

THE POOL CUE

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

Volume XX Issue 2 May 2014

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."



COUNTY ROAD COMMISSIONS' JOINT INSURANCE CONFERENCE

We are again holding our Annual Membership Meeting in conjunction with CRASIF's annual meeting at the Soaring Eagle Resort in Mt. Pleasant on July 23 and 24.

The tentative schedule is as follows:

Wednesday, July 23

- 9:00 - 11:30 CRASIF - Changes with Risk Control & Claims – Meet the Mackinaw Administrator Team
- 11:30 - 12:30 Lunch
- 12:30 - 2:00 CRASIF Annual Business Meeting
- 2:00 - 2:30 Break
- 2:30 - 5:00 MCRCSIP Workshop – “But we haven’t done anything wrong” – Settling Claims
- 5:30 Social Hour/Dinner

Thursday, July 24

- 7:30 - 8:15 Breakfast
- 8:30 - 11:30 MCRCSIP Annual Business Meeting

Our workshop this year is titled, “But we haven’t done anything wrong,” and is a discussion about settling claims. Why defendants settle and how those settlements are determined. We have invited a retired judge and several of our defense attorneys to present information for discussion.

You can register for one or both meetings using our online registration form at www.mcrcsip.org or www.crasif.org.

The cost of registration is \$25 per person. We offer lunch and dinner on Wednesday, and breakfast on Thursday morning and we are asking you to please register for the meals you expect to attend. There is no additional cost for the meals. Please be sure to register by July 1.

For those of you desiring lodging at the Resort, a block of rooms has been reserved. You can make your room reservation online by going to www.soaringeaglecasino.com. Our group number is MCRC72214. The Soaring Eagle needs your reservation by July 1, 2014.

We look forward to seeing all of you in July!

IN THE CUE

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MCRCSIP BOARD OF DIRECTORS' ELECTION

This year, there are three open positions on the Board of Directors: one at-large position; and two northern positions. All open positions are for three-year terms. The following people have submitted letters of candidacy and have been confirmed by our Nominating Committee members:

Russ Gronevelt At-Large Position
Houghton CRC

Nick Matiash At-Large Position
Mason CRC

John Rogers At-Large Position
Kalkaska CRC

Alan Cooper Northern Position
Wexford CRC

Brian Gutowski Northern Position
Emmet CRC

Last year, the membership voted to allow mail-in voting and to restrict voting for regional positions (northern, southern, and upper peninsula) to the counties that will be represented by those candidates. Official ballots have been sent to our Member contacts. Returned ballots will be turned over to the Nominating Committee for opening and tabulation.

The results of the election will announced during our Annual Membership Meeting on July 24.



HEARTBEAT WEBSITE BUG

Nick Wells

MCRCSIP Information System Manager

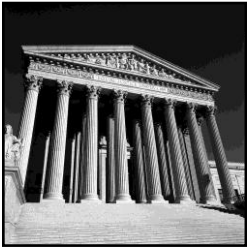
On April 7, it was announced that there was a vulnerability in the OpenSSL encryption software that many internet servers use to secure communications between themselves and users' computers. Heartbleed doesn't just impact internet servers at places like Amazon, Facebook and Netflix, but most Android phones, and hundreds of models of firewalls. The manufacturers of those devices are working very diligently to incorporate the patch as soon as practicable so you'll want to continue to check for updates for your Android devices and Wi-Fi routers.

Heartbleed is a big deal because it has potentially allowed attackers to view data in the server's memory for two years. The "Heartbleed Hit List" lists sites and gives you a Yes/No on whether you need to change your password:

<http://mashable.com/2014/04/09/heartbleed-bug-websites-affected/>

Right now, it's best to wait to change your passwords until the website or the hit list says it's been fixed and keep an eye out for Android phone and Wi-Fi router updates.





**SUPREME COURT
UPDATE:
PAVED PARKING LANES,
TRUCK ROUTE
ORDINANCES AND
WESCHE UNDER FIRE**

William L. Henn
Henn Lesperance PLC

The Michigan Supreme Court has been active recently in several cases posing issues of interest to county road commissions. Two of the cases concern tort liability, and the other deals with challenges to township truck route ordinances.

