One of the primary goals of the Michigan Chapter of PRIMA is to promote education and training for people in the profession and those who might be considering a career in public risk management and/or public administration. For the Fall 2018 semester, we have awarded three scholarships to help eligible students further their college education in the areas of risk management or public administration.

On June 14, 2018, MI PRIMA held its Annual Golf Outing at the Lyon Oaks Golf Club in Wixom, Michigan. The proceeds of this event are completely committed to providing scholarships to students entering the profession. The Golf Outing committee headed by Tim McClorey (MMRMA) provided a great day for the participants. Approximately seventy golfers enjoyed a day of networking and recreation for a good cause.

MI PRIMA Summer Conference
On July 20-21, MI PRIMA will host its annual conference at the DoubleTree Hotel in Bay City, Michigan. Educational sessions are planned on various risk management and current topics of interest. The venue is located on the Saginaw River in a resurging downtown. Local coffee shops, pubs, and a river front park will provide a pleasing and relaxing environment for the conference. In addition to educational opportunities, the conference will provide great opportunities to network with others. Please join us for this excellent educational opportunity. Registration information is available at www.miprima.org, we look forward to seeing you there.
MIPRIMA Summer Conference

July 20 - 21, 2017

Double Tree by Hilton Hotel Bay City–Riverfront
One Wenonah Park Place
Bay City, Michigan 48708

Topics:
FUND RAISING OPPORTUNITIES -- Grant Writing, Patronicity/Crowd Funding
FITNESS FOR DUTY -- Police, Fire, EMS
EFFECTIVE UTILIZATION OF RISK ANALYSIS
EMPLOYMENT LAWS AND LABOR RELATIONS UPDATE
CROWD SAFETY AND RISK MANAGEMENT
AUTONOMOUS VEHICLES AND CONSIDERATIONS
...speaker information and more detail to follow

Also, 9-hole scramble golf outing at the Bay County Golf Course

Please go on line to the MIPRIMA Website and register
2017 MIPRIMA Board of Directors

**PRESIDENT**
Jim Craig  
Middle Cities Risk Management Trust  
Lansing, MI 48917-6872  
517-492-1380  
jcraig@middlecities.org

**VICE PRESIDENT**
Carol Scott  
Lansing, MI 48910  
517-420-2268  
carols1@comcast.net

**TREASURER**
Michelle King  
City of Flushing, MI 48433  
810-659-5665  
mking@flushingcity.com

**PAST PRESIDENT**
Charlie Stevens  
MMRMA  
Livonia, MI 48154  
734-513-0300  
cstevens@mmrma.org

**SECRETARY**
Debra Russell  
County of Bay  
Bay City, MI 48708-5941  
989-895-4133  
Russelld@baycounty.net

TRUSTEES
- Drew Dunsky  
  C/O Road Commission for Oakland County  
  Beverly Hills, MI 48025  
  248-645-2000  
  adunsky@rcoc.org
- Doug Gniewek  
  Detroit Public Schools  
  Detroit, MI 48202  
  313-873-0877  
  Douglas.gniewek@detroit12.org
- Hugo Cardenas  
  Waterford Township Dept. of Public Works  
  Waterford, Michigan 48329  
  248-618-7456  
  hcardenas@twp.waterford.mi.us

2017 MIPRIMA Committees

**Legislative**  
Chair: Michael Ellis  
Jeff Clark  
Dawn Drobnich  
Doug Gniewek  
Christopher Johnson  
Denice LeVasseur  
Paul Pedersen  
William Reising

**Program**  
Chair: Bill Brown  
Program Coordinator: Donna Cianciolo  
Judy Thomson-Torosian  
Charlie Stevens  
Shelly King

**Membership**  
Chair: Paul VanDamme  
Carol Scott  
Debra Russell

**Scholarship**  
Chair: Judy Thomson-Torosian  
Donna Cianciolo  
Michael Ellis

**Newsletter**  
Chair: Cheri Gelnak  
Tom Wolff  
Debra Russell

**Nominating**  
Chair: Paul VanDamme  
Charlie Stevens

**Web Site Committee**  
Chair: Judy Thomson-Torosian  
Paul VanDamme

Useful Resources
Stay informed on the latest national and local events.

