

# RISKY BUSINESS

A Publication of the

**M**iami **V**alley **R**isk **M**anagement **A**ssociation

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## MVRMA OFFICERS

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## MVRMA STAFF

<b>EXECUTIVE DIRECTOR</b>	<b>TOM JUDY</b>
<b>CLAIMS MANAGER</b>	<b>CRAIG BLAIR</b>
<b>LOSS CONTROL MANAGER</b>	<b>STARR MARKWORTH</b>
<b>OFFICE MANAGER</b>	<b>SANDY CAUDILL</b>

## FYI-

### New MVRMA Member

*By Tom Judy*

MVRMA is pleased to welcome the City of Fairfield as the pool's 21<sup>st</sup> member. At its December meeting, the MVRMA Board unanimously approved Fairfield's membership effective December 30, 2019.

Growth in the pool financially benefits the existing member cities. The pool's fixed costs are spread over a larger base, thus lowering costs for all members. The larger the pool, the more predictable its results are for planning and budgeting purposes. However, these benefits are obtained only if the growth is achieved by adding members with a commitment to the pool's objectives of managing risks.

This is MVRMA's first new member since 2004 as MVRMA has a very selective new member selection process. First, to be considered for membership, a city must appear on the Prospective Member List approved by the MVRMA Board. This list is limited to cities in the Dayton-Cincinnati region with a population between 5,000 and 60,000 and a workforce less than 500 full-time employees. Cities on the Prospective Member List must have a demonstrated history of financial stability, political stability, and stable professional management.

If a city on the Prospective Member List contacts the pool, the prospective member's policies and practices are examined to determine its commitment to the concepts of risk management, loss control/loss prevention and workplace safety. The city's insurance loss experience must be consistent with current MVRMA members' loss histories. Finally, the prospective member must demonstrate a commitment to the risk pooling concept and that it is willing to make a long-term commitment to the MVRMA pool.

This selectivity of membership has created a financially strong pool with a synergistic risk management culture that simply is not available via the traditional transactional relationship with an insurance company. We believe the addition of the City of Fairfield only serves to make the pool even stronger and we are excited to have them on board.

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## Broker's Beat

### Shifting Landscape for Ohio's Statute of Limitations for Abuse and Molestation

The State of Ohio is considered by many to be in the "dark ages" in terms of the limitations placed on victims of sexual abuse. This is according to a Columbus Dispatch article from May 26, 2019, where Marci Hamilton, Founder and CEO of CHILD USA, stated "There really is no state that's worse". Currently, for victims 18 years or older, the statute of limitations for criminal sexual abuse charges is 20 to 25 years; however, for civil sexual abuse charges, there is only a one to two year window in which the victim can file a report. For children under the age of 18, criminal charges can extend 20 years after the abuse takes place, with civil charges expiring when the victim reaches the age of 30. This could all be changing in the near future.

Over the last year, politicians have pushed to have these laws repealed. At the urging of Governor Mike DeWine, lawmakers have tried, and to this point have failed, to pass bills eliminating or extending these statutes of limitations, as well as eliminating caps on damages. Most recently, state representative John Rogers formally introduced a bill that would eliminate the statute of limitations for prosecution of rape cases, and extend the window for childhood victims to sue their abusers from the age of 30 to the age of 55. This according to an article by Cleveland-based news channel 19 on January 15, 2019. Ohio's recent actions are in line with the current national trend for states working to amend these laws to offer better protection for victims of abuse. Currently, there are about 38 total states who have, or are attempting to, eliminate or provide a broader window for victims' statute of limitations, according to the Columbus Dispatch article referenced above.

Why is this being brought to the table in Ohio now? Ohio appears set to follow suit with the aforementioned states. However, Governor DeWine did cite one specific abuser who, under different circumstances, could have been brought to justice with more "victim-friendly" laws. Dr. Richard Strauss, an Ohio State University team



## Broker's Beat

doctor, was accused of sexually abusing over 177 male students from 1979 to 1996, according to an independent report released by the University in the spring of 2019. Although Strauss took his own life in 2005, if he were alive today, the victims would not be able to sue Strauss due to the current statute of limitations within the state.

