

# THE POOL CUE

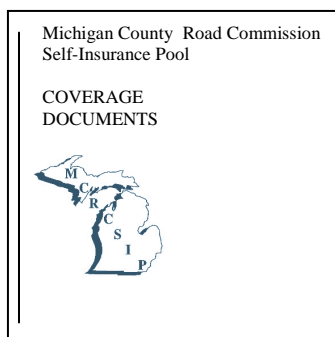
## MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

Volume XVIII Issue 4 November 2012

### 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."

### MCRCSIP NEW COVERAGE AGREEMENTS



New Coverage Agreements for all of your coverages with MCRCSIP were mailed to our Member contacts on October 15<sup>th</sup>. These new Agreements went into effect November 1, 2012.

Coverage has not been significantly changed in any of the Agreements. The Agreements were re-writtten with these objectives in mind:

- To make the documents clear, and as easy to understand as possible;
- To update the documents to better incorporate current customs and requirements; and
- To standardize certain terms and conditions that appear in all of the documents.

If you did not receive the new Agreements, or have any questions, please be sure to let us know.

### WORKPLACE BULLYING

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

Often we are asked the question, "Is bullying unlawful in the workplace?" Technically, the answer is no. While 21 states have introduced the "Healthy Workplace Bill" since 2003, no state has yet to enact it. The Healthy Workplace Bill is the product of a national grassroots campaign making the rounds of state legislatures throughout the Country. The Healthy Workplace Bill has not yet been introduced in Michigan, but proponents of the Bill in other states indicate that it would do the following:

Precisely define an "abusive work environment";

- Require proof of harm to a worker's health by licensed health or mental health professionals;
- Hold the employer accountable when internal correction and prevention mechanisms are not in effect; and,
- Plug the gaps in current state and federal civil rights protections.

Regardless of what changes in society the Healthy Workplace Bill might be able to accomplish, what is equally certain is that passage of this type of anti-bullying legislation would necessarily increase the amount of litigation by employees against their employers.

*Continued on page.....2*

### IN THE CUE

1. MCRCSIP New Coverage Agreements Workplace Bullying
2. Trailers / Equipment Connection & Towing
4. Signage Relevant to Road Closures
5. The Airborne Roadway
7. Guidance on Using Wing Plows
9. CRASIF Connection

It is unlikely that we will see the passage of anti-bullying legislation in Michigan any time soon. Nonetheless, employers can think ahead and prepare. First and foremost, employers can and should ensure that they are not engaging in any type of discriminatory activity now. Under existing civil rights legislation, many types of “bullying” are prohibited. Generally, the recipient of the mistreatment must be a member of a protected status group (based on gender, race, disability, ethnicity, religion, etc.) in order to claim sexual harassment, racial discrimination, or hostile work environment. Discrimination on the basis of any such protected category must be stopped by an employer. Employment discrimination includes discrimination in hiring, promotion, job assignment, termination, compensation, and various types of harassment.

Almost a decade ago, the Michigan County Road Commission Self-Insurance Pool (MCRCSIP) compiled the Employment Practices Guidelines to assist its members with compliance with federal and state laws related to employment practices liability. The Employment Practices Guidelines touch on numerous subjects including hiring, discipline, harassment, unlawful retaliation and more. They include forms and policies which should be regularly reviewed and implemented by MCRCSIP members.

Employers should continuously work at mastering existing employment laws so that they are ready to adapt to new laws which might get introduced and passed in the future. 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 eliminate any discriminatory practices in your workplace and better assure your road commission’s success and productivity in the future.



## **TRAILERS / EQUIPMENT CONNECTION AND TOWING**

### **“A Safe Connection”**

Mike Shultz  
Director of Loss Control/Training

From time to time, MCRCSIP members experience property damage claims involving trailers and specialty equipment such as (but not limited to) hot patchers, sign trailers, wood chippers and arrow board units. The extent of damage to the towed equipment can vary. However, the more serious claims generally result from the unit completely disconnecting from the truck. In addition to reducing preventable equipment damage accidents, the greatest concern is if/when the free-rolling or catapulting trailer strikes another vehicle and/or pedestrian. That could be a disastrous situation for a variety of liability reasons! For these reasons, trailer towing activities continue to be part of our safety audits as well as safety awareness training.



