

THE POOL CUE

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

Volume XIX Issue 4 November 2013

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."

ALCONA COUNTY ROAD COMMISSION GARAGE FIRE

Gayle Pratt
MCRCSIP Administrator



I am sure you have all heard by now that on Saturday, September 28, the Alcona County Road Commission lost their main garage to a fire. These pictures are of what the fire left behind. And, as you may expect, we are including in this newsletter some fire preparedness reminders.

But this article isn't about that. It is about Road Commissions. It is about the phone calls and emails to Alcona from the others. The offers to loan equipment and facilities. And, the general support that the other Road Commissions have extended. It started on the Sunday after the fire, and still continues.



You might not realize just how unusual that is. But it is.

Our Pool will make sure that the Alcona County Road Commission gets the new garage and equipment they are entitled to under our coverage agreement. And, we intend to offer all the support we can. But we can only do so much. Those at the Alcona County Road Commission have a daunting task ahead of them. Without the generosity and support provided by the rest of you, it would likely be much harder.

Thank you for allowing us to be a part of your community!

IN THE CUE

Page

1. Alcona County Road Commission Fire
2. Workplace Fire Preparedness Plan
3. Word Search
4. Court of Appeals Sides With Road Commission
5. Are You Getting What You're Asking For?
6. Supreme Court to Review Governmental Immunity Cases
7. Sexual Harassment Investigations



WORKPLACE FIRE PREPAREDNESS PLAN

Mike Shultz

Director of Loss Control/Training

Following unfortunate events like destructive building fires, members often contemplate, “What if a fire happens to me” and “How can we better prepare”? No one can promise that a workplace fire will never occur; however, having some kind of preparedness plan in place can be influential in protecting workers and help prevent costly property losses. This article cannot address all the necessary fire preparedness issues, but is intended to remind and encourage members to have a Plan.

Emergencies in the workplace often mean chaos when not prepared. A fire preparedness plan can help prevent chaos when it is developed, communicated and practiced. A preparedness plan can vary in complexity from organization to organization, depending on employer size and their specific needs. Therefore, a small member road commission might require a less comprehensive plan compared to a larger organization. A well thought out plan should provide the necessary information regarding what to do in the event of a fire and what to do to help prevent a fire.

Some elements of a plan might include (but not be limited to):

- ❖ Procedures for reporting a fire emergency
- ❖ Availability and use of fire alarms
- ❖ Workplace emergency communication
- ❖ Fire emergency evacuation procedures
- ❖ Supporting those requiring special assistance
- ❖ A fire escape plan diagram



- ❖ Procedures to account for evacuated employees and visitors
- ❖ Planned fire drills to ensure specific evacuation instructions and procedures are understood and followed
- ❖ Identification of potential fire hazards and risks
- ❖ Procedures for inspections, and maintenance of emergency lighting, extinguishers, sprinklers, etc.
- ❖ Communication with your local fire and police departments
- ❖ Establish a plan for dealing with news media and family members
- ❖ Employee training

An effective plan should reinforce prompt and proper responses once an employee identifies a fire. The plan should include appropriate employee actions for sounding the fire alarm, notifying the fire department, conveying important information,

and if necessary, using fire extinguishers. The building evacuation plan should be understood by all. This should include measures to assist those with special needs and should specify employee assembly location(s).

To help get you started, a fire preparedness committee is recommended. A mix of management and employees helps provide a balanced dialog of thoughts and ideas. Also consider utilizing the knowledge and expertise of the local fire department, police agencies and fire equipment service provider. Understanding the importance and strategy behind a coordinated building evacuation is essential! An "Accountability System" should be in place to help confirm that everyone has safely evacuated the building. Be prepared to communicate with arriving fire fighters and police officials. Familiarity with fire extinguisher station locations and proper use of portable fire extinguishers is very important. The time to learn to use a fire extinguisher isn't when there is a fire. Generally, efforts should be made to confine and control the fire. Measures should be taken to close doors to the fire area and ensure doors remain secured. These issues and others can be addressed in your written plan. Upon completion, the plan should be communicated with all employees. This can include placing the written plan in work areas, lunch rooms, and posting it on safety bulletin boards. The work environment and work force can change over time, so it is suggested that the fire preparedness plan be reviewed annually for revisions and that employees be trained or retrained as necessary.

