

# THE POOL CUE

Volume XVIII Issue 12 May 2012

## MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

### MCRCSIP MISSION STATEMENT

"The Mission of the Michigan County Road Commission Self-Insurance Pool is to administer a self-insurance program and to assist members with risk management efforts."



Our 28<sup>th</sup> Annual Membership Meeting will be held at the Soaring Eagle Resort in Mt. Pleasant on Wednesday, July 18 and Thursday, July 19.

The Wednesday Workshop for this year is "POOLING OUR SAFETY IDEAS", and features many of our Members' ideas to improve their road commissions and better manage risk management. The workshop starts right after lunch, at 1 p.m., and will address the following topics:

- **Establishing an Effective Safety Program**  
Three or four of our Members explain how they made their safety programs better. Coordinated by Mike Shultz, MCRCSIP Director of Loss Control.

- **Buildings and Equipment Modifications**  
Impressive ideas for improving your buildings and equipment as demonstrated by our Members. Presented by Mike Phillips, MCRCSIP Senior Loss Control Specialist.
- **Documents for Defense**  
Mark Jahnke, Specialty Claims Services, Inc., summarizes how certain documents can help defend your road commission.
- **Positive Community Involvement Ideas**  
Dorothy Pohl, Managing Director of the Ionia County Road Commission and MCRCSIP Board Member, will lead a discussion of ideas for successful interactions with your community.
- **Low Cost Traffic Safety Ideas**  
A compilation of good ideas to improve traffic safety presented by Tim Haagsma, Kent County Road Commission Safety Director and MCRCSIP Board Chairman.

There is a group dinner planned for Wednesday evening.

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### IN THE CUE

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2. Michigan Supreme Court Decides Gravel Accumulation Case
3. My Generation
4. Understanding Vehicle Blind Spots
6. Use of Arrest or Conviction Records When Hiring
7. MCRCSIP Board Meeting Schedule  
MCCA Assessment  
Word Search
9. CRASIF Connection

Breakfast will be available Thursday morning starting at 7:00 am, and is followed by the Annual Business Meeting at 8:30 am.

The business meeting is when you will be voting for Board Members and Amendments, and when we present the results of our 2011-2012 policy year.

The Annual Meeting Registration Information was mailed last week to all of our members. Please remember to send in your voter authorization form prior to June 26<sup>th</sup>.

A packet of information summarizing the By-Law, Declaration of Trust and Interlocal Agreement Amendments and Resolutions will be mailed by the 1<sup>st</sup> of June to each member and to all commissioners. Please study the fact sheet included in the packet to be sure you have all of the information you need to vote on these critical issues.

It costs \$25 to attend. You can register for the annual meeting and make room reservations at the Soaring Eagle Resort by using the links on our website [www.mcrcsip.org](http://www.mcrcsip.org).

See you there!!

**NOTICE!**

Ingham County Road Commission will no longer be a Member of the Michigan County Road Commission Self-Insurance Pool as of June 1, 2012.



**MICHIGAN SUPREME COURT  
DECIDES GRAVEL ACCUMULATION CASE  
– FINDS NO LIABILITY**

William L. Henn, Attorney  
Smith Haughey Rice & Roegge

The Michigan Supreme Court has issued a peremptory Order concluding that an accumulation, whether by natural means or unnatural means, of a substance on top of a highway surface is not an actionable defect for purposes of the highway exception to governmental immunity.

In *Paletta v Oakland Cty Rd Comm'n*, the Plaintiff was injured in a motorcycle crash on a paved highway in Oakland County. The crash occurred less than a mile from Plaintiff's residence, near the intersection of two roads. Plaintiff contended that on the day of the crash, an accumulation of gravel was present on the highway that caused him to lose control of his motorcycle. Plaintiff did not see the gravel prior to the crash, and could not explain how it came to be on the highway. Testimony from someone who lived near the crash site suggested that Road Commission shoulder maintenance operations would leave accumulations of gravel on the highway surface. Plaintiff's theory, therefore, was that the Road Commission had caused the gravel to be on the highway through negligent performance of maintenance activities and, therefore, should be liable for damages.