First, the Court has rendered its decision in a case posing the question whether a paved 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 answer—drum roll, please—is an unequivocal “perhaps.” In *Yono v MDOT*, the Court of Appeals had determined that the parallel parking lane was within the improved portion of the roadway 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. The Supreme Court ordered oral argument on the question, and following that hearing, issued a single paragraph Order on April 1, 2014. Rather than deciding the issue one way or the other, the Court remanded the case to the Court of Appeals for further consideration of the standard a court should apply in determining as a matter of law whether a portion of highway was “designed for vehicular travel.” This result is perhaps not surprising in that at oral argument, the Justices asked many questions relating to whether highway elements such as lane markings constitute part of the “design” of the highway. The Justices seemed skeptical that lane markings would constitute “design,” but also apparently believed that the

record in the case was not sufficiently developed to permit a decision.

Second, the Supreme Court has denied leave to appeal in a case involving a challenge to a township truck route ordinance. Due to a relatively recent amendment to the statute permitting local units of government to place size, weight and load restrictions on trucks or other commercial vehicles, a township that is adversely affected by a neighboring township’s restrictions has the ability, under certain circumstances, to challenge the restrictions by filing an objection to them with the county road commission. Once a challenge is made, the road commission then has the obligation to investigate the objection and to either approve or void the challenged restrictions. In *Oshtemo Charter Twp v Kalamazoo Co Rd Comm’n*, two townships lodged objections to an Oshtemo Charter Township truck route ordinance. The Road Commission set about on a methodical course to evaluate the merit of the objections, including identifying criteria by which the objections would be judged (largely related to concerns of public safety and convenience, the past and future allocation of scarce highway improvement funds and the likely commercial effect of the ordinance), receiving written submissions from any interested party, conducting its own staff research, and holding a public hearing. At the conclusion of the hearing, the Road Commission invalidated portions of the challenged ordinance. Oshtemo then filed a Circuit Court action seeking to invalidate the decision. Unsuccessful in the Circuit Court, Oshtemo appealed to the Court of Appeals, which issued an Opinion invalidating the Road Commission’s decision because, according to the Court, a road commission may only void a township’s ordinance if it concludes that the ordinance is “unreasonable.” Despite the Kalamazoo County Road Commission’s methodical approach to its statutory duty, the Court was

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unpersuaded that the Road Commission had actually deemed Oshtemo's ordinance "unreasonable." Unfortunately, the Court did not take the additional step of explaining what more a county road commission would need to do to meet that standard. The Court did hold, however, that its decision would not preclude the townships from renewing their objections, in which case the Road Commission could redo its decision. The Road Commission filed an Application for Leave to Appeal with the Michigan Supreme Court, but that Application was denied. The Court of Appeals decision therefore remains valid precedent.

Third, as reported in the November 2013 Pool Cue, the Supreme Court will revisit the "bodily injury" limitation imposed by the motor vehicle exception to governmental immunity. That "bodily injury" limitation was the subject of the Supreme Court's seminal *Wesche v Mecosta Co Rd Comm'n* decision in 2008. In the case discussed in the earlier Pool Cue, *Hannay v MDOT*, the question posed is whether a plaintiff's claimed work-loss arising from a motor vehicle accident is a "bodily injury" for which recovery is permitted. Since that time, the Court has ordered oral argument in a second case presenting a slightly different, but related, issue. In *Hunter v Sisco*, the question to be addressed is whether non-physical injuries such as mental anguish, pain and suffering, fright, or shock are barred by the "bodily injury" limitation. The Court has ordered that *Hannay* and *Hunter* be argued together. That hearing will likely occur early this coming summer.

