

RISKY BUSINESS

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FYI

Closure of Loss Year 26 (2014)

By Tom Judy

The practice of returning all unused loss funds, with interest, is one of the many benefits of MVRMA membership. At their June meeting, the Board of Trustees voted to close Loss Year 26 (2014), resulting in a refund of about \$890,000 to the member cities. Total surplus loss reserves of \$20.6 million have now been returned to the members from the 26 closed loss years.

The initial funding for each loss year is determined through an analysis performed by MVRMA's actuary. The objective of this analysis is to determine a funding amount that will provide a high level of confidence that it will be sufficient to pay that year's claims and losses.

Once a loss year's funding has been set, the members pay their share as determined by the Pool Contribution Factor (PCF) formula. Claims and losses are deducted from the loss year in which the underlying event occurred. Meanwhile, balances in the loss funds earn interest.

It is highly unusual, but if the funding for a loss year would be insufficient to pay that year's claims and losses, the Shock Loss Fund would make up the difference. By far the more common result, however, is that there is a sizable balance remaining after the loss year's claims and suits have all been resolved. That balance, including interest earned, is returned to the member cities in the same proportion in which they contributed to the loss year.

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FYI (continued)

The limit of coverage for the 2014 loss year was \$10 million per occurrence. (The limit was increased to \$12 million in 2016.) The pool's resources covered any liability claims up to \$500,000 and property claims up to \$250,000. Claims exceeding those thresholds were covered by reinsurance or excess insurance policies purchased by the pool.

The refund of \$890,000 represents 35% of the \$2,550,000 contributed by the members to Loss Year 26. The average refund percentage for all loss years is 53%.

Congratulations to all the members. These refunds are a direct result of your exemplary risk management practices.

2019 Risk Management Performance Awards

At the June 2019 meeting members were recognized for their loss control successes.

The Standard of Excellence Award is earned by member cities who incur claims losses less than \$100 per full-time employee for the year. The 2019 Standard of Excellence Award winners were the cities of Piqua, Tipp City, Troy, Vandalia, and Wyoming. The City of Bellbrook received special recognition as Overall Winner.

Members' departments with zero losses for the year receive recognition in the form of a breakfast or other celebration. A total of 36 of our members' departments qualified for this award.

Special recognition is given to departments with three or more consecutive years with zero losses. These departments are presented with a plaque commemorating this achievement. Departments so recognized were:

City/Department	Consecutive Zero Loss Years
Piqua Parks / Recreation	3
Vandalia Water / Wastewater	3
Troy Fire	3
Bellbrook Fire	4
Madeira Parks / Recreation	4
Indian Hill Police	5
Tipp City Streets / Public Works	5
Indian Hill Parks / Recreation	6
Vandalia Parks / Recreation	6
Wilmington Fire	6
Bellbrook Water / Wastewater	7
Wyoming Parks / Recreation	11

Congratulations to the award winners and their employees for a job well done.

Loss Control Lowdown...

Training Amidst Covid-19 - Effective Safety Training

Starr Markworth

In the best of times, workplaces can get sidelined by weather events, emergencies and other unforeseen challenges that impact workload and employee schedules.

In 2020, we have been faced with a major unexpected influence that is forcing immediate changes with enormous impacts—the coronavirus COVID19 pandemic.

Given all the competing elements, it is easy to take an “it-won’t-happen-here” mentality, postpone all but non-essential training, and hope for the best. However, on-the-job accidents, injuries, illness, and fatalities bring human tragedy to your City. Furthermore, sick, or injured employees can mean a loss of workforce, missed deadlines and an unreliable reputation.

According to a report by the Bureau of Labor Statistics, in 2018 (the most recent year for which the data has been compiled), 37 percent of the “days away from work” cases were due to nonfatal workplace injuries and illnesses resulting in a visit to a medical facility—and there were nearly 334,000 of these cases.

When it comes to fatal work injuries, there was a two percent increase from 2017 in fatalities, but the shocking difference comes in the increase among minority populations—16 percent among African Americans, the highest total since 1999, and six percent for Hispanic or Latinos. The fatal work injury rate for those over age 65 is still more than double that of workers of all ages in total.

By necessity, there may always be a level of risk in safety sensitive workplaces. What can change is how organizations prepare their employees for these risks? Ongoing training in specific job duties, equipment, and safety/OSHA topics help to reduce the likelihood of accident and injury.

The challenge now for all of us becomes how to find safe ways to continue training during the COVID-19 pandemic.

MVRMA have some resources that are available to the member cities that may assist in meeting your training needs.

