tipp City (6 years)**
- Montgomery (10 years)**
- Madeira (16 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 2010 recipients:

- Wyoming (\$0/employee)**
- West Carrollton (\$6.49/employee)**
- Englewood (\$15.38/employee)**
- Centerville (\$66.56/employee)**
- Montgomery (\$72.57/employee)**
- Springdale (\$74.32/employee)**
- Wilmington (\$83.40/employee)**

Public Risk Achievement Award winners are listed in the insert.  
**Congratulations to all our 2010 winners!**

## FYI (Cont./Page 1)

offers training on many timely topics.

Whenever possible, our goal is to avoid an employment claim like the one above, but if faced with such a claim, to be in a position to successfully defend it for our member.

*Some of the ideas expressed in this article were adapted from an article written by Melanie Lockwood Herman in the Nonprofit Risk Management Center eNews.*

## Counselor

### (Cont./Pg. 2)

apply to the negligence of employees in the details of carrying out the activity even though there is discretion making choices." Accordingly, the Court ruled that R.C. 2744.03(A)(5) was not applicable to the City's opening of the spillway gate and that no provision of R.C. 2744.03 provided immunity from the plaintiffs' claims of negligence, trespass and nuisance.

The Court of Appeals also remanded the case to the trial court to determine whether there was a "taking" of the Plaintiffs' properties since issues of fact existed as to whether an appropriation of the owners' land had occurred due to the design and operation of the City's reservoirs.

At first glance, the *Seiler* case might appear to some to be a radical reduction in the immunity of political subdivisions. However, in reality, *Seiler* is merely a reiteration of the long standing limitations on the immunity provided by R.C. 2744.03. Immunity pursuant to R.C. 2744.03 provides a relatively broad defense to many claims against municipalities; however, as evidenced by the Court's decision in *Seiler*, that immunity is not limitless.

## Alliant (Cont./Pg. 3)

Alliant recently placed one of these policies for a MVRMA member with a cost per volunteer of \$6 per year. The only administrative requirement was that the city keep track of the total number of volunteers and report that

## Coming Events

### August 9

Work Zone Safety  
Blue Ash Service Center

### August 31-October 12

Wednesdays  
Supervisory Training  
MVCC

### September 1

Ethics and Sunshine Laws  
Centerville Police Department

### September 26

MVRMA Quarterly Board Meeting  
9:30am  
MVRMA Offices

number to the carrier at each renewal.

While this approach does not provide the scope of volunteer injury coverage offered under The State Fund of Ohio, it is an economical way to provide financial support and protection to volunteers, while conveying a strong message of commitment to those individuals who donate their time and energy to your city.

## Lowdown

### (Cont./Pg. 2)

for employees to promote safety.

The final step is making the responsibility of safety part of the supervisor's job description. Many of our cities have had success in including safety as an area that is evaluated during the supervisor's annual review. This allows the city to formally review the success of the department's safety program through the supervisor's achievements.

Whether the city incorporates one or all of these steps in improving safety, it is a step in the right direction.