

THE POOL CUE

Volume XII, Issue 2 May 2006

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.”



ANNUAL MEMBERSHIP MEETING

Our Annual Membership Workshop and Meeting will once again be held at the Soaring Eagle Resort in Mt. Pleasant on July 19 and 20. We are fortunate to have Carl Neu, of Neu & Company, as our workshop presenter on Wednesday afternoon, July 19. Mr. Neu is a noted local government theorist and consultant. He has identified five mega-trends driving the “Second American Revolution” – the resurgence of local government authority and new local-state government partnerships emerging in a number of “pace setter” states.

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MCRCSIP BOARD OF DIRECTORS MEETING SCHEDULE

May 22-23, 2006	Mission Point Mackinaw Island
June 21-22, 2006	Holiday Inn Big Rapids
July 19-20, 2006 Annual Meeting	Soaring Eagle Resort Mt. Pleasant

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.

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Mr. Neu's presentation will review the efforts underway in Oregon, Texas, California, Minnesota, North Carolina and Washington that are reshaping the landscape of local government performance and state-local government relationships.

We feel quite sure that you will find Mr. Neu very interesting and thought provoking. Don't miss this opportunity!

SMALL HEALTH PLANS TO COMPLY WITH HIPAA SECURITY RULE BY APRIL 20, 2006

Michael R. Kluck
Michael R. Kluck and Associates

The implementation date for small health plans to comply with the HIPAA Security Rule was April 20, 2006. Even though you may have a HIPAA Privacy Policy in place, you should not automatically assume you are in compliance with the HIPAA Security Rule. Privacy refers to the right of an individual to control his/her personal information and to not have it divulged or used by others against his/her wishes. Security applies to the spectrum of physical, technical and administrative safeguards that are put in place to protect the integrity, availability and confidentiality of electronic information.

The standards established by the HIPAA Security Rule apply to all individually identifiable health information that is in electronic form, whether it is being stored or transmitted. Health information that is on paper or oral is not covered. All healthcare providers, health

plans, or clearinghouses that electronically store or transmit individual health information must comply.

The Rule is intended to set a minimum level or "floor" of security. Organizations may choose to implement safeguards that exceed the HIPAA standards. Covered entities are required to:

- Assess potential risks and vulnerabilities
- Protect against threats to information security or integrity, and against unauthorized use or disclosure
- Implement and maintain security measures that are appropriate to their needs, capabilities and circumstances
- Ensure compliance with these safeguards by all staff

An organizations' approach to HIPAA Security must be comprehensive and ongoing. No single policy, practice, or tool can ensure effective overall security. The safeguards that are mandated by the HIPAA Security Rule focus on protecting electronic health information through the following:

- Administrative Procedures – documented, formal practices to manage the selection and execution of security measures
- Physical Safeguards – protection of computer systems and related buildings and equipment hazards and intrusion
- Technical Security Mechanisms – processes that protect and monitor information access and prevent unauthorized access to data that is transmitted over a network

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You should consider adoption of a HIPAA Security Policy and appointment of a Security Officer if your organization handles any electronic personal health information through its health plan. You should also assess what steps are needed within your organization to protect the electronic personal health information you are handling. You should contact legal counsel if any further information is required.

NOTIFICATION OF A LOSS

As a result of claims being submitted that were excessively past the reasonable time frame for submission, your Board of Directors passed a motion adopting an addendum to our Physical Damage Agreement. Effective April 1, 2006, Members of the Michigan County Road Commission Self-Insurance Pool must notify the Pool of any loss or damage within ninety (90) days from the date of such loss or damage. The Member must tell how, when and where the loss or damage happened and assist in obtaining the names and addresses of any witnesses. The addendum also adds a requirement for a "Proof of Loss" within one hundred twenty (120) days after the occurrence stating the time, place and cause of loss, the interest of the Member and of all others in the property and the amount of loss or damage.

Failure by the Member to report the said loss or damage and to file such sworn proof of loss shall invalidate any claim under the Physical Damage Agreement for such loss.

