

THE POOL CUE

Volume XIV, Issue 3 August 2008

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

Our 24th Annual Membership Meeting and Workshop was held at the Soaring Eagle Resort in Mt. Pleasant on July 16 and 17. Sixty members were represented by over 170 attendees.

The Workshop featured two excellent speakers. Mr. John Males, Sanilac County Administrator, presented a session on *Managing and Oversight In A Period of Economic Challenge*. Mr. Tim Skubick, a capitol correspondent and the anchor and producer of the public television series “*Off the Record*”, presented his always lively perceptive of *OFF THE RECORD: ELECTION YEAR 2008*.

During the Annual Membership meeting, four member representatives were elected to fill the Board of Directors positions whose term expired in 2008. Lonny Lutke, Missaukee County Road Commission and Mike Roper, Otsego County Road Commission were re-elected to fill the two Northern region positions for three-year terms of office. Darrel Spragg, Alpena County Road Commission, was elected to a three-year term for an at-large position. Mike Power, Huron County Road Commission, was elected as an at-large director to complete a remaining one-year term of office.



Lonny Lutke, Mike Roper, Darrel Spragg, Dorothy Pohl, Ken Rowe, Sharon Hice, Tim Haagsma, Chalmers McGreaham and Mike Power.

Tim Haagsma from Kent County, Sharon Hice from Eaton County, Chalmers McGreaham from Iron County, Dorothy Pohl from Ionia County and Ken Rowe from Houghton complete the nine member Board of Directors.

At the board of directors meeting following the annual meeting, Dorothy Pohl was elected Board Chairman and Mike Roper was elected Vice Chairman.

We want to thank all of our members and all of our directors for their commitment and dedication to serve on the MCRCSIP Board for the past twenty-four years. We look forward to celebrating our 25th Anniversary Year.

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2008 MCRCSIP REFUND

Fred Haring
MCRCSIP Administrator

At our Annual Business Meeting on July 17, 2008, it was my pleasure to announce that the MCRCSIP Board of Directors had approved an \$8 million refund to members for this year. This brings the cumulative refunds to members over the past twenty-four years of operations to **\$97,690,194**. This refund will be distributed to members in mid to late August.

This refund is possible because of the favorable results from the fiscal year ending March 31, 2008. The continuing decrease in the Pool's ultimate expected losses and filed claims, your efforts in working with our safety and loss control programs, the work of our claims personnel in resolving claims, and the attention of the MCRCSIP staff and Board all combine to assure the success.

Thank you!

NEW FORM I-9 AVAILABLE FOR USE

Wendy S. Hardt
Michael R. Kluck & Associates

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated a reduction in the number of documents that employers may accept from newly hired employees during the employment eligibility verification process. However, Form I-9 was not updated to reflect the revised List of Acceptable Documents at that time. Recently, the US Citizenship and Immigration Services (USCIS) has revised Form I-9 as a first step toward achieving the document reduction goals set out in IIRIRA.

The new Form I-9 and the Employer Handbook are available as downloadable PDFs at www.uscis.gov. Employers without computer access can order USCIS forms by calling its toll-free number at 1-800-8870-3676.

The new Form I-9 is different from the old one in that the following five (5) documents have been removed from List A of the List of Acceptable Documents:

- Certificate of US Citizenship (Form N-560 or N-561).
- Certificate of Naturalization (Form N-550 or N-570).
- Alien Registration Receipt Card (I-151).
- Unexpired Reentry Permit (Form I-327).
- Unexpired Refugee Travel Document (Form I-571).

One document was added to List A of the List of Acceptable Documents:

- Unexpired Employment Authorization Document (I-766).

Instructions regarding Section 1 of Form I-9 now indicate that the employee is not obliged to provide the Social Security Number in Section 1 of Form I-9, unless he or she is employed by an employer who participates in E-Verify.

Employers must begin using the amended Form I-9 (Rev. 06/05/07)N for all new hires immediately. Employers only need to complete the new version of Form I-9 (Rev. 06/05/07)N for new employees. Employers do not need to complete new forms for existing employees. Employers who fail to use Form I-9 (Rev. 06/05/07)N may be subject to all applicable penalties under Section 274A of the Immigration and Naturalization Act, 8 USC 1324a, as enforced by US Immigration and Customs Enforcement (ICE).