How is this going to affect the public entity re/insurance industry within Ohio? For one, the aforementioned Ohio State example occurred within a public university. Removing the statute of limitations on sexual abuse crimes will open public entities to the possibility of numerous victims coming forward to speak out and file suits against abusers. These alleged abusers may have been employed at public schools, municipal parks, or libraries for example, which could bring new and "unexpected" claims. The Columbus Dispatch cited that in 2003, when California opened a window for victims to sue their abusers, around 300 predators were identified simply because the victims were offered protection in court, and were able to sue. Additionally, the State of Ohio currently has a \$250,000 tort cap on monetary damages in any civil case. Lawmakers are now trying to remove that cap, as the \$250,000 often will not even cover the expenses involved in fighting these cases. Removing this cap will encourage more victims to speak out, as well as encourage more prominent lawyers to take on these cases due to the potential for larger judgments and settlements.

The action to reform these laws in the State of Ohio is a positive step in the right direction for victims' rights. It is important to note, however, that these changes could have a profound effect on the public entity re/insurance market. Claim counts are expected to rise, summary judgements and settlements will increase, and insurance re/insurers may look to restrict, or even eliminate abuse and molestation coverage.

## Loss Control Lowdown...

### Target Solutions Online Training Program

*Starr Markworth*

MVRMA has worked with TargetSolutions for the past thirteen years to provide high quality web-based training programs geared to public sector employees.

TargetSolutions is the leading provider of internet-based training and tools for public entities and self-insured risk pools. More than 5,000 public entities use TargetSolutions to manage training online.

According to TargetSolutions, here are the top 10 ways agencies are benefiting from TargetSolutions' online training courses and applications:

- Achieving compliance with mandatory training requirements
- Making training more convenient
- Realizing valuable cost savings
- Educating employees on safety and reducing liability
- Increasing comprehension of training material
- Ensuring training has been delivered
- Creating alert notifications for upcoming assignments
- Generating detailed training reports and tracking progress
- Combining training with important and relevant policies
- Going mobile and reducing carbon footprint.

MVRMA offers an annual subscription for only \$300 per year to any MVRMA member. For the one annual fee, members will have access to the MVRMA training catalog and an unlimited number of employees may utilize the training program.

The MVRMA training catalog includes: Driver Training, Human Resources, OSHA/Safety Compliance and Supervisory training.

#### **MOTOR VEHICLE SAFETY**

TargetSolutions' Online Driver Training & Compliance Program offers organizations a solution to reduce motor vehicle losses. Driver curriculum is designed to change unsafe driving behavior and reinforce critical safe-driving concepts. Courses have been tailored to meet the varied needs of drivers of automobiles, large trucks and passenger vans. Supervisor curriculum is designed to provide supervisors with the training necessary to maintain a staff of safe and capable drivers. Driver training courses and curriculum for supervisors are available.

#### **HUMAN RESOURCES**

TargetSolutions' Human Resources courses are designed to supplement the course catalog by providing training that is relevant and essential to all employees. Courses covering Employment Practices for Supervisors cover issues encountered in the workplace for individuals tasked with making employment decisions, including issues of harassment, hiring and termination, discrimination, evaluation and documentation.

#### **OSHA & COMPLIANCE**

TargetSolutions' online courses can be used to help comply with OSHA and other federal and state regulatory agency training mandates. Complete all of your required compliance training courses online, eliminating the logistic issues inherent in traditional training methods. OSHA & Compliance courses cover the following categories: General Safety, Environmental Awareness, Human Resources and supervisor-related course topics.

Please contact Starr Markworth at [smarkworth@mvrma.com](mailto:smarkworth@mvrma.com) for more information regarding utilizing the TargetSolutions online training programs.



## The Claims File...

*Craig Blair*

We recently covered the “Claims Reporting” policy, but some members have asked for a simple guideline to follow when dealing with accidents, incidents, or claims.

### MVRMA Claims Checklist

Auto Accident:

1. Check the safety of all parties involved.
2. Exchange information – Auto ID Cards, provided by MVRMA, should be in all members’ vehicles. The card has information about MVRMA, who to contact at the city to discuss claims and states the employee cannot discuss liability issues regarding the accident. Statements should be given only to the police department. If Auto ID cards are needed, please contact Sandy Caudill at MVRMA.
3. Report the accident – the employee should provide a report the same day of the event, and send it to the city contact person, who will forward it to MVRMA. If liability is not yet determined, MVRMA would simply contact the claimant, advise them of same, and explain the claim process.
4. Inspection of the damages – This is completed by MVRMA. The city can obtain an estimate from a body shop of its choice. If photos are not provided in the police or incident report, MVRMA will arrange to inspect the damages. This also applies to a claimant’s damages if the city is liable.

