President’s Message

I began the year reminding our Membership and prospective Members of the goal of PRIMA. To provide “Education and Knowledge” in Public Risk Management. I have challenged our Membership to get involved in our chapter leadership and committees.

Today I would like to challenge each of you to get involved in mentoring. How many of you have a mentor? How many of you are a mentor?

I would suggest to you that we all have mentors and we all are mentors. Mentors are someone who can be trusted; mentors can be either formal or informal relationships. Our first mentors were our parents, a sibling, a teacher, a coach, perhaps a friend, a peer, or a boss.

I suggest to you that your legacy is your success as a mentor. Someone else can do your work, but those you inspire to be the best they can be will be the legacy you leave behind.

For those of you who are football fans, you likely can tell us the coaching pyramid of coaches like Landry, Shula, or Knox. What pyramid or legacy will you leave behind?

In the 2002 movie, About Schmidt, starring Jack Nicholson, Schmidt retires from the fictional insurance company, Woodmen of the World. Schmidt had spent 40 plus years with his company, and less time with his family, he is a bit lost after retiring. Schmidt decides to visit his young successor to offer his help, but the offer is politely declined. As he leaves the building, Schmidt sees the contents and files of his office, the sum of his entire career, set out for garbage collectors. Schmidt is left without personal connections and his life's work gone in box.

Are you Schmidt? Or are you Landry, Shula or Knox?
Michael Ellis Recipient of the Gene Berrodin Award

In 1997, MIPRIMA created the Outstanding Achievement in Risk Management award. The purpose of the award is to recognize a risk management professional who has made a significant, long-term contribution to both MIPRIMA and public risk management. The first recipient was Eugene F. Berrodin. In 2002, MIPRIMA formally renamed the award after the first recipient.

At MIPRIMA’s fall conference, MIPRIMA Board of Directors bestowed the Gene Berrodin Award on Michael M. Ellis.

Michael Ellis began his insurance career in 1972. He earned his law degree in 1984 from the Thomas M. Cooley Law School. He first became involved with public entities in 1987 with one of MIPRIMA’s corporate sponsors, Cummings, McClory, Davis and Acho. He later served as President of Municipal Claims Services, and in 1992, Michael became the first and only Director of Claims in the history of the Michigan Municipal Risk Management Authority (MMRMA).

Michael holds numerous professional designations, including the Charter Property Casualty Underwriter (CPCU) and Associate in Risk Management (ARM).

Michael is a Past President of MIPRIMA (1998) and continues to serve as Chair of MIPRIMA’s Legislative Committee and on the Scholarship Committee. Additionally, he is Past President of the Greater Detroit Chapter of CPCU (1999-2000). He has been actively involved in the State Bar of Michigan, American Bar Association, Honorable Order of the Blue Goose International, Defense Research Institute, and Insurance Professionals of Metro Detroit.

Michael has announced that he will retire from the MMRMA in December 2015. Michael L. Rhyner, Executive Director of the MMRMA, stated in a letter:

During Michael’s tenure at MMRMA, the organization enjoyed incredible growth and excellent performance results. Michael’s ability to address complex, high-profile litigated claims and develop effective strategies to reach favorable outcomes is remarkable. He accomplishes this while maintaining positive communication between members, attorneys, and reinsurers. He is a leading and respected subject matter expert on municipal liability in the State of Michigan.

Michael serves as a leader and mentor to his staff and is a strong proponent of continuing education and professional development.

Michael is probably best known by our members as a gifted public speaker. His storytelling style, mixing humor, pop-culture, history, and legal insights, has captivated audiences at our conferences for years.

I value his institutional memory, wise counsel, sarcasm, and friendship. He is a fixture of MMRMA and has been instrumental to the MMRMA’s many successes.

In addition to thanking Michael for his many contributions with the Gene Berrodin Award, MIPRIMA’s Board of Directors has awarded Michael with a lifetime Honorary Membership.
Legislative Committee Update
The views set forth below are those of the Committee Chairman, Michael Ellis, and do not necessarily reflect the view of his employer MMRMA, MiPRIMA, or other Legislative Committee members.