Naturally, preventing fires from occurring is an important part of your safety and loss prevention program. Managing and eliminating fire hazards requires employee knowledge and training. Routine visual audits of the facility should be accomplished. The MCRCSIP Facility Inspection Checklist is an excellent resource to assist you in this endeavor.

REMINDER!

Having up-to-date schedules of your buildings, vehicles, equipment, tools and supplies will prove to be valuable following any insurance claim involving a fire, vandalism, theft or severe storm damage.

WORD SEARCH

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

Annual

Bid

Contract

County

Defendant

Deny

Fact

Fire

Grief

Harassment

Immunity

Injury

Insured

Judge

Legal

MCRCSIP

Permit

Policy

Protect

Recover

Road

Vehicle



COURT OF APPEALS SIDES WITH ROAD COMMISSION IN DRIVEWAY ACT AND RIGHT TO FARM ACT LITIGATION

William L. Henn
Henn Lesperance PLC

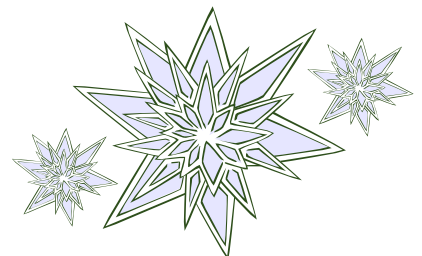
A county road commission does not expect a driveway permit application decision to result in years of litigation. Yet, that is exactly what happened when a road commission denied a driveway permit application to a farmer who insisted on access to his field from the end of a stub street in a densely populated residential subdivision. Despite offers by the road commission to permit a driveway along a rural local road on the opposite side of the field (with over 1000 feet of frontage), and to assist the farmer with building up the access point to mitigate potential water issues, the farmer chose instead to sue the road commission under the state's Driveway Act and Right to Farm Act. A bench trial resulted in a judgment for the farmer, based on the Court's conclusion that both the Driveway Act and the Right to Farm Act had been violated.

A panel of three judges of the Michigan Court of Appeals has now reversed that judgment, finding no violation of either the Driveway Act or the Right to Farm Act. Critical to the Court's conclusion that the Driveway Act was not violated was the recognition that judicial review of a road commission's authority over public roads is "highly deferential" and precludes intervention unless the disputed decision lacks "any reasoned basis or evidentiary support." The Court found, on the

record, that the challenged driveway decision was reasoned and supported by evidence. Specifically, the Court noted that the rural local road had a wider total width which was more suitable for oversized vehicles and equipment. The Court also rejected the plaintiff's argument that the road commission lacked discretion to deny a driveway permit where the application complied with the road commission's written standards. The Court emphasized the discretion vested in a road commission to grant or deny driveway permits based on the circumstances surrounding each individual request.

The Court similarly concluded that the permit decision did not violate Michigan's Right to Farm Act. The Court cited longstanding precedent establishing that the Right to Farm Act was intended as a shield to protect farmers from nuisance lawsuits, not as a sword to force local units of government to take affirmative action to change the status quo. Moreover, the Court found no conflict between the road commission's decision and the Right to Farm Act, because nothing in the Act addresses the permitting or location of driveways.

The Court of Appeals decision is published, meaning that it will be binding precedent on lower courts throughout the state. It will also serve to guide the decision-making processes of local units of government as they exercise their discretion in a variety of different areas.



ARE YOU GETTING WHAT YOU'RE ASKING FOR?