The image shows a scan of the USCIS Form I-9, Employment Eligibility Verification. The form is titled 'Form I-9, Employment Eligibility Verification' and includes instructions for employers and employees. It contains sections for 'Section 1 - Employee Information and Verification', 'Section 2 - Employer Information and Verification', and 'Section 3 - Employer Review and Verification'. The form is designed to be filled out by the employer and the employee to verify their employment eligibility.



**DOES UNAVAILABILITY OF
RESOURCES FOR MAINTENANCE OR
REPAIR HAVE ANY BEARING ON
HIGHWAY LIABILITY CLAIMS?**

Jon VanderPloeg
Chairperson, Appellate Department
Smith Haughey Rice & Roegge

Road Commissions are political bodies – meaning that they engage in a political process each and every day. “Politics” has been defined as the art and science of allocating scarce resources among competing interests. Certainly, then, road commissions perform politics on a daily basis. They have the obligation to allocate available tax revenues to the repair and maintenance of the thousands of miles of roadway within their charge. The resources are “scarce,” meaning not unlimited. Thus, road commissions must constantly make political, policy decisions – what repairs and maintenance are most needed, having the greatest benefit for the greatest number of motorists. If resources were not scarce, road commissions would be obligated to repair and maintain every foot of roadway to autobahn standards. But the real world does not, and cannot, provide unlimited resources.

Thus, the road commission’s statutory obligation is to repair and maintain roadways so that they are “reasonably” safe for public travel. The reasonableness analysis must include the availability of resources for particular repairs and maintenance. In other words, isn’t it more reasonable to allocate the most money for repair and maintenance of highly traveled highways accommodating thousands of motorists daily, before devoting those funds to seldom traveled roads serving very few motorists? All roadways must be “reasonably” safe, but proper resource allocation suggests that money is better spent, beyond that, on the most traveled roads.

A recent decision of the Michigan Court of Appeals illustrates the point. In *Minhas v Oakland County Road Commission* (unpublished per curiam opinion of the Court of Appeals dated July 15, 2008, Docket No. 278477), the court upheld the circuit court’s dismissal of the plaintiff’s claim that she lost control of her vehicle due to a large pothole in a “very bad,” unpaved, gravel-covered road. The plaintiff acknowledged that she had driven the road at least once a week for over three years,

and that she had not seen this particular pothole before the day of the accident. She agreed that conditions on a gravel road may change overnight.

Citing the Michigan Supreme Court’s decision in *Wilson v Alpena County Road Commission*, 474 Mich 161 (2006) (which involved a badly deteriorated, lightly traveled road with a patchwork of repaired potholes), the court said that immunity is not waived unless the road commission has notice of a defect such that the roadway is not reasonably safe. Further, “notice that a road was bumpy and required frequent maintenance measures does not necessarily establish that it was not reasonably safe for public travel. A road in bad repair, or with rough pavement, is not per se one that is not reasonably safe.” The court went on to say, “It may be that a road can be so bumpy that it is not reasonably safe, but to prove her case plaintiff must present evidence that a reasonable road commission, aware of this particular condition, would have understood it posed an unreasonable threat to safe public travel and would have addressed it.

Implicit in this analysis is the fact that the road commission does not have unlimited resources. Thus, the road need only be repaired and maintained so as to be “reasonably” safe. Surely, the “very bad” gravel road in the *Minhas* case could have been repaired or maintained so that it would have been “safer.” The road could have been paved, for example. Or the road commission could have inspected and repaired it daily, in which case it would never have potholes. But the obligation of “reasonable” repair and maintenance does not require absolute safety. The road commission has a political obligation to allocate its limited resources to make roadways “reasonably safe.” So long as it does so, immunity bars claims that the roadway could have been “safer.”

In short, unavailability of resources to repair and maintain highways to a higher level of safety is a relevant part of the governmental immunity defense. Whether the roadway has been maintained and repaired to be “reasonably” safe depends, to some degree, on whether funds were, or were not, available for more maintenance and repair to the particular roadway in question.