The number of trailer units found to be improperly connected to a truck during audits is low, however, when talking with drivers, many appear to be unaware of the importance of safety chains and having them properly adjusted and crossed. It is essential that all drivers make absolutely sure that the trailer is connected properly to the hitch (ball type or pintle) before driving away. A good safety measure is to double check your connection before you drive away from the garage area. A few seconds of your time may save a lot of grief, regret and money!

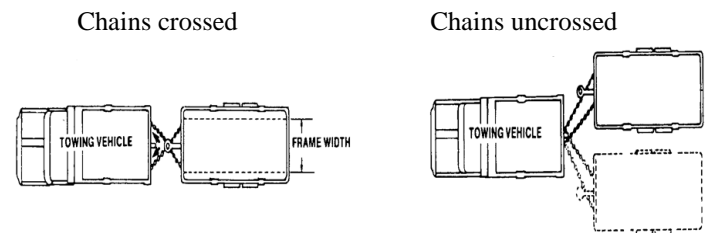
Pintle hitches are a very popular choice in the construction/heavy truck industry, due to their design and load rating. However, like anything else with moving parts, this hitch may potentially fail for a variety of reasons. Always check to ensure that the pintle hitch is functioning correctly before each use. Take the time to service it (i.e., oil/grease) per the manufacturer's recommendations. A solution to a rusted/frozen hitch jaw is not using a bigger hammer! Hitch replacement should be considered when wear and tear is likely to cause failure. Hitch pins are found for both ball and pintle hitches. A safety latch pin (see below right) should be used whenever possible. If the pin becomes worn or damaged, it should also be replaced.



Safety chains on trailer units are an important safety feature and should always be used. The chains should be adjusted as necessary, so they do not drag on the ground and yet with enough slack to allow for adequate turning. Some drivers are unaware of, or disregard, the importance of crossing the chains. Therefore, safety education, monitoring and enforcement are important!



Crossing safety chains (one over the other) will produce a chain cradle in the event the trailer disconnects. The safety chains prohibit (1) the trailer from disconnecting entirely; (2) the trailer tongue from striking the ground; and (3) the trailer from drifting left/right as illustrated below.



Additional information about coupling devices and towing methods can be found in Part 393 of the FMCSR and within the current edition of the MCTS "Truck Drivers Guidebook".

**VETERAN'S DAY  
NOVEMBER 12**



**Honoring Those Who Served**



## **COURT HOLDS REASONABLENESS OF SIGNAGE RELEVANT TO ROAD CLOSURES**

William L. Henn, Attorney  
Smith Haughey Rice & Roegge

It has been settled in Michigan law for over twelve years that highway liability cannot be premised on inadequate or imperfect signage. However, a published Court of Appeals decision in late 2011 concluded that inadequate or improper signage is relevant to one aspect of highway liability: whether a highway is closed for public travel.

In *Snead v John Carlo, Inc.*, the primary issue was whether an exit lane off I-94 which was under construction, and which contained a large hole in the middle of the traveled surface, was closed for public travel at the time of the plaintiff's crash. If it was closed, then MDOT's duty to repair and maintain the highway would have been suspended and no liability could attach. The crash occurred in the early morning hours, as plaintiff was operating her car on eastbound I-94. She entered an exit lane and soon struck a large, unprotected construction hole within the roadbed surface. Within a period of minutes surrounding Plaintiff's crash, three other vehicles also crashed into the hole. Some of the traffic crash reports for these other incidents noted that the barrels marking the travel lane were "confusing."

Plaintiff filed suit against MDOT, alleging negligence in having barricaded the construction hole in a defective, unsafe, and confusing manner.

Plaintiff alleged that the construction site was improperly and negligently constructed and maintained by MDOT, creating a point of hazard or special danger that uniquely affected vehicular traffic on the improved portion of the roadway to the extent that travel was rendered unsafe.

MDOT moved for summary dismissal of the claim, arguing that the plaintiff had driven on the wrong side of orange construction barrels and into the part of the road that was under construction. MDOT argued that the highway exception to governmental immunity did not apply because the crash occurred on a closed portion of the road due to the ongoing construction activities, and that plaintiff's claims related to the negligent placement of barricades and other traffic control devices did not fit within the highway exception as a matter of law.

