

THE POOL CUE

Volume XIII, Issue 1 February 2007

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.”



WE DON'T HAVE A STEAM BOILER AT OUR ROAD COMMISSION – DO WE STILL NEED BOILER & MACHINERY COVERAGE?

Mark Jahnke
Specialty Claims Services, Inc.

Although the MCRCSIP provides excellent coverage to member Road Commissions for their Buildings and Contents through the Physical Damage Agreement, there are standard exclusions inherent in property policies that may leave you with a “gap” in coverage when certain events occur.

Equipment Breakdown Coverage provided by a Boiler & Machinery Policy provides coverage for sudden and accidental breakdowns to air conditioning units,

computer systems, communications equipment, electrical distribution systems and the like caused by such things as electrical arcing, mechanical breakdown, power surges and centrifugal force, perils that are excluded from coverage under property policies. So, whether your Road Commission has a steam boiler or not, Equipment Breakdown Coverage can provide an easy, cost-effective method to protect your Road Commission from these type of equipment losses.

With spring around the corner (thankfully!), this is a good time to review your Road Commission’s insurance coverage so that you are best protected in the event of a loss. Other “specialty” coverages, besides Boiler & Machinery, includes Underground Storage (covers all tanks, not just underground tanks!), Public Official Bond, Notary Bond, and Crime. Please contact the MCRCSIP Pool office and/or Specialty Claims Services and we will be pleased to further describe the benefits of these ancillary insurances and assist you with binding coverage.

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DISCLOSURE TO THE PRESS OF A DISCIPLINARY ACTION MAY CONSTITUTE VIOLATION OF THE EMPLOYEE RIGHT TO KNOW ACT

Wendy S. Hardt
Michael R. Kluck & Associates

Recently, on December 5, 2006, the Michigan Court of Appeals held that a statement to the press concerning an employee's disciplinary suspension constituted a violation of the Bullard-Plawecki Employee Right to Know Act. The case was McManamon v Charter Township of Redford, ____ NW2d ____; 2006 WL 351 8051 (2006).

In that case, the Redford Township Supervisor was quoted in an article in the Redford Observer as stating that "the issue [of the embezzlement] is under review". The article further stated, "McManamon was suspended due to problems in the performance of his day-to-day duties beyond the embezzlement charge, Kelley said." The Court of Appeals found that this was a disclosure by the employer of "disciplinary action" as defined in the Employee Right to Know Act and that Redford Township had no right to make the disclosure without giving notice to the employee in accordance with the Act.

Section 6 of the Employee Right to Know Act, MCL 423.506, provides, in pertinent part:

(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address, and

shall be mailed on or before the day the information is divulged from the personnel record.

Section 11 of the Act provides remedies:

The Court of Appeals noted that there was no evidence that, at the time the Redford Township Supervisor, Kelley, spoke with the Redford Observer reporter, Casper, the plaintiff's suspension was already a matter of public record; therefore, Kelley "divulged" that fact to Casper. Because there was no evidence that the defendant complied with the notice requirements of the Employee Right to Know Act, the divulging of disciplinary action against the plaintiff, without giving the plaintiff notice, was a violation of the Act. For this reason, the Court of Appeals found that the trial court did not err in denying summary disposition to the Township. Ultimately, a jury awarded the plaintiff \$100,000 for his damages.

If an employer violates this Act, an employee may commence an action in the Circuit Court to compel compliance with this Act . . . The Court shall award an employee prevailing in an action pursuant to this Act the following damages:

- (a) For a violation of this Act, actual damages plus costs.
- (b) For a willful and knowing violation of this Act, \$200.00 plus costs, reasonable attorney's fees, and actual damages.

This case serves as a reminder that all personnel actions must be treated as highly confidential. Information about such actions should only be shared with individuals within the organization who have a need to know. If disciplinary action is to be divulged to a third party, notice must be given to the affected employee at least concurrently with the disclosure. This is true even if it is the press calling to inquire about a high profile personnel action.

