

# RISKY BUSINESS

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MIAMI VALLEY RISK MANAGEMENT ASSOCIATION



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## From the Board Room...



At the September 24, 2012 Quarterly Board Meeting, the following actions were taken:

- Approved the Open Claims & Incurred Losses Report
- Accepted the Financial Report and CAFR for the year ended 12/31/11
- Accepted the actuary's loss funding study for LY25 (2013) and approved a loss funding amount of \$2.5M
- Approved a three-year contract with Pinnacle Actuarial Resources, Inc.
- Approved closure of LY17 (2005) - see the FYI article on Page 1
- Approved the 2013 Objectives, Preliminary Expenditure Budget and PCF
- Approved the execution of the Agreement for Deposit of Public Funds with Huntington Bank
- Approved the DPL Energy Resources Agreement Amendment No. 1 for reduced rates

Wishing you a beautiful  
holiday season and a new  
year of peace and  
happiness.  
Tom, Craig,  
Starr and Kathy

## FYI

- Tom Judy

### The MVRMA Difference

Those of us who participate in MVRMA, either as member cities or staff, believe in the value of pooling. Pooling is superior to buying insurance in the commercial market for many reasons including: long-term price stability, flexible coverage to meet the members' needs, economies of scale in purchasing excess insurance and reduced administrative overhead. However, not all pools offer the same benefits of membership. You can call me biased - and you would be correct - but I believe that membership in MVRMA offers extraordinary benefits. I call this *The MVRMA Difference*.

*The MVRMA Difference* is reflected in many ways including:

- *Selective membership* - MVRMA's strategy of accepting only well-managed cities with a commitment to loss control is a vital component of a successful pool
- *In house claims administration* - MVRMA's experienced Claims Manager knows and understands the member cities and their issues.
- *Customized loss control services* - The in-house Loss Control Manager is familiar with the members' personnel and operations. She offers a variety of customized services including safety and risk management consultation and training, a large video library on a variety of risk management topics and an annual review of safety policies and practices. MVRMA also offers contract and document review services.
- *Member-owned and member controlled* - Each of the 20 member cities is represented on the Board, and each trustee is encouraged to be active

on a committee.

- *Local government experience* - The Executive Director has 20 years of experience working in local government, and the remainder of the staff has a total of 48 years serving local governments at MVRMA. When you call MVRMA, you will be served by someone who understands your challenges.

No doubt the most popular MVRMA difference is the return of unspent funds. Unlike a commercial insurance company or other insurance pooling arrangements, MVRMA refunds all surplus loss reserves to contributing members when a loss year is closed. A loss year is eligible to be closed when all known claims and lawsuits have been settled and the statute of limitations period has expired. Historically, MVRMA's loss years have been open from five to ten years. Once closed, a loss year's surplus reserves, or unspent funds, are returned to the members in the same proportion as they were originally contributed. In addition, members are refunded their proportionate share of investment income earned on the reserves.

Since its inception in 1988, MVRMA has closed 16 loss years and returned about \$9 million to its members. This amount is more than 50% of the contributions for those loss years.

### Closure of Loss Year 17

At its September meeting, the MVRMA Board approved the closure of Loss Year 17 (2005). The final balance of LY 17 was \$1,276,061.90. This amount, which represents about 60% of the amount originally contributed, will be returned to the members.

According to the Surplus Loss  
(Cont. on Page 4 - See FYI)

## Counselors' Comments



Surdyk, Dowd & Turner

The question of whether a political subdivision is immune from tort liability in regards to "sewer systems" has recently received attention through the Second District Court of Appeals decision in *Guenther v. Springfield Twp. Trustees*, 2012-Ohio-203, 970 N.E.2d 1058 and the Ohio Supreme Court's decision in *Coleman v. Portage County Engineer*, Slip Opinion No. 2012-Ohio-3881.