The Michigan Court of Appeals agreed with the plaintiff, relying on case law extending back to the late 19<sup>th</sup> century, which, according to the Court, made governments responsible for the maintenance and repair of highways liable for failing to remove

obstructions in those highways. The Court of Appeals also concluded that because there was some evidence to suggest that the Road Commission itself had created the accumulation of gravel, that it must be deemed to have had actual knowledge of the defect with a sufficient amount of time to repair it prior to the crash.

The Supreme Court ordered oral argument to determine whether it should reverse the Court of Appeals' decision. Oral argument occurred on April 5, 2012. At the hearing, the Justices posed numerous questions to the attorneys for each side, many of which focused on whether the accumulation of gravel was a "natural accumulation" or an "unnatural accumulation."

The significance of these questions was likely that the Justices were exploring the boundaries between highway exception law and the "natural accumulation doctrine." As a general proposition, Michigan's "natural accumulation" doctrine holds that a landowner has no duty to remove natural accumulations of ice or snow from his or her premises. A landowner can, however, be held liable for creating, or for failing to remove, unnatural accumulations of ice or snow.

Whatever may have been at the root of the Justices' questions, the Court's decision was not long delayed. On April 13, 2012, the Supreme Court issued a short peremptory Order reversing the judgment of the Court of Appeals. The reasoning offered by the Court was that an accumulation of gravel on a paved highway surface is not actionable under the highway exception to governmental immunity "because an accumulation of gravel, whether natural or otherwise, does not implicate [a road commission's] duty to maintain the highway in 'reasonable repair.'" The Order, although very succinct, is beneficial because it clarifies highway immunity law, and should eliminate many arguments advanced against road commissions relating to accumulations of sand, gravel, mud, water and similar things on top of a highway surface. Plaintiffs often argue that something situated directly on top of a highway surface is a

"surface defect" within the meaning of the highway exception to immunity. That argument has curried some favor with circuit courts, and has increased road commissions' exposure to liability and litigation costs. The Supreme Court's Order in *Paletta* will prove to be a useful tool in disposing of such claims at an early stage of the litigation.

*Paletta*, of course, is not "permission" for county road commissions to refuse to remove accumulations of things on the surface of a highway. Naturally, every road commission should continue to keep the highways under its jurisdiction as free from obstructions as reasonably possible. *Paletta* is simply the judicial recognition that the Legislature has not imposed tort liability upon road commissions for failing to remove accumulations of substances, whether natural or unnatural, upon a highway surface.



## MY GENERATION

Mark D. Jahnke  
Specialty Claims Services, Inc.

Whether you're a Baby Boomer or a member of Generation X or Generation Y, at some point in your life you've probably heard the song "My Generation" by the British rock group, The Who. Composed by Pete Townshend in 1965 at the age of twenty, it expressed the feeling of rebellious youths that older people "just don't get it".

On April 16, 2012, the U.S. Department of Transportation released the results of the first nationally representative telephone survey on distracted driving. The survey reported attitudes and behaviors of 6,000 drivers, 18 and older, from all 50 states and the District of Columbia. Among

Continued on page 4....

the findings: 49% of drivers ages 18 to 24 admit to texting while driving. This astonishing percentage drops as ages increase, to 26% for ages 25 to 34, 19% for ages 35 to 44, 8% for ages 45-64 and 0.4% for ages 65+. Of survey participants, those between the ages of 18 to 20 reported not only the highest incidence of crash or near crash experience (23%) but also the highest level of cell phone involvement (13%) at the time of the crash or near crash; 8% admit they were sending a text or e-mail, 3% were reading a text or e-mail and 2% were talking on a cell phone.