Changes at Michigan Supreme Court
Michigan Supreme Court Justice Mary Beth Kelly has left the Michigan Supreme Court as of October 1, 2015, and accepted a position with the Bodman law firm. Kelly, a Republican, states that at Bodman, she will head a group specializing in litigation and alternative dispute resolution. Kelly’s resignation left a vacancy to be filled by an appointee of the governor. Governor Snyder has appointed Joan L. Larsen to replace Kelly. Justice Larsen was a University of Michigan Law School faculty member and appears to be a Republican. Governor Snyder’s appointment of another Republican does not shift the current 5/2 Republican control of the court.

Ballot Selfies
States are suddenly trying to deal with the question of whether or not selfies should be allowed in the ballot booth.

Historically, a great deal of care was taken to keep an individual’s actual vote a secret. Now, people are trying to take selfies in the ballot booth to show exactly how they voted. The question that arises is, “Why?” It appears to be linked to people’s pledges to vote in a particular manner.

While the idea of selfies seems harmless, the concern is the potential for corrupting the election process. Many stories of bought out votes and voter fraud litter our history and some fear the return of those evils. Several states are now grappling with this issue.

Selfies More Deadly than Sharks
A recent article in Business Insurance cites actual data. So far, the data for this year shows that more people have died while taking selfies than because of shark attacks. People appear to become focused on achieving the ultimate selfie and lose track of their surroundings. It is a case of distracted shooting (of photos). It is reported that this problem has led Disney to ban “selfie sticks” from all its resorts.

Municipal Reports
A group of bills – HB 4661, HB 4665, and HB 4666, all eliminating reports required by municipalities – is moving through the legislature. These reports arguably were intended to provide data about the last insurance crisis and were to lead to a comprehensive report on the insurance market by the Insurance Commissioner. It appears that these comprehensive reports were too much effort and have now been labeled wasted time; so the requirement for these reports may be eliminated.

FOIA Update
HB 4283, introduced by Brandon Dillon, would delete from the FOIA statute language indicating that the Governor and state legislature do not need to comply. This would force the state legislature to live by the same rules as the rest of us. It will be interesting to see what the legislature does with this bill.
Michigan Legislative Update

The views set forth below are those of the author Karen M. Daley, Attorney and do not necessarily reflect the view of the MiPRIMA Organization

Recently Enacted Michigan Laws
Governor Rick Snyder recently signed several bills into law affecting local municipalities. The bills are aimed at clarifying the operations of local municipalities, and should make it easier for counties, cities, townships, and villages to file documents and save money at the local government level.

E-Signatures Accepted at Register of Deeds
Generally, an instrument conveying real property must meet certain requirements to be recorded, including a requirement that it contain the original signature of each person executing the instrument. Senate Bill 62 updates the statute to recognize the modern use of electronically affixed signatures by allowing county deed offices to accept electronic signatures for property documents being filed. The bill also provides that a “certified copy” of a death certificate is the same as an original. It is now Public Act 131 of 2015.

Incompatible Office Exceptions
Currently, a public officer is prohibited from holding incompatible offices. House Bill 4070 modifies this rule by allowing employees of municipalities with less than 40,000 residents to serve in dual roles, so long as they are not in charge of negotiating collective bargaining agreements. Specifically, the new law allows a public officer or public employee of a city, village, township or county with a population under 40,000 to serve as a firefighter, police chief, fire chief, police officer or public safety officer, with or without compensation, as long as he or she was not a person who negotiated a collective bargaining agreement on behalf of firefighters, police chiefs, fire chiefs, police officers or public safety officers. This form of consolidation has the potential to save smaller municipalities several unnecessary costs. It is now Public Act 134 of 2015.

Electronic Proof of Insurance
Under the Insurance Code, auto insurance coverage is mandatory for the operation of a motor vehicle. Under the Vehicle Code, drivers must show proof of insurance at the request of a police officer. House Bill 4193 amends the Vehicle Code by allowing a driver to show an electronic copy of their certificate of insurance to a police officer by using a cell phone or tablet. In order to address concerns of officers regarding handling cell phones during traffic stops, the new law allows a police officer to require a driver to email the information from the electronic device to a site designated by the officer (such as a computer in the police car), where the officer could view and verify it. It is now Public Act 135.