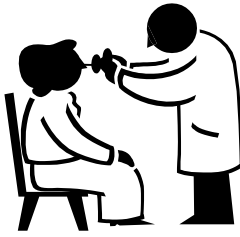
In sum, there are open questions—for the time being—concerning the scope of the highway exception and the damages available in motor vehicle and highway exception claims. Decisions in the near future will likely change the legal landscape in these areas. County road commissions are also left without clear guidance for fulfilling their statutory duty to adjudicate challenges to

township truck route ordinances. Any county road commission faced with an objection would be well served to seek legal counsel early in the proceeding, as the ground in this area is fertile for litigation whichever way the road commission resolves the objection.

WORD SEARCH

h c o u r t o e i d c i r d
c x w c i r c u i t o s r e
t t e o h h l s s i u s h r
i e b r r e c t n n n e w a
w i s d s o a s o o t n c w
s o i i n n u r i e y e o e
a r t n y r e t t a b r a g
f e e a a t n e a b k a r a
e c o n f e r e n c e w e s
t f c c v n g n i k r a p s
y e m e r p u s m z t a t e
u o r s c n s l a c i d e m
n p i n e h o a x w e k o h
i u i x p z o n e e w u t r

awareness	battery	circuit
conference	county	court
disconnect	examinations	heartbeat
insurance	medical	message
ordinances	parking	prevention
safety	supreme	switch
website	work	zone



NEW REQUIREMENTS FOR CDL EXAMINATIONS

Wendy Hardt
Michael R. Kluck & Associates

Effective May 21, 2014, each CDL medical examination must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Beginning on that date, each employing motor carrier must verify and document that the medical examiner's certificate has been issued by a medical examiner listed on the National Registry of Certified Medical Examiners. A note related to that verification must be maintained in the driver's qualification file. If the examination has not been performed by a medical examiner so certified, then the certificate is not valid, and the driver must not be allowed to operate a commercial motor vehicle.

Drivers and Employers can search for certified medical examiners in their area by using the search engine found on the home page of the National Registry of Certified Medical Examiners, <http://nationalregistry.fmcsa.dot.gov>. Please be advised that certified doctors presently available may be extremely limited in your area. For example, I ran a search for certified medical examiners within 25 miles of Flint and came up with zero results. There were, however, several listed in the Lansing area. I am sure the list will be regularly updated, but you may want to begin searching your area for a certified medical examiner now and keep your employees advised of where they will need to go for these examinations.

In order to become certified, doctors will need to complete required training on FMCSA's physical qualification standards and pass the FMCSA Medical Examiner Certification Test to demonstrate knowledge of FMCSA's physical qualification standards. The doctors will also need to complete refresher training every 5 years and recertification testing every 10 years.

Upon completion of a medical examination required under the FMCSA regulations, if the medical examiner finds the person to be physically qualified to operate a commercial motor vehicle, he or she must provide a certificate to the person examined, who in turn must provide a copy of it to his/her employing motor carrier. The medical examiner must also date and sign a Medical Examination Report and retain it on file in his office for at least 3 years from the date of examination. The medical examiner is not required to provide a copy of the Report to the employer.

The examination requirements established by the FMCSA for interstate drivers have been adopted by the State of Michigan for intrastate drivers of commercial motor vehicles. Therefore, each of your CDL drivers must comply with these regulations. Hopefully, the new regulations will result in more accurate examinations of drivers by medical examiners. Proper re-certification by a certified medical examiner might also make employers rest easier about putting drivers back to work when the driver has had a serious health event, like a stroke or heart attack.

Standing in the middle of the road is very dangerous; you get knocked down by the traffic from both sides.

Margaret Thatcher

AUTOMATIC TIMER BATTERY DISCONNECT SWITCHES FOR NEWER FLEET TRUCKS UTILIZING DIESEL EXHAUST FLUID

Michael E. Shultz
MCRCSIP Director of Loss Control

As road commission fleets are updated, members find themselves purchasing trucks with diesel engines that must meet the 2010 diesel exhaust standards. This generally requires engines to utilize diesel exhaust fluid (DEF). As part of the normal engine care with DEF, members must be sure not to incur line freeze-up in cold weather and line corrosion. Both would be caused by allowing DEF to remain in the lines for lengthy time periods. Therefore, when new trucks are parked nights and weekends, the DEF fluid must return to the DEF reservoir. The DEF line emptying process can vary, however, generally less than 10 minutes.