In *Guenther*, Greg Guenther sued Springfield Township following many years of flooding problems on his property that ultimately culminated with his sustaining \$20,000 in flood damage to his basement following a heavy rainfall in early June 2008 - a mere two months after the Township had completed the reconstruction of a nearby ditch. As part of his complaint, Guenther alleged the Township was negligent in its maintenance of two drainage culverts it had authorized and installed in 1971 after the previous owners of the property experienced similar flooding problems on the property. The Township, however, maintained that it was entitled to political-subdivision immunity as it was engaged in a governmental function of reconstructing a "sewer system."

In holding the township was entitled to immunity, the Second District first took a detailed look into what constitutes a "sewer system." Finding the term should be construed narrowly as an exception to the general grant of immunity, the Second District found that the two drainage culverts did not constitute a "sewer system" for purposes of statutory waiver of immunity. In so holding, the Court noted that the Township did not have any easements or other legal authority to enter upon the surrounding property to maintain the pipes and the ditch and that the installation of the pipes was at the request of the former property owners. Continuing, the Second District

also noted that there was no evidence that the pipes and ditch were part of a larger "system" maintained by the township. Therefore, because the pipes and ditch were not a "sewer system" that the Township was obligated to maintain, the Township simply could not be exposed to liability based on Guenther's claim of negligent maintenance.

Not stopping there, the Court continued by finding that even if the pipes and ditch actually did constitute a "sewer system," Guenther failed to provide any evidence that simple maintenance was the solution to, or would have prevented, the periodic flooding of his property. Instead, the Court found that any solution to the flooding problem on Guenther's property required the Township to conduct a complete redesign and reconstruction of the sewer system - something which constitutes a governmental function. Therefore, because reconstruction or redesign of a "sewer system" is a governmental function, the Township was entitled to immunity.

Furthermore, in *Coleman*, Barbara and Robert Coleman owned property in Rootstown, Ohio that they alleged to have flooded in 1982, 1989, 2003, 2005 and 2009. According to the Colemans, the flooding was a result of Portage County collecting a large amount of drainage water and discharging it through a piping system that was otherwise unable to adequately accommodate such quantities. The Colemans subsequently sued Portage County alleging it was negligent in its design, construction and maintenance of the water piping system from which Portage County discharged water on their property - i.e., Portage County was negligent in its failure to "upgrade" the sewer system.

Upon accepting review of the Eleventh District Court of Appeals decision finding the Colemans had alleged a negligent maintenance claim that was not barred by political-subdivision immunity, the Ohio (Cont. on Page 4 - See COMMENTS)

## The Claims File



-Craig Blair

Several of our member cities provide public transportation services. These programs fill a need and provide a valuable service to the community, but these cities need to realize the liability exposures they have assumed. When engaged in these activities, the city is generally recognized as performing the duties of a common carrier. The courts consider this service to be a "proprietary function" not a "governmental function." The city is held to a higher degree of care towards its passengers. Because of their designation as proprietary, when we have to defend a claim for these services, the courts generally will not allow the protections or immunities afforded to municipalities under Ohio Revised Code 2744.

Since most of these programs are designed to assist the elderly or physically handicapped, the first step toward minimizing the risk is to properly evaluate who you hire as drivers and then provide them with the proper training. The physical ability of the driver to carry out the essential functions of his job must be considered, because a major part of his duties, and the area that creates the most exposure, is assisting passengers when they enter or exit the vehicle. The driver must be trained on the proper "lifting" techniques to accomplish this safely. He must be able to secure a wheelchair or passenger for transport, and he must be able to do all these things without endangering himself or the passenger. Remember, when providing transportation for the elderly and/or disabled, a minor incident can lead to a serious injury.

Some of our members provide transportation through a city sponsored program, taking people to special events, dinners, concerts or camps. In these situations, a waiver or release form should be signed by all (Cont. on Page 4 - see CLAIMS)

## Loss Control Lowdown

- Starr Markworth

### How to Communicate in a Crisis: What's the Plan?

30 years of work destroyed in 30 seconds is what can happen if your city mismanages an explosion, natural disaster or a multitude of other crisis situations.