Another result of this interesting survey was the difference in behaviors among age groups when survey participants were passengers in vehicles. While 84% of respondents ages 45 and above would “say something” to a driver who was texting while behind the wheel, only 56% of 18- to 20-year-olds and 52% of 21- to 24-year-olds would urge the drivers to stop texting. These survey results indicate that peer pressure may play a role in the text-messaging-while-driving phenomenon. Young people think “it’s not cool to be safety-conscious” said Nicholas Ashford, a Massachusetts Institute of Technology professor of public policy, law and technology.

When a decision needs to be made whether or not to proceed to trial on a given claim, an evaluation needs to be made relative to how jury members will view the facts, including the driver’s behavior. Was the driver’s behavior negligent, and if so, to what degree? The results of the National Highway Traffic Safety Administration survey suggests that prospective jurors can have widely disparate viewpoints on a subject as basic as the usage of cell phones while driving, dependent simply on differences in age. Predicting what a jury will do with a given case has always been an imprecise science, and these survey results exemplify why jury verdicts can be so unpredictable.



## UNDERSTANDING VEHICLE BLIND SPOTS

Mike Shultz  
Director of Loss Control / Training

To address MCRCSIP Members’ vehicle/equipment blind spot issues, the 2012 Safety Workshops included a presentation which addressed auto liability claims that resulted from making lane changes, entering into intersections or backing along the roadway. All three are necessary driving maneuvers, yet they must be performed safely! These accidents can cause serious bodily injuries and costly property damage. As with any driver safety awareness topic, employers must continuously remind drivers about vehicle blind spots and how to manage them effectively and defensively. We hope this article can be used as part of your in-house accident prevention program.

The terms, “Dead Space” and “Blind Spot”, can be used interchangeably. A vehicle blind spot is defined as a limited or no vision quadrant, which impairs or obstructs the driver’s view from the driver’s seat. Pedestrians, co-workers and motorists can be momentarily hidden in these areas. For road commission fleets, blind spot locations most often are found:





1. Directly Behind Vehicle. The blind spot at the rear of trucks and equipment has been addressed and demonstrated during in-house safety meetings for several decades. Yet today, we continue to find seasoned drivers surprised that there can be as much as 80 - 100 feet of dead space behind the vehicle.

Warning signs can be helpful (“If You Cannot

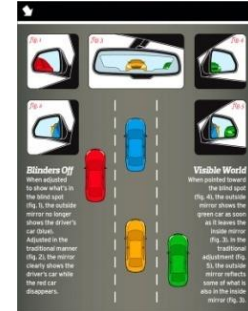
See My Mirrors – Driver Cannot See You”). However, if the sign message becomes covered with snow/ice during winter months, it will not be seen by motorists. We suggest a variety of measures to reduce exposure to loss, from limiting the number of backing maneuvers a driver performs each work day, to keeping the mirrors properly adjusted!



2. Alongside Vehicle. Motorists seem to “hang out” next to vehicles, not respecting the driver’s limited vision. This increases the chance of striking these motorists when making lane changes/turns. It isn’t enough to caution the driver to, “Keep a watchful eye for people on the ground as well as traffic around you”. We suggest a habitual “lean and look” in all side mirrors as part of your daily driving routine. A slightly different view angle in any mirror may allow that hidden vehicle to show up! In recent years, front convex safety mirrors



have been added to road commission fleets. Members have indicated that these additional mirrors are extremely helpful. Finally, always remember to properly adjust and clean all mirrors to get maximum benefit. The illustration below identifies how important this can be to any vehicle. We would be happy to email supportive information from the National Highway and Traffic Safety Administration upon request.



3. Cab Corner Quadrants. From the driver’s seat, the cab corner posts (and mirrors) can obstruct the driver vision quadrants to the left and right. MCRCSIP statistics show that many of our accidents that take place in intersections occur from a passenger vehicle approaching from the right side. Again, that additional “lean and look” (2-3X) can certainly be effective in spotting a hidden vehicle or person.



The MCRCSIP Loss Control can be of assistance in providing in-house driver awareness training to your employees. Please feel free to contact Mike Shultz at [mshultz@mcrcsip.org](mailto:mshultz@mcrcsip.org) or Mike Phillips at [mphillips@mcrcsip.org](mailto:mphillips@mcrcsip.org) for more information.



