

THE POOL CUE

Volume XIII, Issue 3 August 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.”

MCRCSIP ANNUAL MEMBERSHIP MEETING & WORKSHOP

Fred Haring
MCRCSIP Administrator

The MCRCSIP Annual Membership Workshop and Meeting was held July 18 & 19, 2007 in Mt. Pleasant. I was very pleased to report that the MCRCSIP had completed another very successful year and that sixty-six, of our seventy-nine members, were represented at the meetings in person by a record number of registered attendees.

During the Annual Membership Meeting, Chalmers McGreaham, Iron County, and Kenneth Rowe, Houghton County, were elected to fill three-year terms for the two open Upper Peninsula director positions. Dorothy Pohl, Ionia County, was elected to a three-year term for an at-large director position. Michael Power, Huron County, was elected as an at-large director to complete a remaining one-year term of office.

Lonny Lutke, Missaukee County, Tim Haagsma, Kent County, Sharon Hice, Eaton County, Michael Roper, Otsego County, and Karl Schmidt, Jackson County, complete the nine member MCRCSIP Board.

At the Board of Directors meeting following the annual meeting, Lonny Lutke was elected Board Chairman and Dorothy Pohl was elected Vice-Chairman.

On behalf of the Pool Board, members, staff and myself, I wish to extend our very best wishes to Donald Maronde who retired in June from the St. Clair County Road Commission and the Pool Board. Don was a founding member of the MCRCSIP and served as Chairman and Director in his over twenty-three years of continuous service to the Pool.

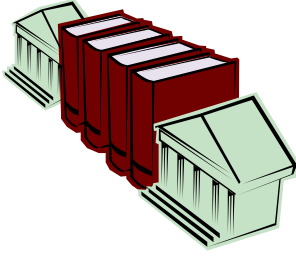
As a result of the continuing decrease in the Pool's ultimate expected losses, and favorable results from the fiscal year ending March 31, 2007, the MCRCSIP Board of Directors approved a refund of \$10.5 Million. This refund will be distributed to members in mid to late August.

We want to thank all of our members and directors for their commitment and dedication to serve on the MCRCSIP Board for the past twenty-three years.

INSIDE THE CUE

1. MCRCSIP Annual Membership Meeting & Workshop
2. Heavy Hauling "Permits"
3. Are You Guilty of Unconscious Bias?
5. Loss Prevention Programs Reminder
6. "12 Danger Zones for Supervisors"
MCRCSIP Board Meeting Schedule
7. MCRCSIP & Specialty Claims Services Directories

*** Please share this publication with your employees by either posting or circulating throughout your road commission facility.



HEAVY HAULING “PERMITS” AND WAYS TO AVOID PROBLEMS DOWN THE ROAD – DOCUMENTATION! DOCUMENTATION! DOCUMENTATION!

Matthew L. Wikander, Attorney
Smith Haughey Rice & Roegge, P.C.

All road commissions have a statutory duty to keep their county roads in “reasonable repair” so that “they are reasonably safe and convenient for public travel.” Naturally, a road commission’s statutory duty is put to the test when developers or contractors initiate large construction projects on or around county roads. The projects are often located on roads that are not intended to handle the heavy truck traffic that is necessary to construct the project. The natural result is a reduced life expectancy of the roads, often with visible destruction or damage to the roads before the project is even over.

What are road commissions to do?

In addition to their obligation to protect their roads, road commissions are also empowered to reduce weight and speed restrictions, and they can even sue for an “injury” to a county road. *See* MCL 224.19(4). Because of these powers, road commissions statewide have begun to issue “heavy haul permits” to contractors whereby the contractors pay deposits to the road commission before the project begins, and the road commission keeps the roads up to road commission standards, without disrupting the project’s schedule.