Wumbus online training videos are available at no charge to MVRMA members. These videos are a great resource to supplement your ongoing training programs as well as additional instruction for those who may need some remedial or additional training. Members can access the video library [here](#) and please contact me if you would like to get an account established.

MVRMA also sponsors an online training program through Target Solutions. MVRMA offers an annual subscription for only \$300 per year to any MVRMA member. For the one annual fee, members will have access to the MVRMA training catalog and an unlimited number of employees may utilize the training program. The MVRMA training catalog includes: Driver Training, Human Resources, OSHA/Safety Compliance and Supervisory training.

In addition to those resources, I am happy to assist members in developing in-house training plans and programs that will meet your needs.

Counselor's Comments

By Surdyk, Dowd and Turner

The Ends Justify the Means: Ohio Supreme Court relies on Broad Interpretation of “transmit” in R.C. 149.43 for Officials to electronically provide Public Records

The Ohio Public Records Act details how to request and transmit public records. The Ohio Supreme Court of Ohio has expressly directed public officials that the records they possess belong to the people. Within specified limitations, the Act allows anyone to inspect and obtain copies of public records prepared, possessed, used by, or in the control of any public office. This access to government information is fundamental to our system of open government, and to the rights of citizens to be informed about the actions of public offices on matters of public concern. Anyone, including individuals, groups, associations, corporations, firms, partnerships, or organizations, may obtain access to government-held information.

The Ohio Supreme Court recently issued a decision that embraces a broadened interpretation of the means that public officials may use to transmit public records to requesting parties. In *Municipal Construction Equipment Operators' Labor Council v. City of Cleveland*, 2020-Ohio-3197, the attorney for a union emailed a public records request to the City of Cleveland seeking “an emailed copy of the application files of and test reports for” a list of people who had applied for an open position with the City. Less than 3 weeks later, the City of Cleveland sent to the union’s

attorney an email with a hyperlink to the responsive records. The email included instructions similar to the following: “[p]lease log in to the *Cleveland Public Records Center* at the following link to retrieve the appropriate responsive documents.” The email further noted that the union had 30 days in which to view and download the responsive documents.

Days later, the union filed an original action for a writ of mandamus with the Eighth District Court of Appeals to compel the City of Cleveland to release the public records related to the job posting. After the case was referred to mediation, in filing its respective certification with the court, the union maintained that the City of Cleveland had not fully satisfied its records request. In filing its own certification, the City of Cleveland maintained it had satisfied the request. The Eighth District Court of Appeals concluded that the City of Cleveland produced all records responsive to the union’s request, and was further not persuaded by the union’s argument that the City of Cleveland’s hyperlink to the copies of records via email did not constitute a transmission of the records pursuant to R.C. 149.43. Accordingly, the Eighth District Court of Appeals held that the union’s complaint for writ of mandamus was moot.

Counselor's Comments

By Surdyk, Dowd and Turner

In granting certiorari, the union argued to the Ohio Supreme Court that the City of Cleveland had failed to comply with its duties to “transmit” copies of the requested records by email in accordance with R.C. 149.43. Ohio Revised Code § 149.43(B)(7) (a) provides that when a public records request is made, the public office “shall transmit” copies of the records “by United States mail or by any other means of delivery or transmission within a reasonable period of time.” The union argued that R.C. 149.43 does not require it “to do anything to receive the produced record[,]” and therefore, by merely emailing a hyperlink to the union’s attorney, which required the union to sign in to the City of Cleveland’s server to access, view, and download the records, the City of Cleveland failed to both “transmit” the records and provide copies in accordance with the union’s choice of receipt, i.e., directly by email.

The Ohio Supreme Court disagreed with the union, and held that it “ha[d] not established that Cleveland violated either duty.” Specifically, the Ohio Supreme Court held that “the fact that the union had to click on a link in the city’s emails to view and download the responsive records does not mean that Cleveland failed to ‘transmit’ those records.” Although not defined in R.C. 143.43, by according “transmit” with its plain and ordinary meaning, the Ohio Supreme Court held that the City of Cleveland “transmitted copies of the responsive records to the union by sending emails with hyperlinks that allowed the union to view and download copies of the records.” The Ohio Supreme Court agreed with the Eighth District Court of Appeals’ decision to dismiss the union’s

complaint for writ of mandamus as moot since “there is little difference between clicking on a hyperlink in an email and clicking on an attachment to an email[,]” that any other interpretation would be “overly technical[,]” and further that “[i]n the end, both methods provide the requester with the responsive records.”