Mark D. Jahnke
Specialty Claims Services, Inc.

A standard requirement in contracts entered into between county road commissions and contractors is for the contractor to name the road commission as an “additional insured” under its general liability insurance policy. When a county road commission, its board, officers, agents and employees are added as “additional insureds” under the contractor’s policy, it gives the road commission the right to assert a claim directly against the contractor’s policy. This is because the road commission is an “insured” on the policy.

Road commissions that are members of the Michigan County Road Commission Self-Insurance Pool do an excellent job of requesting “additional insured” status from contractors in bid specifications. However, we have seen numerous examples of road commissions accepting bids from contractors in which the “additional insured” specification has *not* been complied with, despite being required in the bid specifications. The types of non-compliance vary, but include total lack of compliance, identifying the road commission as a “certificate holder” but not an “additional insured” and identifying the incorrect entity as “additional insured” (e.g., *ABC County*, rather than *ABC County Road Commission*).

Given the litigious society in which we live, the importance of protecting your road commission via

“additional insured” status cannot be overemphasized. Besides double-checking bid proposals to make sure the road commission, the board, etc. are correctly identified as “additional insureds”, you need to receive an *endorsement* from the contractor’s insurance carrier along with the Certificate of Insurance confirming that coverage is being provided. A Certificate of Insurance *without* an “additional insured” endorsement does *not* provide “additional insured” status to the road commission. *The contractor’s policy must be endorsed or contain a blanket additional insured endorsement!*

In summary, when requesting “additional insured” status from contractors (or others, for that matter), thoroughly review what is being provided in response to your request. Make sure... 1.) the road commission, the board, officers, agents and employees are correctly identified as “additional insureds” and... 2.) a copy of the “additional insured” *endorsement* is provided. Getting what you asked for in your bid specifications is critical to achieving the goal of securing extra coverage and defense for claims against your road commission by being named as an “additional insured” under the other party’s policy.

WELCOME!

Welcome to Lapeer County Road Commission,
the newest member of the Michigan County
Road Commission Self-Insurance Pool.

Their membership, as of November 1, 2013,
brings our total number of members to 77. We
welcome their support and look forward to
working with their board and staff.



SUPREME COURT TO REVIEW GOVERNMENTAL IMMUNITY CASES

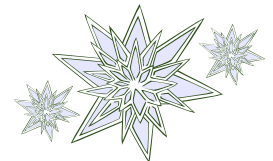
William L. Henn
Henn Lesperance PLC

In the coming months, the Michigan Supreme Court will review two governmental immunity cases with implications for county road commissions. First, the Court has ordered oral argument in *Yono v MDOT*. At issue in that case is whether a parallel parking lane that is contiguous with the traveled portion of a highway constitutes the “improved portion of the highway designed for vehicular travel.” The Court of Appeals had determined that the parallel parking lane was within the improved portion of the highway designed for vehicular travel, and consequently that the plaintiff, who was injured on cracked pavement as she walked around her parked vehicle, could maintain an action against MDOT under the highway exception to governmental immunity. MDOT filed an Application for Leave to Appeal from that decision. MCRCSIP filed an amicus brief in support of MDOT’s position. The Supreme Court, after reviewing the Application and Amicus Brief, ordered oral argument on the questions presented. That oral argument will be scheduled in the next several months, and the Court will likely be keenly interested in whether the parallel parking lane is “designed for vehicular travel” in the sense contemplated by the highway exception to immunity. Earlier Supreme Court precedent excluding highway shoulders from the exception

adopted a narrow definition of “travel” requiring that before liability may attach, the area of the highway must be designed for “sustained” travel, not temporary starting and stopping. The Supreme Court’s decision likely will not be issued until sometime in the first half of 2014.