A recent opinion released by the Michigan Attorney General states that road commissions cannot “require” that contractors hauling heavy materials, who are

otherwise hauling legal loads, pay a deposit to the road commissions before initiating their project. It is important to note that Attorney General opinions are not binding on courts and do not carry the weight or force of law. As courts have said for years, Attorney General opinions may be persuasive, but they do not have “precedential value.” However, there is always the possibility the courts would agree with the reasoning set forth by the Attorney General.

Recently a member road commission was presented with the situation where a large construction project was going to take place just off of an older county road. The road was passable for its intended purpose—light local traffic—but it was clearly not capable of withstanding the constant pounding of heavy truck traffic. Considering the size and magnitude of the project, the road commission engineer-manager approached the contractor’s representative and asked him to enter into an agreement whereby the contractor would deposit with the road commission an inspection fee and a restoration fee (determined by the road commission) and the contractor’s trucks would be allowed to proceed with the project without interruption from the road commission (weight and speed restrictions). The road commission would also make the repairs to the road itself so that the project could stay on schedule.

The road commission presented the agreement to the contractor under the member road commission’s newly adopted “heavy haul permit policy” and had the contractor fill out a permit form when it deposited the money. While there was clearly an understanding between the parties (or at least so the road commission thought), the contractor would later maintain that the road commission *required* that the permit be obtained before the heavy hauling could begin. Sure enough, shortly after the above mentioned Attorney General’s

opinion was published, the contractor filed a lawsuit against the road commission saying that the road commission “required” the contractor to pay the heavy haul permit fee, and that because the road commission did not have the authority to require the payment, the road commission should give the contractor its money back.

After months of discovery and depositions, we were successful in convincing the judge that the road commission and the contractor entered into a contract as a matter of law, and at no time was the contractor forced to pay the road commission the deposit amount. Our position was that the contractor could have refused to apply for the permit and pay the deposit, and the road commission would have then utilized its powers to protect the road (speed and weight restrictions) and sued the contractor for any damage to the road caused by the project. The judge dismissed the contractor’s case against the road commission, finding that a contract between the parties governed the transaction, and the court never had to address whether the Attorney General’s opinion would apply to the case.

While the road commission escaped liability, the task at proving its case was made much more difficult because of the lack of documentation establishing the contractual arrangement between the road commission and the contractor. Because the road commission had used its standard “permit” application (with a few modifications), as opposed to a clearly worded, written contract, the contractor thought that it had a valid claim in light of the Attorney General’s opinion.

The moral of the story is, because road commissions have the power to enter into contracts, it is very important that the appropriate documentation be used by the road commission at the very beginning of a heavy hauling situation. A written contract, clearly spelling out each party’s understanding of the agreement

and its rights and obligations, will not only make the relationship between the road commission and contractor clear, but it should also prevent the contractor from later asserting that the road commission “required” that a permit deposit be obtained without legal authority to do so.

Contractors should also be put on notice of the road commission’s heavy haul policies as early as possible so that contractors are able to calculate the additional expense when submitting their bids.



ARE YOU GUILTY OF UNCONSCIOUS BIAS?

Wendy S. Hardt
Michael R. Kluck & Associates

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that they have a new target in their sights – “unconscious” or “unexamined” bias among employers. In February, the EEOC rolled out its new E-RACE initiative. E-RACE – Eradicating Racism and Colorism from Employment – is designed to “identify issues, criteria and barriers that contribute to race and color discrimination, explore strategies to improve the administrative processing and the litigation of race and color discrimination claims, and enhance public awareness of race and color discrimination in employment.”

Under its E-RACE initiative, the EEOC has already filed an employment discrimination lawsuit against the Walgreen Company, alleging widespread racial bias against thousands of African-American workers.

Continued on page 4.....

The EEOC accuses the drugstore chain of assigning managers, management trainees, and pharmacists to low-performing stores and to stores in African-American communities because of their race. The EEOC also alleges that Walgreen's violated federal law by denying the workers promotional opportunities based on race. The EEOC seeks back pay, compensatory and punitive damages, and injunctive relief for the class of aggrieved workers.