Effect of *Municipal Construction Equipment Operators’ Labor Council v. City of Cleveland*

The Ohio Supreme Court’s decision sets precedent regarding the electronic transmission of public records. While the requesting party continues to have the opportunity to preface the preferred method they wish to receive public records, if the requesting party chooses email delivery, a political subdivision is now permitted to provide the public records by way of a hyperlink to a third-party cloud storage system for the requesting party to view and download the records. Such a decision is quite beneficial to political subdivisions, since it provides them with an efficient, cost-effective approach to respond to public records requests. It further permits political subdivisions to expand their use of cloud-based storage systems to respond to large, extensive public records requests, instead of merely relying on multiple sets of emails to transmit limited numbers of PDFs requesting parties. Quite simply, the ends justify the means regarding the transmission of public records to requesting parties.



Broker's Beat

How Current Events Could Shape The Insurance Market

The Coronavirus and Black Lives Matter Protests have disrupted daily life for many and could very well shape the future of the insurance market.

"Lloyd's Suggests Coronavirus Will Likely Be The Most Expensive Insurance Event in History" (Insurance Business) and some industry observers have predicted the insured losses to be upward of \$100 billion. The pandemic is expected to drive the hard market through 2021, affecting all buyers of commercial insurance. The industry was quick to respond with "communicable disease" and "organic pathogens" exclusions. In response, Congress is discussing the Pandemic Risk Insurance Act (PRIA) to provide a financial backstop for insurance companies to offer coverage for pandemics. The last time Congress intervened was after 9/11, when the Terrorism Risk Insurance Act of 2002 (TRIA) was enacted.

"Insurers May Rethink Property Risk After Unprecedented Losses from Riots" (Claims Journal). The civil disturbance that started in Minneapolis after the killing by police of George Floyd spread to 20 other states — an unprecedented property insurance catastrophe that will likely impact policy renewals and could even persuade some insurers to exclude coverage for damage caused by riots, executives for Verisk's Property Claim Services said. The biggest driver impacting the liability market has been "social inflation" with exponential increases in jury verdicts and liability claim settlements. Law Enforcement Liability could be the next shoe to drop. Re/insurer appetite for municipalities with law enforcement exposure could change dramatically resulting in diminished capacity and increased rates.

These are unprecedented times and there are many more questions than answers at this point, but one thing we know for sure is the events that have unfolded so far in 2020 will play a role in shaping the future of the insurance market.



The Claims File...

Craig Blair

Questions often arise about the processing of a claim for a vehicle that is considered a total loss. Once reported to MVRMA, an appraisal company will be contacted to complete an inspection. MVRMA will process the sale of the salvage and collection if a third party is found at fault. The city would need to send the signed and notarized title to MVRMA for processing. If a police or fire unit is involved, the city would also need to remove all equipment prior to pick-up by the salvage company.

The Board approved a slight change to the MVRMA Claims Reporting Policy at its June 2020 meeting. The requirements for reporting claims are now as follows:

- (1) All third party (damages to others property) claims, regardless of the dollar amount.
- (2) First party (damages to city property) claims, including auto physical damages, if the loss exceeds or potentially exceeds **\$2,500 (previously \$1,000)**.

Members must report lawsuits to MVRMA within forty-eight (48) hours of receipt and all other claims within ten (10) business days from the date they receive the notice of the claim.

If a member has any claims-related questions, please contact the Claims Manager or consult the MVRMA Handbook at www.mvrma.com.

Calendar of Events

Upcoming Training Events

Due to COVID-19, training events will be scheduled at a later date.

Upcoming Board Events

Committee Meetings (at MVRMA Office, 3085 Woodman Drive, Suite 200, Kettering)

Risk Management - September 3rd, 10:00 AM

Finance - September 3rd, 1:30 PM

Board Meeting

September 21st, 9:30 AM at Home2 Suites, Centerville

From The Board Room

- Approved revisions to: Litigation Management Policy, Cash and Investment Policy, Purchasing and Contract Policy
- Approved AGRiP Standards Recognition Application
- Repealed the Disposal of Surplus and Asset Inventory Policies
- Adopted Asset Accounting and Control Policy and Business Continuity Policy
- Approved the 2019 Annual Report
- Accepted the 12/31/19 Actuarial Report
- Approved the 2020-2021 APiP Property Renewal and Property Coverage Document
- Approved a 5-year contract renewal with Alliant for brokering services
- Approved a 5-year contract renewal with the Auditor of State and Julian & Grube for audit services
- Approved Closure of LY26 (2014) and refund to members
- Approved nomination of Emily Christian, Miamisburg as Vice President of MVRMA Board of Trustees
- Approved 2019 Awards of Excellence and Zero Loss Awards