## **USE OF ARREST OR CONVICTION RECORDS IN HIRING**

Wendy S. Hardt, Attorney  
Michael R. Kluck & Associates

In an Enforcement Guidance issued April 25, 2012, the EEOC reaffirmed its position that use of an applicant's criminal record information as part of an employer's screening process may violate Title VII of the Civil Rights Act of 1964 if the employer intentionally and selectively enforces its screening policy against protected class members. Secondly, even where employers apply criminal record exclusions uniformly, the exclusions may still operate to disproportionately and unjustifiably exclude people of a particular race or national origin ("disparate impact"). If an employer's screening policy has a disparate impact on protected class members, the policy must be "job related and consistent with business necessity."

Prior to issuance of this Enforcement Guidance, the EEOC's Office of Legal Counsel issued an advisory opinion letter, in October 2011, on the use of arrest and conviction records in making hiring decisions. The advisory opinion letter was written in response to a request for comments from the Peace Corps about a proposed application for volunteer positions. The proposed application contained the following provisions which were of concern to the EEOC staff attorney:

-A statement that applicants with certain types of drug or alcohol-related charges, arrests or convictions were not eligible to have their application considered until one year had passed from the date of the charge, arrest or conviction, whichever is later.

-A request that individuals state, among other things, whether they had been arrested, charged with or convicted of any alcohol or drug-related offense or charged or convicted of any felony offense, whether they were subject to any pending charges or probation for "any criminal offense," and whether they had been "arrested for, or charged with, or convicted of any offense."

The EEOC staff attorney stated in his advisory opinion that, in order to exclude an applicant based on a criminal conviction, the criminal conduct should be "recent enough" and "sufficiently job-related to be predictive of performance in the position sought, given its duties and responsibilities." The EEOC staff attorney recommended that an employer narrow its criminal history inquiry to focus on "convictions that are related to the specific positions in question, and that have taken place in the past seven years, consistent with the proposed provisions of the Federal government's general employment application form."

The EEOC attorney noted in his advisory opinion that arrest records are unreliable indicators of guilt because: (1) individuals are presumed innocent until proven guilty or charges may be dismissed and, therefore, an arrest record is not persuasive evidence that the person actually engaged in the conduct alleged; (2) an applicant's criminal history information may be incomplete and may not reflect that his or her arrest charges have been modified or dropped; and (3) arrest records may be inaccurate due to a variety of other factors. The EEOC staff attorney's recommendation was that, before an employer rely on arrest-related information, the employer also give the applicant a reasonable opportunity to dispute the validity of any information showing that the applicant has an arrest record.

In Michigan, the Elliott-Larsen Civil Rights Act prohibits an employer from requesting, making, or maintaining a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result. An applicant is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information that a person has a civil right to withhold by the Act. The prohibition does not apply to information relative to a felony charge before conviction or dismissal.

In conclusion, an employer needs to exercise caution in how it uses information related to an applicant's criminal history record. As a general rule, employers should not make inquiries about arrests which have not led to convictions. Further, an employer should consult with its legal counsel before making a hiring decision based on an applicant's criminal history record to determine whether the criminal record is sufficiently job-related to be used by the employer.

### **MCRCSIP BOARD OF DIRECTORS MEETING SCHEDULE**

**May 17 - 18**  
**MCRCSIP Office - Lansing**

**June 21 - 22**  
**Little River Casino - Manistee**

**July 18 -19**  
**Soaring Eagle Resort - Mt. Pleasant**  
**Annual Meeting**

**August 23 - 24**  
**Island Resort - Harris**

**November 8 - 9**  
**Perry Hotel - Petoskey**

### **MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION ASSESSMENT**

The Michigan Catastrophic Claims Association (MCCA) has increased its assessment from \$145.00 per vehicle to \$175.00 per vehicle for the period July 1, 2012 to June 30, 2013. This amounts to approximately a 20% increase for renewal year 2013 / 2014.