The Court of Appeals concluded that MDOT was not entitled to summary dismissal of the claim. First, the Court observed that traffic-control devices generally indicate whether a road is "open for public travel." By extension, if the exit lane was effectively open for public travel and not closed by appropriate traffic-control devices, then MDOT's duty to keep the exit lane reasonably safe for public travel would be in effect. The Court concluded that the construction activities, in and of themselves, did not support a conclusion that the exit lane was closed. Stated differently, the Court observed that a road is not necessarily closed for public travel simply because construction work is being performed in the area. However, the Court acknowledged that under certain circumstances, a construction project may so blatantly prevent any potential use of a roadway that any reasonable motorist would understand that the roadway was fully closed, even in the absence of signage or traffic-control devices.

A significant aspect of the Court's decision is its formulation of a test for determining whether a road is open for public travel: "Whether a reasonable motorist, under all the circumstances, would believe that the road was open for travel." The Court also commented that the placement of traffic-control devices would be relevant to the issue of whether the construction hole amounted to a breach of the duty to maintain the highway in reasonable repair. The Court reasoned that there are typically two separate issues in tort actions against governmental agencies: (1) whether the plaintiff has pleaded a cause of action in avoidance of governmental immunity, and (2) whether the plaintiff can establish the elements of a negligence action. The Court noted that resolution of the question of whether MDOT was negligent would turn, in part, on any negligent conduct in placing the traffic-control devices in a manner to effectively allow the exit lane to remain open, thereby making the construction hole a "true defect" in the roadbed.

Next, the Court addressed MDOT's argument that the plaintiff's case was really a case of defective signage, which is not actionable under the highway exception to immunity. The Court quickly disposed of this argument, observing that the true alleged highway defect was the large hole created by the ongoing construction work. The Court found that if the plaintiff could demonstrate that the road was not properly closed through the use of traffic-control devices, and that MDOT's duty to keep the highway in reasonable repair remained in effect, that the presence of a large construction hole would constitute a defect in the physical structure of the roadbed surface for which MDOT could be liable if the plaintiff could satisfy the other elements of her claim.

An Application for Leave to Appeal to the Supreme Court was filed by MDOT, but the parties stipulated to dismissal of the appeal before the Supreme Court acted.

In summary, the *Snead* Court concluded that the applicability of governmental immunity and the highway exception depended on whether the exit lane was open for public travel at the time of the crash. That question is determined on the basis of what a reasonable motorist would have observed while driving down the highway at the time of the crash. Assuming that the signage is defective and that the highway is deemed to have been open for public travel, then a road commission remains liable under the highway exception to immunity for defects within the physical structure of the roadbed surface that caused bodily injury or property damage.



## THE AIRBORNE ROADWAY

Mark D. Jahnke  
Specialty Claims Services, Inc.

Ever since the *Regan/Zelanko vs. Washtenaw County Road Commission* case was decided by the Michigan Court of Appeals (COA) in 2003 it's been well established that member road commissions can face liability under the *motor vehicle exception* to governmental immunity for traffic accidents caused, in whole or in part, by airborne dust kicked up by road commission sweepers during a roadway sweeping operation. Now, in a recent unpublished decision, the Michigan COA ruled that a county road commission can face liability under the *highway exception* to governmental immunity for traffic accidents allegedly caused by dust emanating from a gravel road surface, finding that airborne dust can be an actionable roadway "defect".

*Continued on page 6.....*



In the case of *Debra Hagerty-Kraemer vs. Manistee County Road Commission*, the plaintiff passed a motorist who was traveling in the opposite direction on a gravel road, allegedly was blinded by the dust cloud kicked up by the passing motorist, drove off the road, struck a tree and sustained fatal injuries. The decedent's estate filed litigation against the road commission and, among other allegations, the estate alleged that the "surface disbursement potential" of the roadway constituted a "defect" in the roadbed. A Motion for Summary Disposition was filed on behalf of the Manistee County Road Commission in the Manistee County Circuit Court seeking dismissal of the "dust" allegation which, surprisingly, was denied by the judge. An appeal was filed and, on September 11, 2012, the Michigan COA shockingly affirmed the decision of the circuit court judge.

As the membership is well aware, pursuant to the 2000 ruling of the Michigan Supreme Court in *Nawrocki*, the road commission's duty under the highway exception to governmental immunity is limited to defective conditions "within the actual roadway". The Michigan Supreme Court further narrowed the term "highway" to its "physical structure" and the "physical roadbed itself". In contrast to *Nawrocki*, the *Hagerty* COA panel found... "The dust was still part of the roadbed surface when it was temporarily suspended above the road, and it was still part of the roadbed surface when it settled back to the ground." Sounds kind of transcendental, doesn't it? Also quoted from the decision... "if part of the roadbed structure travels and leaves the roadbed, it does not transform into something other than the roadbed surface." *Traveling roadbeds?* That's getting downright eerie!