A:\Disclosure to the Press.ERTKA.wpd



VEHICLE / EQUIPMENT WARNING LIGHTING DEVICES

Most experienced motorists have encountered emergency vehicles approaching them in both rural and urban environments. Once noticed, one begins to wonder what the flashing and/or strobe lights represent and will they be required to react in a certain manner such as pull over, slow down or do both? Regardless whether the flashing warning lights are from an emergency vehicle (police, fire, or ambulance), or a county road vehicle performing road maintenance, they are very effective in getting drivers attention and helping to reduce roadway accidents.

Recently, MCRC SIP loss control conducted a small survey to find out what type of warning devices are being used and how they are to be used. Our survey found that most fleet managers have different opinions regarding the type (strobes, rotating lights, L.E.D flashers, etc) and vehicle/equipment installation location (left side, center, rear, etc). Several indicated that they are planning to make certain lighting changes for greater visibility (i.e. during day time hours), improved dependability and a variety of other reasons. Some indicated that L.E.D. lights have become very popular, however they can be expensive and come with a few drawbacks. (Note: Snow and ice accumulates on L.E.D. much easier, due to the lack of bulb temperature.) Most members in the survey had no specific policy regarding when flashing warning lights should be activated and when they should not. General rule was when working in/near the roadway.

Regardless of what type of warning lighting device(s) you are using and how you are using them, it is very important to reinforce to our members the following information.

1. When installing flashing, rotating or oscillating amber lights, ensure that they are placed in a position as to be visible throughout an arc of 360 degrees. **Note:** Section 257.698 of the Michigan Vehicle Code further indicates shall be used by state, county, or municipal vehicles while engaged in the removal of ice, snow, or other materials from the highway. It also mentions that they shall not be activated except in those circumstances that the warning produced by the lights is required for public safety.
2. Lighting devices are expensive to your budget, so consider vehicle/equipment installation locations. Most fleet managers seek vehicle equipment locations that are less prone to warning light damage.
3. Depending on the vehicle/equipment, some installation locations can produce a light distraction (i.e. glare) to the driver. Some research and driver feedback can be helpful when deciding where to place a warning light on a truck or off road equipment.
4. Always use a protected electrical systems consisting of fuses or breakers when installing warning lights. A properly installed light is as important as other truck/equipment electrical issues.

Continued on page 4.....

5. Warning lights should be part of a daily inspection check. If lights are not working, they should be promptly reported and repaired as soon as possible.
6. Employees should be trained and monitored regarding when warning lights are to be activated. Lights should be activated during poor weather conditions, when parked or working in/near the roadway. The Michigan Andy's Law for defining work zones mentions the importance of exhibiting a rotating beacon or strobe light for construction, maintenance, surveying and utility work activities.
7. It should be reinforced that warning lights do not give road commission vehicles permission to violate the rules of the road such as run traffic lights, stop signs, etc. Drivers will be ticketed and serious accidents and injuries will still occur!
8. Wind deflectors have proven to be useful in reducing snow and ice off the rear of trucks and sander units so that vehicle rear as well as warning lights can be seen during winter maintenance activities.



Note: The left vehicle is shown without the top foil, the right vehicle illustrates the wind clearing benefits of the top foil.

Please refer to the charts on pages 9 and 10,

Michigan Vehicle Code

Section 257.698.

THANK YOU!

A Big THANK YOU to all of you that worked so hard to update your property schedules with the COPE information required by our re-insurers.

We also appreciate the time and patience it took to complete your schedules with the disconnect switch information.

DISORDER IN THE COURT

Jon D. Vander Ploeg
Chairperson – Appellate Department
Smith Haughey Rice & Roegge



Tensions run high among the seven justices of the Michigan Supreme Court. While the justices often have differing opinions on points of law, and while they will often express those differences in multiple opinions in a given case, their disagreements have become a bit more personal in recent months.