To ensure compliance with the MCRCSIP “Battery Disconnect Switch Mandate” and manage the DEF requisite, members with newer trucks with DEF systems have been installing battery disconnect switches with automatic timers. Therefore, when the battery switch is turned off at the garage, the switch’s automatic timer would then allow necessary time for the switch to remain ON and the DEF emptying process to take place.

A recent fire emergency with a newer plow truck became a further problem when an automatic battery disconnect switch delayed the ability to immediately kill all battery power. Similar to a fire truck arriving late on a fire scene, the consequences of any time delay could be catastrophic. NOTE: In previous years, members have found that promptly shutting off the disconnect switch during an electrical emergency, would almost immediately stop the arcing and help extinguish the fire at the source.

As a preventive measure, this particular member designed/installed an emergency “kill switch” (see photographs) at the automatic timer battery disconnect switch. A reputable truck builder and a switch supplier were both involved in this endeavor. The emergency switch would only be used in the event of a truck electrical emergency, for which all battery power must be immediately eliminated at the switch.



Example: Emergency Kill Switch

After discussing the installation of a kill switch with a number of MCRCSIP members, most thought it was a very good idea. Some members had other ideas that would possibly eliminate the need for an automatic timer switch and/or for adding an emergency kill switch.

- On the newer trucks, allow the standard battery disconnect switch to remain active for a short period of time, permitting the DEF fluid to return to the reservoir. It would then be the responsibility of the driver and/or supervisor to follow up and shut off the battery disconnect switch. Directly wiring the switch to overhead light(s) served as a visual reminder. This approach would require close monitoring, but not overly difficult with fleets that have only a few newer trucks.
- Install two (2) battery disconnect switches on newer trucks. One automatic timer switch for the DEF fluid system and a standard switch for all other truck electrical.



WORK ZONE SAFETY AWARENESS – Safety Message

Mike Shultz
MCRCSIP Director of Loss Control

Each year work zone accidents occur around the United States. In Michigan, construction and maintenance accidents occur on expressways, highway routes and local county roads. They include (but not limited to):

1. Motorists running into road workers, including traffic regulators.
2. Parked and operating construction equipment and vehicles.
3. Construction materials stock piled on site in the work area.
4. Construction excavations and other road conditions created by the work activities.

Regardless if you are working on a major highway or a gravel road having little or no traffic, appropriate safety measures and work practices must always be communicated and followed. They include (but not limited to):

- ✓ When appropriate, install appropriate advance warning signs for approaching traffic. Ensure they are legible and spaced appropriately. Remember, set-up and take down is the most dangerous time period. Never leave your signs out if the work is delayed or completed.

- ✓ If closing the road is a better option, consider it! Never use road machinery and vehicles for road closure barricades.
- ✓ Park and operate road equipment so that it is visible from all directions. Warning lights and flashers should remain active at work sites.
- ✓ Employees should wear the necessary PPE including the proper traffic vests. Generally, Class II vests are required. Class III is recommended for certain conditions, including night work.
- ✓ Use Traffic Regulators to guide and assist approaching motorists. Ensure training is accomplished and that employees understand the proper PPE attire and the location of the regulator station(s).
- ✓ Watch out for people on the ground like co-workers and pedestrians. The most dangerous activity at a work site is vehicle/equipment backing. Do it with the utmost safety!

NOTE: The MMUTCD Part 6. is an important reference booklet that should be used by supervisors and available to workers. If you need copies, MDOT can provide them free of charge. Contact Mike Shultz and he can assist you in obtaining copies for your organization.

This short safety message isn't written nor intended to cover all safety issues and information on work zone safety. It should be used as part of other safety training materials and discussions at your organization. In closing, "Think Safety for Yourself and Your Co-workers". Remember....The motorists driving into your work zones might be your family and friends. Keep everyone safe by knowing, implementing and enforcing safe work zone practices every day! Never hesitate to ask for training assistance and please have a safe 2014 construction and maintenance season!



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417 Seymour Avenue, Suite #2
Lansing, Michigan 48933

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