Pharmacy Technician Licensure
After tainted drugs led to a nationwide outbreak of meningitis that resulted in 64 documented deaths, including 19 in Michigan, the Michigan legislature enacted a law that requires compounding pharmacies to be accredited through a national accrediting organization approved by the Michigan Board of Pharmacy. In addition, the legislature enacted a law to license pharmacy technicians, because Michigan was then one of only six states that failed to require licensure or certification. The new law set minimum educational requirements at a high school degree or GED equivalent.

The Governor recently signed Senate Bill 468, which adjusts these pharmacy technician licensure requirements. The new law 1) makes an exception to the requirement that a pharmacy tech have graduated from high school; 2) increases from 210 days to one-year the duration of a temporary license; 3) allows a pharmacy technician employed at a multi-site pharmacy to work at any of the pharmacy's in-state locations; and 4) delays for one-year the deadline for a licensed compounding pharmacy to be accredited. The bill is now Public Act 133.

Legislation to Watch

Loss of Local Control Over Dog Breeds
Currently, 27 municipalities in the state target specific dog breeds in local ordinances. A bill recently passed by the Senate would take away this local control by prohibiting municipalities from enacting or enforcing an ordinance or rule that regulates a dog based solely on the breed, perceived breed or type of dog. However, the bill would not prohibit a local unit of government from enacting an ordinance or rule that placed restrictions or imposed additional requirements on dogs or dog owners. Animal advocacy groups say targeting specific breeds in dog ordinances is discriminatory, but critics say communities should decide. The bill now goes to the House for consideration.

continued…
“Blue Alert” Act
In May of 2015, President Obama signed the Rafael Ramos and Wenjian Liu National Blue Alert Act into law. Ramos and Liu were detectives with the New York City Police Department who were shot and killed while sitting in their patrol car. This federal law requires the establishment of a national Blue Alert communications network through the Department of Justice, used to issue blue alerts when a person suspected of killing or injuring a law enforcement officer is at large and believed to be a threat to public safety.

So far, 24 states have currently established Blue Alert systems, with legislation pending in several more states. The systems use media broadcasts and highway messaging signs to quickly provide the public with information identifying the offender and, if relevant, the offender's vehicle, similar to an Amber alert for missing children.

Under Senate Bill 336, the Michigan Department of State Police would be required to establish and maintain the Blue Alert plan. A Blue Alert would be activated only if all of the following apply: (1) A law enforcement officer is killed or severely injured; (2) the law enforcement agency investigating determines the suspect poses a serious risk or threat to the public or other law enforcement personnel; (3) the investigating agency can provide the suspect's name or a detailed description of the suspect and/or the suspect's vehicle; and (4) the investigating agency recommended that the MSP activate the Blue Alert. The bill has already passed in the Senate, and recently the House Criminal Justice Committee supported the bill, so it is now on to the full House for a vote.

Medical Marijuana Regulations
The Michigan House recently approved sweeping plans to create a highly-regulated medical marijuana industry and allow patients to purchase the drug at storefront dispensaries, which would be taxed. House Bill 4209 would create a new state board to license dispensaries, large-scale growers, processors, distributors and testing facilities in communities that allow them. The House also approved bills to create a "seed-to-sale" tracking system for medical marijuana and extend legal protections to registered patients who prefer to use other forms of the drug, including edibles and oils.

Under the Act, dispensary owners would be required to pay a 3-percent tax on their gross retail income, and proceeds would be divided between local municipalities, counties, sheriff's and the state's general fund. Patients would also be required to pay Michigan's 6-percent sales tax on dispensary purchases. In order to cover the costs of maintaining the regulatory system, the state would require licensees to pay application fees and an annual regulatory assessment. The bill now heads to the Senate for consideration.
No Good Deed Goes Undisclosed: Appellate Court Requires Disclosure of Donors’ Names Under Freedom of Information Act

Hilary A. Ballentine

The views set forth below are those of the author Hilary A. Ballentine and do not necessarily reflect the view of the MiPRIMA Organization.

A recent ruling by the Michigan Court of Appeals has reaffirmed the court’s tendency to favor public disclosure of information under the Freedom of Information Act (FOIA), even when privacy concerns are at play.