So much so, that personal infighting among some of the justices has gained national attention. A recent headline on the MSNBC website states, “Michigan’s High Court Falls Into Bickering – Decorum Takes a Hit as Disorder Reigns at State’s Supreme Court.” A January 19 headline in the *New York Times* reads, “Unfettered Debate Takes Unflattering Turn in Michigan Supreme Court.” A CNN website article is entitled, simply, “It’s Getting Ugly on the Michigan Bench.” And the *Lansing State Journal* headlined their January 13 article – “Sniping on Michigan Supreme Court Escalates.” That article starts, “The idea that black-robed judges are symbols of decorum and civility seems farfetched in Michigan, where sniping among Supreme Court justices has escalated so much, it’s drawing wide attention.” As these articles explain, the personal rancor is between Justice Weaver, A Republican,

and certain of the other Republican members of the Court who, numbering four, comprise the majority vote on most issues.

Unfortunately, a usual suspect, attorney Geoffrey Fieger, has been instrumental in producing this rift among the justices. Some time ago, Mr. Fieger took issue with three members of the Michigan Court of Appeals, after they reversed a rather sizeable judgment in one of his personal injury cases. Mr. Fieger, speaking on a radio talk show, retaliated with comments about those judges. If nothing else, his criticisms were drawn in rather exaggerated, obscene terms. The State Bar chose to sanction Mr. Fieger as a consequence. Mr. Fieger has opposed the State Bar’s actions, arguing that his right to free speech is violated when he is sanctioned for words alone. That issue has percolated to the Michigan Supreme Court.

Mr. Fieger moved for certain of the justices to recuse themselves from the matter, because they had previously expressed bias against him in their judicial campaigns. Those justices refused to do so, but Justice Weaver found some merit in Mr. Fieger’s arguments. The dispute has resulted in opinions from the justices, primarily Weaver and Taylor, which have become extremely personal in nature. Justice Weaver has written opinions accusing the four other Republican justices of abusing their power and attempting to stifle her dissent with an internal “gag order.” The Republican majority, Justices Taylor, Young, Corrigan and Markman, adopted, and then rescinded, a rule prohibiting any of the justices from divulging in-chambers, “confidential” communications to the public. Justice Weaver referred to that rule as a “gag order” directed to her, and she objected to its adoption without a period of publication and public comment.

Continued on page 6.....

Recently, the Supreme Court heard public comment on the proposed confidentiality rule. A number of judges and lawyers offered their opinions both for, and against it. But, the adoption or rejection of such a rule is not likely to cool the heated debate.

Regardless of who might be to blame for the current situation, it is an unfortunate one. The Court's popular authority depends in great part, upon the respect that lawyers, litigants, and the public have for it. The ugly debate now displayed in full public view is giving the Court's image some tarnish not easily mistaken for a respectable patina. In fact, commentators are referring to this current situation as unprecedented and a rather dark day in Michigan jurisprudence.

It is hard to say what all of these might mean for future cases. Since 1999, the Court has been rather conservative, controlled by a majority of five Republicans, including Justice Weaver. But, even if Justice Weaver might still agree with the other four politically or philosophically, it is unlikely she will be discussing cases with them and reaching consensus in that way. By all accounts, she and they are not even speaking to each other. She claims, in fact, that the majority of four, as she calls them, have threatened to bar her from the Hall of Justice.

Since 1999, the Court's Republican majority has been favorable to road commissions and other governmental entities in cases involving governmental immunity. The Court has consistently construed the exceptions to governmental immunity narrowly and according to the strict language of the statute. The Court has disallowed many claims that would have been permissible in the past under the highway exception.

It remains to be seen whether the Republican majority will stay together on future cases involving governmental immunity. The Democrat justices, Kelly and Cavanagh, have remained unwavering in their loyal opposition to the more conservative philosophy. Now, Justice Weaver is far more likely to give them an ear for their concerns. In other words, the previously monolithic five-member Republican majority has cracked apart to a significant degree. It remains to be seen how philosophies might shift a bit and how the votes compile in future cases.