ROAD LIABILITY REMINDER

“Loose Stones Can Cause Accidents”

Michael Shultz
MCRCSIP Assistant Administrator
Director of Loss Control/Training

From time to time, we find it helpful to remind the MCRCSIP members about the importance of maintaining the road surface free of sand and loose stones. Additionally, we encourage your road crews to monitor, report and whenever practical, remove the accumulation of materials so they cannot contribute to vehicle accidents. In most instances, sending a sweeper unit to these locations is the corrective action that is necessary, but in some instances, pushing the accumulated material back with an underbody blade might work. Loose stones/sand can be brought onto the road surface by a variety of reasons. Listed are six (6) contributing factors:

1. Material spilling from a truck dump box or undercarriage.
2. Material from an intersecting gravel road getting kicked out by vehicle tires.
3. Shoulder material being kicked on the road surface near a curve or turn.
4. Shoulder material washing on the road surface (especially in low areas) during a heavy rain.
5. Shoulder and gravel road material being pushed/dragged on the asphalt from trucks/equipment underbody or plow.
6. During chip sealing type operations.



Of particular concern, an accumulation of stones can create a marble effect and catch motorists off guard. Accident investigations indicate loose stones can cause braking, acceleration and steering to be changed and this can catch motorists by surprise. In recent years, motorcycle accidents have increased on our roadway systems. Accident data often indicates that motorcycles have slid out of control, causing serious injuries to the operator and passenger.

During the construction/maintenance season, many members perform chip seal type operations to improve road surfaces. The risk for a vehicle/motorcycle accident becomes significantly higher, especially during and following the application of the material to the road surface. Members must continue to be diligent in placing and maintaining sufficient advance signing, and effectively sweeping the road of excess stone as soon as practical (especially near intersections).



As with all roadway work sites, good signing practices are critical to accident prevention. In addition to the “Road Work Ahead” sign (shown above), supplemental signs, “Loose Stone on Pavement” and “Speed Advisory” signs, should be used to help alert approaching motorists. For the benefit of cross traffic at intersections and lengthy projects, a single sign message “Loose Stone” is important and should be considered at prescribed intervals. Note: Our members, such as the Muskegon County Road Commission, strongly believe this type of signing practice can help reduce “the surprise factor” while turning onto (or driving over) a newly chip sealed surface.

2008 MCRCSIP HOT LIST

Michael Shultz
MCRCSIP Assistant Administrator
Director of Loss Control/Training

A number of years ago, the MCRCSIP Loss Control generated a **“Hot List”** discussing a variety of important safety and loss prevention topics/issues important to our program. We believe this “Hot List” can be used as a tool to help augment your loss prevention efforts.

Vehicle and Heavy Equipment Operations:

According to the MCRCSIP claim information, vehicle and equipment accidents continue to be one of the leading accident trends, costing our program hundreds of thousands of dollars each year. Although some accidents can be difficult to avoid, our data indicates drivers and operators continue to have costly and preventable accidents. Listed are four major accident categories:

- 1) Vehicle/Train collisions (RXR grade crossings)
- 2) Vehicle/Vehicle intersection collisions (pulling in front of)
- 3) Vehicle Backing collisions (other objects including vehicles)
- 4) Vehicle/Building collisions (dump boxes striking overhead objects)

Driver safety awareness training is the first important step to accident prevention. In addition to continued training, we strongly recommend supervisors evaluate and monitor driver/operator skills. When inappropriate behavior/habits are noted, corrective measures should be encouraged.

Listed are a few examples of what supervisors can do to help reduce vehicle/equipment accidents:

- a) Ensure that new drivers receive adequate training in the beginning. Don't assume a valid CDL license indicates a safe/defensive driver.
- b) Pay special attention to drivers reporting “near miss” accidents or those generating small “seemingly insignificant” accidents. This includes minor vehicle/equipment damage such as dents, broken mirrors, etc.
- c) At least annually, monitor employee driving records. Tickets can indicate a high risk driver.
- d) Supervisors should monitor driver performance. This requires taking time to accompany drivers for an hour or two each year.
- e) After each evaluation, supervisors must take the necessary time to inform each driver of any areas for improvement.
- f) Experienced drivers with good driving records can be a great resource, sharing success stories and positive experiences with new and experienced drivers. Allow them to be part of your driver safety-training program.
- g) Consider setting up a “Driver/Operator Skills Program” allowing truck drivers and equipment operators to demonstrate their skills. This can be part of your new employee “Driver/Operator Orientation” program.

- (h) Take advantage of available training opportunities (in-house and off-site) to promote safe and productive vehicle and equipment operations.