### **WORD SEARCH**

M	G	S	R	E	V	I	R	D	A	G
O	U	V	E	H	I	C	L	E	C	H
T	I	R	A	D	A	R	C	A	C	Y
O	D	E	Y	S	L	N	L	E	I	D
R	A	T	T	M	A	L	R	S	D	R
I	N	M	K	R	E	C	C	T	E	A
S	C	I	U	G	T	O	D	I	N	U
T	E	S	E	Y	N	N	E	M	T	L
S	N	D	Y	R	E	V	F	A	S	I
I	F	E	E	O	M	I	E	T	P	C
T	O	M	N	T	E	C	N	E	O	M
R	R	E	R	N	C	T	S	D	H	E
A	C	A	O	E	R	I	I	A	S	M
F	E	N	T	V	O	O	V	N	K	B
F	S	O	T	N	F	N	E	G	R	E
I	N	R	A	I	N	A	L	E	O	R
C	J	S	A	F	E	L	Y	R	W	S

Accidents	Enforces	Misdemeanor
Alleged	Estimated	Motorists
Attorney	Guidance	Radar
Conviction	Hydraulic	Safely
Danger	Insurance	Traffic
Defensively	Inventory	Vehicle
Drivers	Members	Workshops



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# CRASIF

## Connection

May 2012

Dear CRASIF Member,

**New Legislation.** Our last newsletter focused on what CRASIF was doing with CRAM to slow down and curb the negative effect of the pending legislative initiatives affecting the future existence of independent road commissions. We are all aware that this legislation was passed and signed into law by the governor in December. The end result was not what we wanted. However, we were able to get some beneficial provisions into the law. CRAM has highlighted those provisions recently so I will not list them here. We want to publicly thank Ed Noyola from CRAM for spearheading and coordinating our efforts with our advocates Public Affairs Associates and Karoub Associates. Our presence and the strength of our numbers caused legislators and their staff to have more respect for road commission issues according to them. There is a silver lining in everything.

We learned earlier this week that Ingham County Road Commission will be the first impacted under this new legislation. The county announced that they will make the road commission one of the county departments effective June 1, 2012. At this time, we are aware of only a handful of counties that have begun exploring the financial and operational issues of absorbing road commission operations.

How will this effect CRASIF? CRASIF is a solid, financially stable workers' compensation program. Our surplus allows

us to withstand a number of members leaving without affecting the services to the remaining members. We are committed to being the best workers' compensation option for road commissions now and into the future.

**Safety Programs.** As part of that commitment, our staff just completed this week seven (7) regional safety workshops. We collaborated with the property/casualty pool MCRCSIP and their loss prevention staff in developing and presenting the program. Turnout has been excellent and we have received good reviews. Thank you for your support in training staff to work in a safe manner.

**Strategic Planning.** The CRASIF board recently dedicated 11 hours to team building and developing a five-year strategic plan. Mr. Lew Bender, a specialist in training and organizational development, facilitated the sessions. An organizational road map was identified and will be flushed out in the next 12 to 18 months. The plan will help the board be more effective and efficient in carrying out its fiduciary duties. In addition, it will help guarantee that our member's needs are met in the most cost effective manner. We will be sharing more on this topic in the future.

Respectfully,

Joyce Randall, Board Chair  
County Road Association Self Insurance  
Fund

# CRASIF

# Connection



## TREE REMOVAL CHECKLIST

(DO IT SAFE OR DON'T DO IT.)