Since 1999, the pendulum swung in a rather conservative direction with many sorts of claims previously permissible against road commissions, now out, as a matter of law. But the laws of physics tell us this. The pendulum always swings both ways. Current happenings in the Supreme Court might signal the pendulum's change of direction.

Last, all of this stuff is a short Goggle away. Have we seen the last of the Court flying under the radar screen of public scrutiny? This controversy certainly has Michigan lawyers watching daily for the next chapter. Might the public, or the electorate, have a similar "train wreck" fascination? Time will tell.





WORK ZONE SAFETY TRAINING “MCRCSIP and Michigan State University”

Although the 2007 Michigan Road Construction/Maintenance season is still several months away, it is important to get the message out early! This year, MSU will be working with the MCRCSIP to offer specific Work Zone Safety Training onsite at county road commissions at a reduced cost. This reduced cost is possible because county road commissions have volunteered to allow training rooms to be used onsite at their facilities. The training programs are designed to:

- ✓ To create awareness and a sensitivity of highway safety problems associated with highway construction and work zones.
- ✓ To point out and discuss common deficiencies noted during MCRCSIP loss control visits.
- ✓ Provide information about the most current worksite traffic control devices and requirements based on both the new Michigan Manual of Traffic Control Devices as well as MDOT requirements (for contract agencies).
- ✓ Illustrate correct and incorrect applications of worksite traffic controls.
- ✓ Describe the proper procedures for operating and maintaining roadway work zones.
- ✓ Describe the best traffic control devices required for short duration work operations and typical examples that can be used for these operations.
- ✓ Conduct hands-on demonstration through which attendees will learn the correct techniques of installing guardrail and guardrail endings and will actually experience how guardrail is properly installed with important "DOs & DON'Ts".

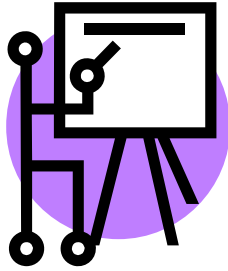
If you are interested in hosting the training or attending this training in your area please contact Mike Shultz of MCRCSIP at 616-866-3168 or email at mshultz@mcrsip.org. Additional information will be sent to your organization later in February regarding this valuable and important training opportunity.

MCRCSIP BOARD MEETING SCHEDULE

March 6, 2007 7:00 P.M.	Holiday Inn West Lansing
April 19-20, 2007	Crowne Plaza Hotel Grand Rapids
June 14-15, 2007	Atheneum Detroit
July 18-19, 2007 Annual Meeting	Soaring Eagle Resort Mt. Pleasant
July 19, 2007 12:30 p.m.	Soaring Eagle Resort Mt. Pleasant
October 18-19, 2007	TBD

Meetings are open to all members and are moved around the State in order to be as convenient and accessible as possible to those wishing to attend.





2007 COMMISSIONERS' SEMINAR

Please make sure you mark your calendars for the 2007 Commissioners' Seminar to be held at the Holiday Inn in Alpena April 15 – 17.

Registration begins at 5:00 p.m. on Sunday, April 15, followed by an Old Country Picnic, sponsored by Asphalt Materials.

Something new this year is an hour long orientation for new Commissioners scheduled for 8:00 a.m. on Monday, April 16. We feel this is well worth your time and encourage all Commissioners to attend.

The Seminar also includes a session on:

- (1) Township, County and CRAM relations,
- (2) CRASIF
- (3) MCRCSIP (Update and Overview of the Pool)
- (4) Parliamentary Procedures
- (5) General Session: Alternate Fuel Sources
- (6) Fiduciary Responsibility
- (7) News from MDOT and.....
- (8) CRAM Update

We hope to see all of you there!

REMINDER

Please make sure that the MCRCSIP Employment Practices Guidelines Books get passed on from past Commissioners to your new Commissioners.

NOTE: The EPL Guidelines can now be viewed on The MCRCSIP Website, www.mcrcsip.org.

PLEASE.....