It will come as no surprise that Pool-retained attorneys have filed an Application for Leave to Appeal with the Michigan Supreme Court on behalf of the Manistee County Road Commission seeking

to undo the ruling of the COA. The Michigan Municipal League has also expressed its intent to file an Amicus Brief in support of our arguments on appeal. While the *Hagerty* decision seems to fly in the face of existing case law that restricts a road commission's duty to defects in the "physical roadbed", the decision raises a "red flag" as to the possibility of future broadening of liability for road commissions under the highway exception to governmental immunity. If it can be successfully argued to the Michigan COA that a dust cloud can be "a defect in the physical surface of the roadbed" (quoting *Hagerty*) surely other creative legal theories will be presented and entertained by the court in the future.

Within the first few months of 2013, the Michigan Supreme Court will rule on the Manistee County Road Commission's Application for Leave to Appeal. While our chances for a successful appeal would seemingly be good given the current makeup of the Supreme Court, our prospects could change depending on the results of the November election. We will keep you apprised of developments as this interesting and potentially dangerous case progresses. However, if you have any further questions about the *Hagerty* case or if there are any other claims or incident-related matters that you would like to discuss, please contact Specialty Claims Services or the Pool office at your convenience.

---

### NOTICE!

The Physical Damage Loss Claim Form on MCRCSIP's website has been replaced with a "new and improved" Physical Damage Loss Claim Form. This form is for reporting claims directly to our Third Party Administrator, Specialty Claims Services, Inc.

# Maintenance Advisory

November 10, 2008

From Jon W. Reincke, Engineer of Operations

MDOT  
Division of Operations  
Maintenance  
6333 Old Lansing Road  
Lansing, MI 48917

For questions regarding  
this advisory, contact:

Dave Budd  
Maintenance Superintendent  
Phone: (269) 337-3939  
[Buddd@michigan.gov](mailto:Buddd@michigan.gov)

Scott Johnson  
Roadway Coordinator  
Phone: (517) 322-3323  
[johnsonsc@michigan.gov](mailto:johnsonsc@michigan.gov)



jwr:db:sj:tc

## Guidance on Using Wing-Plows

The use of wing-plows for winter operations in Michigan has increased over the past few years. Using wing-plows can make a winter operations program more effective and efficient; however, a vehicle equipped with a wing-plow attachment must occupy only one lane of traffic with the wing-plow in use on the shoulder or edge of pavement only.

Vehicles equipped with a wing-plow attachment shall not occupy two lanes of traffic at a time. Several accidents have been caused by motorists trying to pass snowplows and not seeing the wing-plow in the traveling lane because of the snow cloud generated by this operation. Below are several photos illustrating this.

In rare instances, exceptions to this advisory may be granted by the Chief Operations Officer upon written request from the Region Engineer. Such requests must be very specific and include the following:

1. Reason for requesting an exception.
2. Specific routes and limits where the exception is being requested.
3. Days and hours of operation that the exception will be used.
4. Conditions governing when the exception may be used, i.e., not during storm conditions.
5. Steps to be taken to ensure that the wing-plow can be seen by motorists and a plan for ensuring that any lights or reflective devices are in proper working order and cleared of ice and snow before wing is placed in driving lane.



Damaged wing-plow



Snow cloud behind wing-plow



Semi-truck after hitting wing-plow



Proper use of wing-plow



**Michigan County Road Commission Self-Insurance Pool**  
**417 Seymour Avenue, Suite #2**  
**Lansing, Michigan 48933**

**The Pool Cue is published quarterly by the**  
**Michigan County Road Commission**  
**Self-Insurance Pool**  
**417 Seymour Avenue, Suite #2**  
**Lansing, Michigan 48933**

**Past and current issues of the Pool Cue are available on the MCRCSIP website – [www.mcrقسip.org](http://www.mcrقسip.org).**





# CRASIF

## Connection

November 2012

Dear CRASIF Member,

### **The 2012 Annual Membership Meeting:**

We want to thank the 53% of our membership for attending the Business Meeting at our Annual Meeting held on September 4 and 5 at Crystal Mountain Resort in Thompsonville, MI. We were down 13 members or 25% from last year. The feedback we received was that the various venues were too spread out for most people and that discouraged attendance.