Location: \_\_\_\_\_ Crew Leader (sign for each dangerous tree): \_\_\_\_\_  
Crew Members (sign for each dangerous tree): \_\_\_\_\_

Date: \_\_\_\_\_

Photo and / or diagram on back ☐ Yes ☐ No

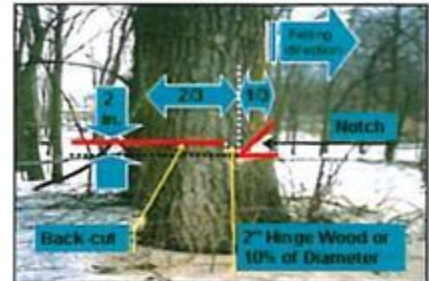
### PRE-REMOVAL STEPS

- ☐ Complete temporary traffic and pedestrian controls. (MMUTCD & MDOT Guide)
- ☐ Measure tree height using the "stick method."
- ☐ Check trunk, leaders and branches for decay.
- ☐ Establish the **DANGER ZONE** for participants ( $1\frac{1}{2}$  x tree height) and those who are not participating (2 x tree height).
- ☐ Identify forward, back and side lean potential.
- ☐ Determine "good" and "bad" side of tree. ("good" = safest for chainsaw operator)
- ☐ Establish desired direction of fall.
- ☐ Mark where to finish back-cut on the "good" side.
- ☐ Plan and clear escape paths. (45° either side, opposite the intended direction of fall)
- ☐ Set rope or cable if applicable.
- ☐ Inspect for the following dangerous conditions:

- ☐ Electrical conductors within 10 feet
- ☐ Bark loose
- ☐ Utility location; e.g., phone, well
- ☐ Wind force and direction
- ☐ Hung-up on other tree(s)
- ☐ Diameter of tree
- ☐ Decay and cracks
- ☐ Root problems
- ☐ Nails, wires, etc.
- ☐ Critters

- ☐ Lean or weight excessive
- ☐ "Widow makers"
- ☐ Dead tree
- ☐ Manpower capability
- ☐ Surroundings and targets
- ☐ Bent or under tension
- ☐ Hollow trunk
- ☐ Type of wood

- ☐ Vines and fruiting bodies (e.g., mushrooms)



Soil conditions

- ☐ For a safer removal, should a portion of the tree be removed first? (If yes, can the tree stand the strain of the lowering procedure?)
- ☐ Are all necessary tools readily available? (PPE, rope, sledge, wedges, first-aid, ladder, communication equip., etc.)
- ☐ Chain saw operator shall clear any obstructions, which might interfere with the saw or operator, from the base of the tree.
- ☐ Chain saw shall be fueled, oiled, sharp, and tension adjusted properly.
- ☐ Work assignments shall be clearly communicated to all crew members.
- ☐ Practice escape routes – "Dry Run." (optional)
- ☐ Crew leader should conduct a **PRE-REMOVE SAFETY TALK**, to discuss the items above.

### REMOVAL STEPS (All rules apply at 6-inch diameter tree trunk.)

- ☐ MIOSHA requires a feller to issue an audible warning – "**STARTING NOTCH CUT.**" (At this point, feller is Person In Charge.)
- ☐ Use chain saw's felling sites to locate proper notch angles and start with upper notch-cut.
- ☐ Look down into the top notch-cut while making the lower notch-cut, to by-passing the apex (i.e., more than one chain thickness).
- ☐ Notch-cut shall no more than 1/3 diameter: "Open Face Cut" = 70°- 90° (required)
- ☐ Feller asks crew members "**IS DANGER ZONE CLEAR.**"
- ☐ Crew members respond "**CLEAR.**"
- ☐ Feller tells crew members how much tension to put on cable / rope (preload and back-off a bit).
- ☐ Feller issues audible warning when beginning back-cut – "**MAKING BACK-CUT.**" ("Common" = 2 in. above lower notch-cut)
- ☐ Feller pays attention to leave "**HINGE WOOD**" (2 inches or 10% of diameter) – **CRITICALLY IMPORTANT!**
- ☐ Feller signals when to pull on cable.
- ☐ When back-cut is finished or the tree starts to move, turn saw off; apply brake; and, walk away along your planned escape path.
- ☐ **NEVER TAKE YOUR EYES OFF THE TREE AS IT FALLS!**

### POST-REMOVAL STEPS

- ☐ Check felling site for hangers or rollers before coming back inside the danger zone. (Work uphill from rollers when "bucking.")
- ☐ Clean site, secure tools, remove or cover temporary traffic and pedestrian control devices and signs before leaving.