COURT OF APPEALS CONVENES SPECIAL PANEL TO RE-EXAMINE WESCHE'S "BODILY INJURY" LIMITATION

William L. Henn
Attorney at Law
Smith Haughey Rice & Roegge

The Michigan Court of Appeals has convened a "special panel" to examine whether the holding of *Wesche v Mecosta County Road Commission* should remain good law. In *Wesche*, the Court held that governmental immunity bars a loss of consortium claim asserted by the spouse of a party who suffers bodily injury. However, in *Kik v Sbraccia, et al*, a three-judge panel subsequently concluded that it disagreed with *Wesche* and would decide the issue differently, if free to do so. Describing its disagreement with *Wesche*, the *Kik* panel commented that it believed the term "bodily injury and property damage" used in the motor vehicle exception to immunity, MCL 691.1405, was simply a threshold that one plaintiff must cross before immunity is lifted and a governmental defendant becomes subject to liability for all forms of damages, including damages for loss of consortium.

In contrast, the defendants in *Kik* had argued consistently with *Wesche* that the term "bodily injury and property damage" used in the statute is a limitation on the type of damage that a plaintiff may recover in a suit against the governmental agency. In other words, defendants argued that the Legislature has waived governmental immunity for claims that assert bodily injuries or property damage, but not for any other type of claim. Because a claim for loss of consortium is a claim for injury to the marital relationship, and not for bodily injury, the defendants in *Kik* argued that such a claim is barred by immunity.

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By indicating that it would decide the loss of consortium issue differently if it could, the three-judge panel in *Kik* invoked the special panel procedure. After the decision was issued, the Chief Judge of the Court of Appeals polled the other judges on the Court to determine whether a special panel should be created. The judges voted to convene the panel. The parties filed supplemental briefs and oral argument was held in Lansing on April 25, 2006. Seven judges of the Court presided over that hearing: Judges Schutte, Zahra, Cavanagh, Wilder, Smolenski, Fort Hood and Borrello.

At argument, several of the judges were interested in whether loss of consortium is viewed as an independent claim that belongs to the spouse of the person who suffers bodily injury or whether it is more akin to an element of damages for the bodily injury claim. Michigan law has consistently—at least since 1960—treated claims for loss of consortium as independent claims belonging to and asserted by the spouse of the person who suffers bodily injury. They are not merely elements of damages recoverable as part of a bodily injury claim. Based on that distinction, the defendants in *Kik* argued to the special panel that claims for loss of consortium, as independent claims, must come within an exception to governmental immunity on their own merit. In other words, defendants argued that each independent claim must be a claim for bodily injury or property damage. If an independent claim fits neither of those categories, it does not fit within the highway exception to immunity.

The special panel will now determine whether *Wesche* should remain good law, or alternately, should be overturned. Notably, *Wesche* is still pending on application for leave to appeal in the Supreme Court. The plaintiffs in that case appealed the Court of Appeals

decision holding that loss of consortium is not a claim for "bodily injury" and is therefore barred by the immunity statute. The Supreme Court has not acted on the plaintiffs' application, but is likely to do so in the near future. Whether that occurs before or after the special panel in *Kik* issues its opinion is impossible to predict. Either way, there is a good chance that the special panel's decision in *Kik* will not be last word on the issue.

SAFETY – EVERYONE'S RESPONSIBILITY (with Mr. Charlie Morecraft)

A number of years ago, road commissions around the state viewed a powerful video presentation, "Remembering Charlie". Mr. Charlie Morecraft spoke about a tragic gasoline refinery explosion and how his poor attitude was a major contributing factor to this accident. Charlie further commented about the importance of following safety procedures and the combined cost of workplace accidents. He left you with the important message, "think safety for yourself and your family!"

Recently, the MCRCSIP purchased a sequel video presentation titled "Safety – Everyone's Responsibility." This presentation is as powerful as the original, designed to motivate workers and management to work as a team and not as adversaries. He stresses the importance of taking responsibility for your own actions, because what we do (or fail to do) impacts lives of everyone around us.

The MCRCSIP is using this video as part of a loss prevention PowerPoint presentation to reinforce observing, reporting and correcting unfavorable conditions in our facilities and along the roadway.

Please contact Michael Shultz at (616) 866-3168 to further discuss this training opportunity.

2006 WORK ZONE SAFETY

Michael Shultz, Assistant Administrator
Director of Loss Control/Training

As we step forward into the 2006 construction season, we need to keep work zone safety in the forefront for workers, our equipment and the motoring public. Complacency is a frequent killer when workers become lulled to approaching traffic, heavy equipment operations and proper work practices. Employees need to keep alert to changing conditions, look out for one another, and follow safety training procedures and rules.