Somewhere within every organization a crisis is waiting to happen. Maybe tomorrow, maybe next year or even in five years; you can't be sure what the crisis will be or when it will strike. But, you can be sure that a crisis will put your city's hard earned image and reputation in jeopardy.

One of the best outcomes of thinking about a crisis before it happens is the chance to consider your city's strategy without the pressure of news media hovering.

Every organization should have a crisis communications plan that considers the following:

- *What could go wrong?* You'll think of all kinds of things, but this exercise

is important because it helps cities understand what they will need from both a communications perspective and a business contingency planning perspective in the event of crisis. It also serves to educate your key leaders on what types of issues could turn into a true crisis requiring external communications.

- *Who's in charge?* When a crisis hits, you don't want to waste time trying to figure out who should be involved in the response. And, the roles and responsibilities of all members of the crisis team should be clear. In particular, who has final sign off on strategy, messages and timing should be agreed upon in advance.

- *What's the strategy?* These days, transparency and immediacy are the two critical elements of any crisis response.

- *Who are the spokespeople?* Review your list of potential problems and figure out who would be the credible people within the organization to respond to those issues--with everyone from residents to the press.

MVRMA is sponsoring a seminar "Communicating in a Crisis" on  
(Cont. on Page 4 - See CRISIS)

## Brokers' Beat...



### Market Conditions

In 2011, the insurance industry closed the year with a combined loss ratio of 108.2%, a loss of \$19 billion and a reduction in capital and surplus to \$550 billion, a decrease of \$9 billion. The negative results were primarily due to \$100 billion in catastrophic losses that overwhelmed commercial carriers throughout the year. These losses included the Australian floods, New Zealand's earthquakes, the Japanese earthquake and tsunami and severe wind and hail losses in the U.S. These losses caused a modest hardening of the market in the last six to nine months that influenced the pricing of property placements.

The good news is there have been no catastrophic losses to date in 2012. If that remains the case, 2012 should prove to be a very profitable year for the industry. According to first half results, the combined loss ratio is 102.2%, profit is \$16.4 billion and capital and surplus has increased to \$568 billion. Keep in mind that the combined ratio does not include investment income.

Looking forward, we see the marketplace being essentially flat for January renewals and remaining flat well into 2013. Given the positive financial results of 2012 so far, we would normally anticipate a modest softening, but anemic investment income seems to be offsetting lower rates. With the anticipation that investment income will remain at historically low levels for the foreseeable future, it appears underwriting practices will remain tight since higher rates of return on investment income are not available to offset less stringent underwriting.

Specifically for MVRMA, we see the January 1 liability renewal being flat. A flat property renewal in July is also anticipated as long as there are no catastrophic events or difficult property losses in the months ahead.

## Mason's Water Reclamation Plant Receives Award

Congratulations to the City of Mason. At the Ohio Water Environmental Association's (OWEA) state conference, held in Aurora, Ohio July 19, Mason's Water Reclamation Plant was awarded the Facility Image award for 2012. The award is intended to recognize members who have enhanced the physical image of their workplace by cleaning up their own work facilities and therefore presenting a better image for the wastewater profession as viewed by the general public. There are hundreds of treatment plants in the state of Ohio, and approximately 60 were nominated for this award.

Mason's investment in utilities continues to pay dividends by reducing treatment costs, protecting the environment, and encouraging economic development and innovations to reclaim treated effluent for irrigation and bio-solids for

fertilization. City Council's emphasis on securing cost-effective, long-term wastewater treatment continues to be widely recognized.

The staff at the City of Mason takes great pride in its Water Reclamation Plant facility. Due to the facility's advanced type of treatment, it continues to receive a large number of visitors each year. Officials from various cities, counties, state offices and international groups, from as far away as the Kingdom of Saudi Arabia, have visited the plant.

Employees are responsible for both the internal and external appearance and landscaping throughout the facility. Biosolids produced at the plant are used to fertilize the grass and landscaping around the buildings. Throughout the plant you can tell that staff takes ownership and pride in their facility.