Second, the Court has decided to revisit the issue of “bodily injury” for purposes of the motor vehicle exception to governmental immunity. The issue presented in *Hannay v MDOT* is whether a plaintiff’s claimed work-loss arising from a motor vehicle accident is a “bodily injury” for purposes of the motor vehicle exception. The Court of Appeals had determined that work-loss is recoverable as a “bodily injury.” Informing the Supreme Court’s decision will be its 2008 decision in *Wesche v Mecosta Co. Rd. Comm’n*, which determined that the term “bodily injury” in the motor vehicle exception must be limited to a physical or corporeal injury. In other words, non-physical injuries such as loss of consortium, grief, shock, or mental anguish and suffering, are not compensable. In *Hannay*, the parties will submit an additional series of briefs, and will eventually participate in oral argument. Likely, the Supreme Court’s decision will not be rendered until sometime in the first half of 2014. Given the magnitude of the issue, MCRCSIP has authorized an amicus brief to address the legal arguments and to provide the perspective of county road commissions statewide.

We know that the law constantly evolves, and 2014 promises to be no exception in the area of governmental immunity. Our Supreme Court has benefitted in the past, and will continue to benefit, from the vigilance of MCRCSIP in advocating for a sensible and consistent application of the laws limiting government exposure to tort liability.





SEXUAL HARASSMENT INVESTIGATIONS

Gordon J. Love
Michael R. Kluck & Associates

Allegations of sexual harassment in the workplace should not be taken lightly by the employer and must be investigated to avoid potential litigation and liability. Courts have ruled time and time again that employers must follow their procedures in place when such allegations are made. The latest example of this comes out of the Sixth Circuit Court of Appeals in a recent opinion titled Waldo v. Consumers Energy.

In this case, all signs pointed to the fact that the employer should act, yet it failed to do so. This case involved a female employee working on a crew with all males. She found herself subjected to a variety of incidents which she alleged were sexual harassment. The incidents included sexually explicit literature in the work vehicles, being called derogatory and demeaning names, being denied use of trucks to drive to a bathroom, having her purse thrown out of a truck, being locked in a porta-potty, and being excluded from lunch trips. The employer argued that none of the incidents were sexual in nature when looked at individually. However, the Appeals Court focused on all the incidents together and held that the lower court did not abuse its discretion in finding that the misconduct alleged by the plaintiff amounted to a hostile work environment. It's worth pointing out that her case

was bolstered by the fact that all of her allegations were either verified by witnesses or not disproved by the employer.

The other issue leading to the Court's decision was that the Court felt the employer failed to properly investigate the claim. On the other hand, the plaintiff took all the right steps. She properly reported the misconduct and even filed a grievance. The plaintiff also met with company officials over the allegations, yet no investigation was undertaken, which was directly contrary to the employer's policy to investigate such claims. The Court felt the employer should have and could have done more, including conducting interviews and documenting its investigation.

The Waldo case is a reminder to employers to never take allegations of such misconduct lightly. Investigations should be undertaken and interviews conducted to determine the merit of such claims. A failure to do so could lead to more serious consequences, including having to defend against a sexual harassment suit.

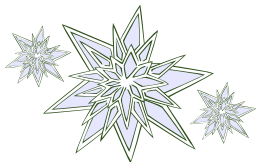
As a reference for employers, the Michigan County Road Commission Self-Insurance Pool (MCRCSIP) compiled the Employment Practices Guidelines to assist its members with issues related to employment practices liability. The Employment Practices Guidelines touch on numerous subjects including harassment as well as hiring, discipline, unlawful retaliation, and more. They include forms and policies which should be regularly reviewed and implemented by MCRCSIP members.

If you have any questions concerning the Employment Practices Guidelines, or any of the subjects contained therein, you should contact your legal counsel. In this way, you can work on eliminating any potential liability in your workplace and better assure your road commission's success and productivity in the future.

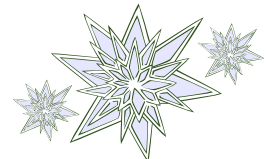




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