Although Walgreen's is a large employer, even small employers need to remain concerned about adopting policies and engaging in employment practices which do not end up having a disparate racial impact. A partial purpose of E-RACE is to heighten awareness of subtle or unconscious forms of discrimination. According to the EEOC, while many workers and managers recognize that overt racism will not be tolerated, they still may unwittingly discriminate by making employment decisions based on unconscious biases. For instance, research suggests that applicants with stereotypically black names are less likely to be called for interviews than applicants with stereotypically white names, despite similar qualifications.

So what are some of the steps you can take to reduce the potential impact of unconscious bias in decision making? Experts suggest the following:

- * Establish objective hiring standards and criteria for each position for which the company is seeking application;
- * Identify the specific minimum and maximum qualifications, experience, and skills necessary to effectively perform the particular job;

- * Set up a "blind applicant" review system where the names and addresses of applicants are removed before circulating an application to determine whether an applicant should be interviewed or otherwise advance to the next step in the hiring process;

- * Use multiple interviewers with diverse backgrounds and different perspectives to ensure that individual decisions are more legally defensible and that the impact of any biases held by individuals or groups is minimized; and

- * Implement more "structured" interviews wherein all candidates are asked the same questions regardless of demographic characteristics or appearance. A more structured interview process lessens the likelihood of snap judgments based on superficial criteria.

Specific criteria for advancement and promotion should be developed, and an internal job posting system should be used. Discipline and discharge decisions should be monitored to ensure that similar situations are handled in a similar manner and that decision makers are accountable for any discrepancies. Finally, employers may wish to consider using a checks-and-balances system, in which discipline and discharge decisions are made by more than one person and/or are subject to an impartial review prior to implementation.

Claims based upon a disparate impact, as opposed to intentional discrimination, are rare but may become more prevalent as the EEOC begins to focus on these types of claims. Each of the above-outlined strategies may assist an employer in defending against such discrimination claims. For further advice concerning your specific hiring practices or any specific hiring decision, you should contact your legal counsel.



LOSS PREVENTION PROGRAMS

“An Investment – Not An Unnecessary Expense”

Michael E. Shultz
Assistant Administrator
Director of Loss Control & Training

For over two decades, the MCRCSIP Loss Control has provided Safety and Loss Prevention services in such areas as (but not limited to) workplace safety audits and safety awareness training. We have served as your extra set of eyes at a variety of work environments, as well as bringing guidance and assistance to occupational risks that are typically found at county road commissions. Being privy to “the larger picture” as it pertains to claims, we analyze losses and then develop loss prevention training programs that can help bring safety improvements to your organizations.

SAFETY AUDITS: As part of an onsite loss control visit, we review work environments (i.e. garages and work sites) to help ensure that risks and hazards are properly managed. Realizing that our safety audits are a mere snapshot of that day, we encourage and support management and supervision to audit their own workplaces on an ongoing basis. This generally includes monitoring and correcting inappropriate employee behavior and unsafe conditions.

SAFETY TRAINING: Over the years, most members have taken advantage of in-house safety training. This involves setting aside valuable time from a busy work schedule to allow loss prevention training to be conducted. **Note:** Over the past decade, it was not uncommon to find more and more members requesting one half to a one full day of training several times a year.

With safety training increasing over the years, we strongly believe it has played a very positive role in accident prevention, controlling insurance costs and contributing to membership dividend refunds.

It is important to comment that we are completely aware of the financial issues currently impacting our members. We realize hard financial times will require managers and supervisors to take a long hard look at expenditures to include the time and cost of safety meetings and employee training. With that said, it is important that we never ignore the many positive benefits your proactive safety program brings to your organization. An effective accident prevention program with all the essential components, are an investment to your organization, not an unnecessary expense that should be trimmed away.

Whether your safety program is on the right track or you believe it just needs a boost in a new direction, contact the MCRCSIP Loss Control. We stand ready to support and reinforce your in-house safety and loss prevention program.