## FYI (Cont./Page 1)

Reserves Disbursement Policy, MVRMA will credit each member's refund to its General Reserve Fund (GRF) account, unless within 30 days, the member requests a cash disbursement. Once deposited to the GRF, a member city may use any portion of its balance to pay any MVRMA invoice throughout the year. Cash withdrawals are permitted only in January, unless otherwise approved by the Executive Director.

Member cities may use their General Reserve Funds in the way that best suits them and their budgets. Some members withdraw their funds as soon as they become available. Others leave some or all of the funds on deposit. We recommend leaving at least a portion of your refund on deposit in the GRF for budget stabilization purposes. Members' funds left on deposit in the GRF continue to accrue investment income.

Although the benefits of MVRMA membership are numerous, none is more compelling than the refund of closed loss years. During these challenging economic times, it is perhaps the major component of *The MVRMA Difference*.

## Comments

### (Cont./Pg. 2)

Supreme Court was faced with the question of whether Portage County's failure to "upgrade" the sewer system was a governmental or proprietary function. In reversing the Eleventh District's decision finding Portage County's failure to "upgrade" the system was actionable, the Ohio Supreme Court first noted that the General Assembly did not use the term "upgrade" in writing Ohio's Political Subdivision Tort Liability Act and that "it is not proper for courts to read 'upgrade' into the statute." Continuing, the Ohio Supreme Court then noted that the "failure to upgrade is different from the failure to maintain or upkeep." In so holding, the Ohio Supreme Court

relied on the Second District's decision in *Guenther* finding that a complaint presents a design or construction issue entitling a political subdivision to immunity where "remedying the problem would require a political subdivision to, in essence, redesign or reconstruct the sewer system."

As these cases demonstrate, the governmental or proprietary function rubric can oftentimes lead to otherwise unpredictable results. However, while wading through the murky waters of what may constitute a governmental or proprietary function leaves much to be desired, these cases do provide some much needed guidance to political subdivisions faced with such issues. As the Second District's decision in *Guenther* indicates, the initial question to be resolved is whether a "sewer system" is involved at all. Once that issue is resolved, attention should then be turned to the question of whether the flooding must be resolved with redesign or reconstruction, or whether it is simply a question of routine maintenance, inspection, or the removal of obstructions.

## Claims (Cont./Pg. 2)

passengers/guardians. This document can be a valuable tool if a claim is pursued in the courts and is the best protection from exposure to an injury claim. MVRMA can assist in drafting a waiver or release form for your program. For questions relevant to your city's transportation service, contact the MVRMA office.

## Crisis (Cont./Page 3)

November 29th at the Centerville Police Department from 8:30-3:30 presented by Anthony Huey, a national speaker from Reputation Management Associates.

The purpose of this seminar is to provide crisis first responders with information on how to deal with the media during a crisis. The media play an important role during any crisis. This seminar will teach participants what the media need and how the media can help

## Coming Events

Snow and Ice Control  
8:30 am - 11:30 am  
12:30 pm - 3:30 pm

**November 8** - Vandalia

**November 14** - Piqua

**November 15** - Mason

**November 20** - West Carrollton

**November 27** - Montgomery

**November 29**

Communicating in a Crisis  
Centerville Police Department

**December 4 & 6**

Motivating Employees - Without  
Money  
Location TBD

**December 17**

MVRMA Quarterly Board Meeting  
9:30 am  
MVRMA Offices  
Holiday Luncheon to Follow

YOU get information to the public quickly.

Attendees will learn how to respond to questions briefly and directly, with honesty and candor, and learn how to control the flow of information. With hands-on instruction, participants will do interviews in front of a camera and critiques will follow.

This seminar goes a step further, with instructions on how to hold a press conference and how to handle a group of reporters. This is needed preparation for any crisis, when time is critical and working with the media is a priority.

Please contact MVRMA's Loss Control Manager, Starr Markworth, [smarkworth@mvrma.com](mailto:smarkworth@mvrma.com) for more information on registering for this upcoming program.

## Quote of the Day:

Pure risk leads to self-destruction. Pure safety leads to stagnation. In between lies survival and progress.

- Unknown