The sought-after information in Bitterman v Village of Oakley included the names of donors to the village’s police fund. The village argued that the identity of the donors was exempt from disclosure under FOIA’s privacy exemption, which exempts information “of a personal nature” from disclosure – if divulging the information “would constitute a clearly unwarranted invasion of an individual’s privacy.”

The appellate court refused to apply the privacy exemption, even though the donors used private assets to contribute to the police fund. In its view, the only potential harm to the donors was increased vulnerability to unwanted solicitors, which did not outweigh the public’s interest “in knowing the sources of non-tax funds that support Village operations.” The court, therefore, ordered disclosure of the donors’ names.

With FOIA requests on the rise, the appellate courts will likely have further opportunity to weigh in on the scope of the act and when its various exemptions should be applied to prohibit disclosure. Until then, municipalities should be mindful of the court’s current policy favoring disclosure and give careful consideration to FOIA requests in light of privacy and other related concerns.

Status as Non-Member of Public Body Insulates Clerk From Open Meetings Act Liability

Hilary A. Ballentine

The views set forth below are those of the author Hilary A. Ballentine and do not necessarily reflect the view of the MiPRIMA Organization.

Some public servants can sleep a little easier now, knowing that they will not be subject to individual liability under Michigan’s Open Meetings Act (OMA), which requires public bodies to make decisions at meetings open to the public and provides a remedy against public officials who intentionally violate the OMA’s provisions.

In April 2015, the Michigan Court of Appeals held in Bitterman v Bolf that the individual liability provision of the OMA did not extend to the clerk for the Village of Oakley, who did not have voting rights and was not part of the village council.

Taking from a prior decision analyzing the term “public official” in the criminal counterpart of the OMA, the appellate court concluded an individual must be a member of a “public body” to be considered a “public official” subject to individual liability. The Village clerk was undoubtedly not a member of the public body (the Village council), which by statute consisted of the president and trustees only. Accordingly, the clerk was insulated from suit under the OMA.

The appellate court’s decision in Bitterman is a step in the right direction in that it evidences the court’s recognition of the OMA’s limits. However, municipalities should not read this case as broadly insulating all non-voting public servants from suit because the legislative structure in a particular city, town, or village often dictates whether the individual in question is a member of a public body and thereby subject to the OMA’s requirements. In addition, this case is an unpublished decision and, therefore, not precedentially binding on other panels of the court who may later visit this issue.
Perhaps one of the major incentives for plaintiffs to pursue claims brought under the Open Meetings Act (OMA) is the possibility of recovering attorney’s fees and costs if they are successful in the action.

A provision of the OMA allows for recovery of court costs and actual attorney’s fees, if a person brings a civil suit “for injunctive relief to compel compliance or to enjoin further noncompliance” and “succeeds in obtaining relief in the action.”

The latter part of this statutory provision has caused much confusion in the courts, and it has produced a series of cases that allow plaintiffs to recover their attorney’s fees even for minor, technical violations of the Act that do not result in the issuance of an injunction.

In its Speicher v Columbia Township Board of Trustees opinion, the Michigan Supreme Court abrogated that line of cases, holding that a plaintiff must seek and actually obtain injunction relief in order to recover attorney’s fees and costs. The Supreme Court based its decision not only on the precise wording of the statute itself, but also on the statutory scheme as a whole.

As a result of the Supreme Court’s ruling, municipalities are sure to see plaintiffs pushing more forcefully for injunctive relief in OMA cases than ever before. However, given the general difficulty in demonstrating that the extraordinary remedy of injunctive relief is appropriate, the Supreme Court’s decision in Speicher should result in fewer attorney fee awards to plaintiffs.
Autumn Driving Safety Tips
AJ Hale Safety & Loss Prevention/Risk Manager

The views set forth below are those of the author AJ Hale and do not necessarily reflect the view of the MiPRIMA Organization.

Make adjustments for the light. Did you know that we lose a minute of daylight every day until the clocks are set back in November? Fewer hours of daylight make it more difficult to see pedestrians, cyclists and children playing in the late afternoon. Also, later sunrises mean that drivers need to adjust to the brighter sun at different times of the morning. Always keep a pair of sunglasses in your car to shield your vision.