Claim payments – All claims are to be paid through MVRMA who pays the body shops or contractors directly and pays the 3<sup>rd</sup> parties’ damages accordingly.

### 3rd party injury or damages on city property

1. Public safety concerns – the area, or roadway, involved should be inspected and marked with cones or barriers.
2. Scene inspections – inspection, before repairs are made, is vital to defending the claim. MVRMA will go to the scene and take photos and measurements. Liability cannot be determined until the investigation is complete.

City property is insured through MVRMA and all claims are to be reported and paid through MVRMA.

## Counselor's Comments

By Surdyk, Dowd & Turner

### Recent Appellate Court decision broadens scope of Open Meetings Act

The Open Meetings Act (OMA) was designed with the intention of providing transparency within the legislative processes of public bodies in Ohio. The act, contained in O.R.C. Section 121.22 provides in pertinent part:

(A) This section shall be *liberally* construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is *specifically excepted* by law. (Emphasis added)

The Eleventh District Court of Appeals recently issued a decision that embraced the liberal construction called for in the OMA. In *Ames v. Rootstown Board of Trustees*, 11<sup>th</sup> Dist. App. No. 2019-P-0019, 2019-Ohio-5412, 2019 WL 7372054 (12/31/19), the court issued a decision that restricts the application of the judicially created "information gathering" exception, and further reinforced the requirement that the *minutes* of the public meeting reflect, in more than just general terms, each of the purposes for which an executive session is held.

Brian Ames brought suit against the Rootstown Board of Trustees for multiple violations of the OMA. Pertinent to this article, were five counts for five different meetings during which the Board of Trustees, during open meetings, went into executive session for unapproved purposes, and eight counts where the board went into executive session to discuss "economic issues" without determining by roll call vote that the sessions were "necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project as required by ORC 121.22(G)(8).

Relative to the five sessions for the alleged unapproved sessions, the stated purpose for each was to discuss "legal matters" regarding the "JEDD contract" with an attorney. Revised Code Section 121.22(G) limits the exception for attorney conferences of a public body to "conferences... concerning disputes involving the public body that are subject of pending or imminent court action." In apparent recognition of having no specific statutory exemption to rely upon, the board submitted an affidavit of one trustee attesting that there were no discussions or deliberations as to public business at these "so

called executive sessions" and argued they were excepted from the act as they were information gathering in nature and did not discuss public business, citing *Cincinnati Enquirer v. Cincinnati Bd. Of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.). The Board also argued the sessions were exempt as the conversations were protected by the attorney client privilege.

With respect to the eight meetings to discuss economic issues, the minutes reflected that each of the executive sessions was "to discuss economic development assistance concerning JEDD", and was entered by a unanimous roll call vote. The minutes however did not specify, as required by (a) that the information is directly related to a request for economic development assistance or involves a public infrastructure improvement or extension of utility services that are directly related to an economic development project, nor, as required by (b), that a unanimous quorum determined by roll call vote the executive session was necessary to protect the interests of the applicant or possible investment or expenditure of public funds to be made in connection with the economic development project. The affidavit from the trustee however stated that despite the absence in the minutes, the board read the relevant parts of R.C. 121.22 (g) in

## Counselor's Comments

By Surdyk, Dowd & Turner

the motion to move into executive session. The board further argued that "there is no requirement that the minutes contain a verbatim recitation of the motion read from the code: rather, the minutes 'need only reflect the general subject matter of the discussion in executive session'" pursuant to R.C. 121.22(C).

The trial court agreed with the board and granted summary judgment to the township on all counts. The court of appeals reversed. In doing so, the court expressly rejected the rationale of the *Cincinnati Enquirer, supra* decision. In *Cincinnati Enquirer*, the trial court found, and the First District affirmed, that even though the board held a non-public information gathering session during public meeting, the information gathering session itself was not a "meeting" as defined by OMA because no deliberations or official action took place outside of the public hearing. Therefore, the First District concluded, the information gathering sessions were not required to occur in public. The Eleventh District expressly disagreed with the First District's conclusion. The court observed that per R.C. 121.22(C), meetings must be open to the public at *all times*." (Emphasis included.) "The only exceptions enumerated by R.C. 121.22(C) are properly convened executive sessions.... Thus, it follows that any nonpublic part of a meeting, unless excepted by law, violates the OMA." The court further rejected reliance up-

on the attorney-client privilege noting that "the general assembly, in limiting the circumstances in which such discussions can be held in executive session (pending or imminent litigation), has required a partial waiver of the privilege by the client-public body." *State ex rel. Cincinnati Enquirer v. Hamilton County Com'rs*, 1st Dist. Hamilton No. C-010605, 2002 WL727023, (Apr.26,2002 at \*5, quoting Recchie & Cheroski, Government in the Sunshine: Open Meeting Legislation in Ohio, 37 Ohio St.L.J. 497, 509-510.