The MMUTCD Part 6 references that each person whose actions affect Temporary Traffic Control, from the upper level management through the field workers, should receive training appropriate to the job decisions each individual is required to make.

MIOSHA Part 22, Rule 2221 requires: An employer shall provide training appropriate to the work assignments for each employee engaged in activities covered by this part. These include:

- * Traffic regulating (proper positioning, proper work attire, etc.)
- * Placing and removing signs and barricades
- * Working next to traffic

When considering your temporary traffic control devices, they must be in compliance with NCHRP 150 requirements as of October 1, 2005. This includes:

- * Sign supports
- * Channelization devices
- * Type I, II and III barricades
- * Crash cushions

Furthermore, the need and control of all road users (motorists, bicyclists and pedestrians) within the highway, including persons with disabilities in accordance with the American With Disabilities Act of 1990 (ADA) through a TTC zone shall be an essential part of highway construction, utility work, maintenance operations.....

The MCRCSIP Loss Control offers safety awareness training on this subject and can assist you upon request.

MCRCSIP – ROADSIDE CHATS Safety Messages for Accident Loss Prevention

Michael Shultz, Assistant Administrator
Director of Loss Control/Training

In a business economy where budgetary money is very tight, managers might consider employee safety training as an unnecessary or too costly expense. Without thinking through the benefits, they begin to restrict training opportunities or not allow it at all. Although one might consider some training is better than none, it is important to provide safety training as part of your ongoing safety/loss prevention program. Listed are some examples when training is either important or required by state (MIOSHA) or federal (OSHA) law:

1. New hire orientations
2. When the job assignment changes
3. When job processes and procedures change
4. Annual refresher or certification training every few years
5. To address serious accidents, accident trends, near miss accidents

To assist businesses and organization in their safety training endeavors, companies and organizations offer training via workshops, seminars, videos/DVDs, computer PowerPoint, on-line training, etc. The MCRCSIP Loss Control offers all members a wide variety of awareness programs, and training materials to our membership. Dozens of informational materials are routinely displayed at road commission conferences and annual meetings. We encourage our members to pick up this information and share it with your employees.

Understanding it can be difficult to dedicate many hours of training during busy work seasons, we have available “Roadside Chat” safety discussion brochures.

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The information format allows for short (5-10 minute) discussions led by a manager, supervisory personnel and/or safety committee. Another approach, they can also be reviewed by the employees during the workday. Keep in mind that any questions should be directed toward supervision or management. For training documentation, "Roadside Chats" provide a section for employee names, dates, etc. Listed below are the titles currently available and can be ordered by contacting the Lansing office via email jwise@mcrsip.org or phone (800) 842-4971.

- * Backing equipment and snowplows
- * Driver fatigue
- * Flammable liquid storage containers
- * General workplace harassment
- * Hazardous chemicals
- * Obtaining material safety data sheets
- * Railroad grade crossings
- * Road safety issues
- * Sexual harassment
- * Using battery disconnect switches
- * Working near power lines

MUSKEGON COUNTY ROAD COMMISSION SAFETY CONFERENCE & TRAINING

First Aid / CPR / PPE / Work Zone

MIOSHA / Chainsaw / Miss Dig

Much, Much, More

New Dates for 2006!

September 27, 28, & 29

Muskegon Harbor

Holiday Inn

Registration information will be sent in August.

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION ASSESSMENT

The MCCA has decreased its assessment to \$137.33 per vehicle effective July 1, 2006 – June 30, 2007, to our Members. This amounts to a 3.6% reduction for renewal year 2007/2008.

MCRCSIP LOCKBOX ADDRESS HAS CHANGED!

In order to take advantage of new features available to bank lockbox users, we needed to change our remittance mailing address. Since we thought it would be easier for our Members to have one address for all payments, we will now be directing *all payments* for renewals, deductibles, reimbursements and salvage purchases to the same address. Please send your payments to the Pool to the following address:

Dept. #77943
Michigan County Road Commission Self-Insurance Pool
P.O. Box 77000
Detroit, MI 48277-0943

Thank you!



MCRCSIP ADMINISTRATIVE DIRECTORY

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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
e.mail 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
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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.

**Michigan County Road Commission
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