Fall means back to school for kids, which means more cars and buses on the roads. Drivers also need to watch out for increased pedestrian traffic in the morning and afternoon as children walk to and from school and their neighborhood bus stops.

Avoid driving over wet leaves. Fall foliage is beautiful but once those leaves start falling and get wet from rain, they can become a serious driving hazard. Wet leaves are slippery and reduce traction.

Don’t Veer for Deer. If a crash with a deer is unavoidable, remember don’t swerve. Be sure to brake firmly and hold onto the steering wheel with both hands. Come to a controlled stop and move the vehicle out of traffic to a safe location.

- Slow down and use caution, particularly where deer crossing signs are posted and increase following distance between vehicles;
- If you live in an area where there are deer, they are more apt to run into the roadway especially at dawn and dusk since the fall is an active breeding time. If you see a deer cross the roadway, proceed very slowly as they often travel in groups;
- Make young drivers aware of increased deer movement;
- Be especially watchful during morning and evening hours when wildlife is most active;
- Exercise caution when one deer crosses a roadway. Since deer often travel in small herds, one deer will usually be followed by others;
- Always wear your seat belt;
- Never drive impaired; and

Turn on your headlights if your wipers are on - it’s the law. Prepare an emergency kit for your car. Carrying an emergency kit in your car trunk or cargo area can be a real lifesaver. Be sure to include a flashlight, flares and a first-aid kit, jumper cables, extra washer fluid, nonperishable food, a jug of water, and a few basic tools such as wrenches, a ratchet/socket set, screwdrivers, and pliers.

Watch for frost. Low nighttime temperatures cause frost on windshields and roads. Be sure to clear your windshield completely before driving. Also, slow down when approaching bridges and overpasses, as these structures are more prone to collect frost on the roadway surface. Stay alert for shaded areas that could create black ice during early morning and evening hours.

Plan ahead for changing weather conditions. Have your car winterized before the winter storm season sets in. Keeping your car in good condition decreases your chance of being stranded in cold weather. Also, be sure to have a first-aid kit, thermal blanket, a working flashlight, a shovel and sand in your car.

Watch for construction work zones. Construction work zones may still be active. Consult MDOT’s Michigan Drive traffic Web site to plan your route. Please remember to slow down and pay attention in work zones. The life you save could be your own.

Always keep a pair of sunglasses in your vehicle. Fall sunrises and sunsets can be very brilliant. The bright sun often creates a large amount of glare, making it difficult to see other vehicles, the roadway or the road's shoulder. Wearing sunglasses during these times reduces the danger.

Before you head out on your autumn driving trip, be sure to take your car in for a basic inspection of its fluids, tire pressure, windshield wipers, brakes, engine, and other critical parts.

Many autumn driving expeditions take leaf peepers on rural roads that are far flung from towns and cities.

Drive Safe, Watch out for Children and School Buses (STOP for All School Buses) and of course do not forget to watch out for DEER.

References: MDOT, AAA and Experience
MIPRIMA Board

Charlie Stevens presenting Michael Ellis with the Gene Berrodin Award

Josh Oleszczak, Elizabeth Hernandez & Charles Gordon

Louise Duchesneau, Cindy King & Michael Ellis

Peter Kühnmuench, Executive Director of Insurance Institute of Michigan, spoke to the attendees during the luncheon - presenting Michigan No-Fault updates

Michael Ellis delivering his acceptance speech for the Gene Berrodin Award

Charlie Stevens & Patricia Wehrung

Michelle King, Enida Metaj & Paul VanDamme

Carol Rosatti, Attorney & Rod Arroyo, President of Clearzoning Presented Master Plan & Zoning Considerations
MIPRIMA Fall Conference

Charlie Stevens & Ellen Ortopan

Donna Cianciolo & Judy Thomson-Torosian

Jim Craig & David Dernbach

Patricia Wehrung & Paul VanDamme

Charlie Stevens with Michael Rosati, Attorney presented Governmental Immunity Updates

Terry McCauley, Director of Public Safety & Risk Management Oakland Community College, presented Security & Safety - If You See Something.....

JoDee Burton & Carol Scott

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