Turning its focus to the eight "executive sessions" to discuss economic development, the court likewise reversed the trial court finding in favor of the township. In doing so, the court did not mandate a verbatim recitation of the statutory language, but concluded the phrase "general subject matter" in the OMA requires the meeting minutes state the purpose of going into executive session. The court followed another recent decision from the Eleventh District involving the same plaintiff that held:

The minutes must reflect each of the purposes for which the executive session was held in order for the public to discern whether the non-public meeting was excepted under the OMA.\*\*\*Interpreting R. C. 121.22 (C)

any other way is contrary to the purpose and intent of the OMA. A citizen should not be forced to file a mandamus action to determine whether or not a board has conducted business in a lawful manner under the OMA. We agree, however, with the *Laughlin v. James*, 115 Ohio St. 3d 231, 2007-Ohio-4811 decision in that there is no requirement that the minutes provide any further specificity. *State ex rel. Ames v. Brimfield Township Board of Trustees*, 11<sup>th</sup> Dist. No. 2019-P-0017, 2019-Ohio-4926.

As applied to the pending matter, the court observed that the minutes merely stated that executive sessions were held to "discuss economic development assistance concerning JEDD" and were entered into by a unanimous roll call vote for each of [the] dates. The minutes did not however specify the other requirements as set forth in O.R. 121.22 (G)(a) and (b). The public would not therefore be able to determine from the minutes that the board conducted business in a lawful

## Counselor's Comments

*By Surdyk, Dowd & Turner*

lawful manner, and the OMA was therefore violated.

### **Effect of Ames v. Rootstown Township Board of Trustees**

While the Ohio Eleventh District's decision does not set precedent for any courts outside of that district it does provide a warning for public bodies regarding their use of executive sessions. The decision calls into question the vitality of the First District's decision in *Cincinnati Enquirer* that recognized the "information gathering" exception, at least with regard to sessions called during an open meeting. We shall continue to monitor the case to see if the Board seeks an appeal to the Ohio Supreme court on a certified conflict. In the meantime prudence dictates public bodies should refrain from going into an executive session during an open meeting, unless it is for one of the excepted reasons contained in the OMA. The decision further reinforces the need for public bodies to maintain accurate meeting minutes that reflect, with sufficient specificity that the session is entered into for one the statutorily recognized exception. It is not enough to state the purposes via motion or otherwise during the meeting. The purposes must be contained in the minutes.



We would like to thank Dina Minneci of the Village of Indian Hill for her leadership as Board President during 2018-19.

At the December 2019 board meeting, the following were elected to serve as the Association's 2020 board officers:

President: Bill Kucera, City of Beavercreek

Vice President: Amanda Zimmerlin, City of Springdale

Secretary & Treasurer: Ginger Adams, City of Sidney

## Calendar of Events

### Upcoming Training Events

Elected Officials Training April 20th - Centerville Police Training Room

Trenching and Excavation - March 2nd - location to be determined

Confined Space - March 6th - location to be determined

### Upcoming Board Events

#### Committee Meetings (at MVRMA Office, 3085 Woodman Drive, Suite 200, Kettering)

Risk Management - February 27, 2020 - 10:00 AM

Finance - February 27, 2020 - 1:30 PM

#### Board Meeting

March 16, 2020 - 9:30 AM at Home2 Suites, Centerville

## *From The Board Room*

Actions taken at the June 17th Board meeting included:

- \* Approved the City of Fairfield for Membership effective 12/30/19
- \* Approved 2019 Liability Coverage Document amendment and 2020 Liability Coverage Document
- \* Approved 2020 Liability Renewals with GEM and Genesis
- \* Approved 2020 Crime Renewal
- \* Approved 2020 Budget
- \* Approved Repeal of Personnel and Compensation Policy
- \* Approved Employee Handbook Policies to Replace P&C Policy
- \* Approved 2020 Meeting Dates