Please periodically review your equipment and property schedules to make sure that new equipment has been added in case there was ever a loss.

Also, please check to see that all equipment and vehicles with a duty rating of over one ton have a disconnect switch installed, and used. Equipment and vehicles parked outside are not exempt from having a disconnect switch installed.



“12 DANGER ZONES FOR SUPERVISORS”

2007-2008 Employment Law Training Opportunity

Over two years ago the MCRCSIP conducted numerous regional training sessions titled “10 Danger Zones for Supervisors.” When completed, approximately three hundred road commission foremen, supervisors and managers attended the one (1) day training sessions. Feedback was very positive, with many indicating that the training helps bring awareness to the seriousness and complexity of employment practice liability. Knowing how quickly middle and top management personnel can change (i.e. promotions and retirements) from year to year, we believe it is time to offer an updated (3rd Edition) program, “**12 Danger Zones For Supervisors.**”

It goes without saying, managers and supervisors are on the front line when it comes to keeping your organization out of court, and training them about the law is essential to liability claim prevention. Accordingly, taking one day every few years for refresher training is time well spent!

The “12 Danger Zones” program addresses twelve (12) critical areas of employment law: Hiring, Firing, Documentation/Evaluations, Discipline, FMLA, Sexual Harassment, Other Harassment, Discrimination, Privacy, Safety/Workers’ Comp, Workplace Violence, and Wage & Hour Labor Law.

Your organization will be notified of the locations and dates with the first regional sessions beginning sometime around mid October 2007. We plan to schedule ten (10) regional training programs around the state at convenient locations so that attendee’s have minimal travel time and expense. Note: Some members may decide it is best to hold their own in-house program exclusively for their management and supervisors. For more information or to volunteer your facility, please contact Mike Shultz @ 616-866-3168 or mshultz@mcrsip.org.



MCRCSIP BOARD MEETING SCHEDULE

October 18-19, 2007
Yarrow Conference Center
Augusta

December 13-14, 2007
Perry Hotel
Petoskey

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.

MCRCSIP ADMINISTRATIVE DIRECTORY

Phone: (517) 482-9166 or (800) 842-4971
Fax: (517) 485-4809

Frederick Haring
Administrator
E-Mail: fharing@mcrsip.org

Gayle Pratt
Assistant Administrator
Director of Finance & Administration
E-Mail: gpratt@mcrsip.org

Michael Shultz
Assistant Administrator
Director of Loss Control & Training
(616) 283-1103
E-Mail: mshultz@mcrsip.org

Michael Phillips
Sr. Loss Control Specialist
(616) 283-1296
E-Mail: mphillips@mcrsip.org

Matthew Morgan
Information Systems Manager
E-Mail: mmorgan@mcrsip.org

Kay Newberry
Member Services Coordinator
E-Mail: knewberry@mcrsip.org

Janet Wise
Administrative Assistant
E-Mail: jwise@mcrsip.org

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

Phone: (586) 226-2446 or (877) 855-8614
Fax (586) 226-2217

CONTACT LIST:

Kirsten Lents klents@specialty-claims.com	Extension 100
Mark Jahnke mjahnke@specialty-claims.com	Extension 101
Andrea Alef aalef@specialty-claims.com	Extension 102
Jim Kesek jkesek@specialty-claims.com	Extension 103
Paul Palazzola ppalazzola@specialty-claims.com	Extension 104
Paul Aubin paubin@specialty-claims.com	Extension 105
Maureen Verkest mverkest@specialty-claims.com	Extension 107

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.

**Michigan County Road Commission
Self-Insurance Pool
P.O. Box 14119
Lansing, Michigan 48901**



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

**The Pool Cue is published quarterly by the
Michigan County Road Commission
Self-Insurance Pool
417 Seymour Street, Suite #2
P.O. Box 14119
Lansing, Michigan 48901**