At the business meeting, the membership elected Mike Larrabee to fill the 3-yr term UP position, Dale Linton to fill the 3-yr Southern position, Ken Hulka to fill the 3-yr at-large position, and, Mary Herman to fill the remaining 1-yr of Fred Chapman's 3-yr term. The Board and staff recognized former staff treasurer Dale Ruttan, the late Steve Stocking and Fred Chapman for their services to CRASIF and the board. It was a special moment when Steve's son, Jake, received the award on behalf of the family while his dad's friends and colleagues gave his dad a standing ovation.

It was very encouraging to see greater attendance at the morning safety seminars entitled "How to Conduct a Job Hazard Analysis" and "Developing /Maintaining PPE Hazard Assessment Guidelines." We also had a representative from MIOSHA's education division discuss common violations and free resources.

### **2012 Loss Prevention Leaders Honor**

**Roll:** We also recognized 47 members who had experience modifications factors of less than 1. Special recognition went to three members with the lowest experience mod factor in their payroll class. The three members were: Livingston CRC (Largest), Newaygo CRC (Middle) and Gladwin CRC (Smallest).

### **The 2013 Annual Membership Meeting:**

Changes seem to abound in the road commission community these days. One change we hope will be for the better is the sharing of the same days and location of the annual meetings of both CRASIF and MCRCSIP. We will be meeting in Mount Pleasant on July 24 and 25. Set the date aside and please plan on coming to this historical event.

**Calhoun County Road Commission:** On November 1, Calhoun County Road Commission will become a department of the county government. Consequently, they are not eligible for CRASIF membership. They were good members whom we wish well in the next organizational structure. Their departure will not have an adverse effect on the Fund.

Respectfully,

Joyce Randall, Board Chair  
County Road Association Self Insurance Fund

# How To CONDUCT SAFETY “TAILGATE” TALKS



Brief, informal safety talks, often called, “Tailgate or Toolbox Talks”, provide an excellent means of delivering proper training to safe-guard against the hazards that can exist at any workplace.

**For Safety “Tailgate Talk” training to be effective, you should consider the following six points:**

## **1. Safety “Tailgate” talks should be presented – not simply read aloud!**

This type of training takes its name “Tailgate”, from the notion of supervisors and employees informally gathering around the truck tailgate at the job site to talk about an important issue. This means the presenter should review topic materials before the meeting, and then present the topic. It’s OK to refer to notes, but again, you should not just read a “Tailgate” safety talk. The training will be far more effective if it is presented and not just read.

**2. Safety “Tailgate” talks should be presented by a Supervisor, Foreman or similar lead employee.** Don’t delegate this important task! When “Tailgate” safety training is presented by a credible supervisor or person of similar responsibility, it’s far more likely the training will be taken seriously.

**3. Safety “Tailgate” talks should address the hazards at your workplace.** Present “Tailgate” safety training that’s relevant to your workplace and safety issues. Otherwise, you’ll quickly lose the attention of your employees and workers.

**4. Safety “Tailgate” talks should be *quick* and to the point and should take no longer than 5-10 minutes).** You can likely address one specific hazard or issue and the relevant safe-guards in that 5-10 minute time span. You want your audience to “grasp” and remember this safety training and you’ll have more success if you keep the talk short and to the point.

## **5. Subject Matter of Safety “Tailgate” Talks.**

The subjects of Safety “Tailgate” Talks can be anything safety related. Subject material can include such things as, safety briefings on the hazards of operating certain equipment like wood chippers and chainsaws, tree felling safety, job site work vehicle and general traffic layout, heat stress, proper PPE, strain and back injury prevention, and the like. A good source of “Tailgate Talk” materials are incident reports. But, be careful to not single out a particular employee for ridicule or divulge any medical information. Use the incidents as general discussion points. Another good source of training materials is the ASU Group Safety First Resource Center website. This website can be accessed through the CRASIF website. Click on the Safety Coordinator Resources link on the left hand side of the CRASIF webpage. Then browse the library materials.

## **6. Document your safety “Tool Box” talks.**

Make sure the names of the attendees, the date of the training, the name of the person(s) who lead the training, and the attendee’s signatures are recorded and properly filed. If you don’t record the training, it is as though it never occurred.

*November 2012*