Vehicle and Equipment Fire Prevention: The implementation of the vehicle battery disconnect switch has proven to be a success. In several instances, members have reported saving a truck or piece of heavy equipment by shutting off the master disconnect switch once the fire/smoke was noticed. In the interest of vehicle and equipment fire prevention, we recommend the following:

- 1) Ensure that installations are done carefully and professionally by your maintenance personnel or outside vendors. This can help reduce switch failures and other related problems.
- 2) Ensure employees are shutting off the switches at the end of each workday. This must be monitored and enforced by supervision. (**Note:** One supervisor places his lock on any switch found not properly shut off. This requires the driver to report to the supervisor to get the lock removed!)
- 3) Mechanics should carefully inspect the batteries, cables, master switches, and starter motor connections (including the ground straps and wires). Note: Poor and/or loose ground connections have caused fires. Therefore, we encourage each member to make this an important inspection item during routine vehicle checks.
- 4) Ensure portable fire extinguishers are available in facility parking garages (near vehicles) and within vehicle cabs.

Remember: Fire extinguishers

generally have limitations and this must be considered as part of your company fire extinguisher training and program. A five pound extinguisher gives more protection and has a flexible hose for more accurate spraying.

- 5) **NEVER** allow unauthorized personnel to perform maintenance and/or parts installation(s) to any truck or equipment. Your shop/equipment supervisor must strictly monitor and enforce this rule.
- 6) Although each member is taking every precaution to reduce the risk of vehicle and equipment fires, we must continue to be proactive in finding new ways to reduce risk in this area. Furthermore, we encourage your shop maintenance personnel to work closely with the MCRCSIP loss control department and openly report concerns and problems, as well as new ideas.

Building/Property Risks: Although each member location is different in design, size and age, most road commission facilities consist of three main areas – Administration, Storage, Maintenance. As part of your inspection (daily, weekly, monthly and annually), we suggest monitoring the following items. This is not a complete list. NOTE: The Hillsdale County Road Commission has developed a detailed “Job Site Inspection Form” which is now available on the MCRCSIP website and can be used by supervisors and your safety committee.

- Ice hanging from roof edges over gas regulators and doorways
- Roofs (inside and out) for water damage or blocked drains
- Furnace room housekeeping
- Vehicle/equipment cab housekeeping

- Storage room housekeeping
- Parking garage housekeeping
- Vehicle maintenance housekeeping
- Office housekeeping
- Cold storage housekeeping
- Smoke detectors (proper operation)
- Fixed fire extinguishers
- Portable fire extinguishers (size, location, rating, access)
- Trash containers (emptied) with lids
- Flammable liquid and fuel storage (cabinets and containers)
- Combustibles storage (shelving, cabinets and containers)
- Electrical (outlets, breaker boxes, wiring, cords)
- Electrical GFCI near water sources
- Refueling stations (shut-offs, pump protection, signing, fire extinguishers)
- Overhead doors (bump posts, safety devices)
- Compressed Gases (Oxygen and Acetylene) storage
- Hay storage (cold storage) within buildings

Employment Practices Liability: As we move forward in time, we must ensure that all members are taking every precaution to reduce the risk of creating a liability through illegal employment practices. History has shown that “Knee Jerk” decisions and “Unlawful Employment Actions” can cost you and our program millions of dollars. Employee awareness training has greatly benefited the MCRCSIP membership, and will continue to, with new programs being added each year. Laws can frequently change regarding employment matters, so it is important that management remains familiar with changes. The MCRCSIP “EPL Guideline Manual” continues to be your reference to 24 employment law issues.

Road Liability: Over the years, our program has seen many changes in roadway/highway law. Many changes have either eliminated or greatly reduced liability exposures. This has helped save our insurance program tens of thousands (maybe millions) of dollars. We must stay focused on risks and exposures that will continue to cause our program preventable litigation claims. All levels of your organization must continued to monitor, report and correct the roadway defects (road surface, shoulders, etc.) as part of a daily “Road Surveillance” program. Educational training is available upon request.

NOTICE!

The MCRCSIP Loss Control Department will be presenting the “**12 Danger Zones for Supervisors**” on Wednesday, September 17th. The training program will be hosted by the Iron County Road Commission.

For more information, please email Mike Shultz, mshultz@mcrsip.org or call (616) 866-3168.



REMEMBER:

The room at the top is made by people who have gotten there....and fallen asleep.

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

**The next MCRCSIP Board Meeting
Days Inn Grayling
November 6, 2008**

Past and present issues of the Pool Cue are available on the MCRCSIP website – www.mcrsip.org.

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