Share this publication with your employees by either posting or circulating throughout your road commission facility.

Thank you.

NOTE

Present and previous issues of the Pool Cue are available on the MCRCSIP website – www.mcrcsip.org.



The following chart is from the Michigan Vehicle Code Section 257.698. It can be obtained electronically - www.michigan.gov/documents/aftermarket_lighting_8570_7.pdf.



FLASHING, OSCILLATING, OR ROTATING LIGHTS

The use and possession of flashing, oscillating, or rotating lights of <u>ANY</u> color is prohibited* except as otherwise provided by law or under the following circumstances:				
Vehicle Description	Red Lights	Blue Lights	White Lights	Amber Lights
Police Vehicles	Shall be equipped with red or blue. MCL 257.698(5)(a)		May display in conjunction with an authorized emergency light prescribed in this section. MCL 257.698(5)(g)	no
Fire Vehicles for public use	Shall be equipped. MCL 257.698(5)(b)	no		
Ambulance public or private				
Private motor vehicle owned by a volunteer or paid fire fighter, a volunteer ambulance driver, or a licensed ambulance driver or attendant. Must be authorized by the Chief of the local fire department.	May be equipped, must be mounted on the roof. MCL 257.698(5)(c)			
School Bus Public Transit Vehicle	Shall be equipped with two alternately flashing red lights at both the front and the rear. Public Act 187 of 1990 Section 17		no	Must be mounted on roof, displayed only during inclement weather, while boarding or discharging passengers, from ½ hour before sunset until ½ hour after sunrise, or where conditions hinder visibility of the bus. PA 187 of 1990, Section 31
Emergency support vehicles Vehicles must be used exclusively for emergencies and owned and operated by a federally recognized nonprofit charitable organization. MCL 257.698(5)(c)	May be equipped, must be mounted on the roof. MCL 257.698(5)(c)	no	no	no
Physicians vehicle Must obtain written authorization from the county sheriff.	May be equipped, must be mounted on roof. MCL 257.698(5)(h)			
State, county, and municipal vehicles	no			Shall be used while engaged in the removal of ice, snow, or other material from the highways. MCL 257.698(5)(d)
Private security guard	no	no	no	Shall not be activated on a public highway when the vehicle is in motion. MCL 257.698(7)
A person that is engaged in the manufacture, sale, or repair of these lights.	May possess lights, however shall not activate the lights upon a highway unless authorized to do so under the direction of the proper authority (for demonstration or repair purposes). MCL 257.698(5)(i)			
A person who possess or uses a light contrary to any of the above is guilty of a misdemeanor.				

FLASHING, OSCILLATING, OR ROTATING LIGHTS				
Use and Possession				
Vehicle Description	Red Lights	Blue Lights	White Lights	Amber Lights
A vehicle used for the cleanup of spills or a necessary emergency response action taken pursuant to state or federal law.	no	no	no	Lights shall <u>not</u> be activated unless the vehicle is at the scene of a spill, emergency response action, complaint, or compliance activity. MCL 257.698(5)(e)
A vehicle operated by an employee of the DNR that responds to a spill, emergency response action, complaint, or compliance activity.	no	no	no	
Hearse or funeral vehicle*	no	no	no	
A motor vehicle while escorting an oversize load that has been issued a permit.	no	no	no	Amber or Purple MCL 257.698(5)(g) <

*Changes effective 7/8/98.

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REMINDER!

We're Here For You – Guaranteed

We cover your liability. If you feel you have a problem,
please call us.

1-800-842-4971

For additional copies of the "Pool Cue" please call or
email Janet Wise or Kay Newberry.

SPECIALTY CLAIMS SERVICES, INC. 42450 Garfield, Suite E P.O. Box 381136 Clinton Township, MI 48038

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NOTICE!

Please call our **24-HOUR EMERGENCY PAGER
NUMBER** to report serious accidents that need
immediate attention after hours.

Call 1-800-209-8349 and a Specialty Claims
Investigator will respond to your call A.S.A.P.

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