- Educational Resources
  - The Institute  
    www.TheInstitutes.org  
    Offering professional designations in Insurance and Risk Management
  - CPCU Society  
    www.cpcusociety.org  
    5 CPCU chapters located in Michigan
  - PRIMA Institute  
    Public Entity Risk Institute (PERI)  
    E-Training Center
  - Risk and Insurance Management Society (RIMS) – Education

- National PRIMA  
  www.Primacentral.org  
  Offering National Membership and Webinar Series
  - Olivet College  
    www.olivetcollege.edu
  - Other Resources
    AM Best Rating Center
    Dept. of Treasury’s Listing of Approved Sureties
  - Michigan Office of Finance and Insurance Services Search Criteria for Insurance Entities

- Michigan BWDC Employer Insurance Coverage Inquiry
- Current Workers Comp Insurance Coverage Lookup
- Risk Management Library
- Library and Resource Directory

Visit MIPRIMA online... scan the QR code
When entering into a contract with a vendor, it is imperative that the contract be strongly worded to protect the interest of the public entity. Insurance, indemnity, and hold harmless agreements can be as important as the details of the project. It has been our experience that these insurance clauses are often afterthoughts. They should be reviewed by counsel whose practice includes contracts, as well as risk managers, to ensure the financial and legal protection of the project owner.

Be aware that documents that can contain insurance, indemnity, and hold harmless agreements include written contracts, purchase orders, bills of sale, invoices, receipts, etc. Some of these documents may be routinely signed by employees without reading the document or signed by someone who is not authorized to enter into a contract on behalf the organization. Therefore, it is recommended that clear lines of authority be shared with staff and training be provided regarding both authority and contracts.

The ultimate goal is to transfer risk and to prevent losses. Contractors are in the best position to manage the risk and the safety of the project. Contractors will profit from the work to be performed; hence, if the contractors have responsibility for their product and for safety, they should be focused on preventing or reducing exposures that might affect their bottom-line “profit.” If a contractor is adverse to risk, the contractor likely has had losses, and is thus wise to the exposures.

Some may argue that contracts that include requirements for insurance, indemnity, and hold harmless clauses will increase the cost of the project. This may very well be true, but it is important to ask the question: “Who most stands to lose should a loss occur?” Contractors come and go, filing bankruptcy one day and opening up a new business with a different name the next. So who has the deep pocket? That would be the public entity, which has the obligation to protect vast public assets. Additionally, litigation can also create political risk that has its own cost in the court of public opinion.

Speaking of litigation, anyone who has been sued can attest to the exorbitant cost of legal defense. Insurance coverage includes the cost of defense, which can exceed a plaintiff’s actual damages.

You may ask why it is important to have all three clauses. The three clauses provide balance and maximum protection. For example, contracts themselves can be subject to litigation. The courts may interpret the contract provisions and may determine that an indemnity and hold harmless agreement is null and void based on implied, common, and statutory law or contractual factors.

Continued...
example, the courts have ruled that a party cannot contract away their sole negligence. Therefore, the court strikes down the indemnity and hold harmless provisions within the contract. The property owners, having thought they were protected by the indemnity and hold harmless agreement, suddenly find themselves with an unfunded exposure.

A good contract will have a provision stating that, if any part of the contract is found to be void or unlawful, this does not void the rest of the contract. Thus, the property owner can look to the insurance clause. The insurance clause should require that the property owner be named as a “Named Insured” or “Additional Insured” on the contractor’s insurance coverage. In this case, the contractor essentially has purchased insurance on your behalf, thus transferring the risk to the insurer. The property owner is, therefore, entitled to the same benefits as the contractor, including cost of defense and indemnification.

It is important to note that “Named Insured” or “Additional Insured” is significantly different than a “Certificate Holder.” A “Certificate Holder” document does not afford the property owner any rights under the coverage. “Certificate Holder,” in simple terms, means that you confirmed at the time the certificate was issued that the contractor had coverage.

The insurance provisions should include coverage for exposures like general liability, product liability, automobile liability, property damage, and workers compensation. Limits of coverage should also be addressed and limits should be sufficient to protect the property owner. If too low of a limit is selected, the property owner may still be at risk of having to pay for a claimant’s damages. Additionally, the contract should require that the coverage be primary, meaning that the property owner’s coverage, if applicable, is excess and not contributory.

Subrogation may also be addressed within the insurance, indemnity, and/or hold harmless provisions, or subrogation may be a specific clause within the contract. The contractor may seek a subrogation waiver, which essentially attempts to eliminate the property owner’s right of recovery for damages caused by the contractor. As stated above, the contractor is in the best position to manage the risk and the safety of the project. If the contractor does something that results in a loss, the contractor or the contractor’s insurer should be responsible for the damages. Therefore, eliminating subrogation waiver clauses from the contract are not in the property owner’s best interest.
Legislative Committee Update

The views set forth below are those of the Committee Chairman, Michael Ellis, and do not necessarily reflect the view of MiPRIMA, or other Legislative Committee members.

US Supreme Court

Trump nominee Neil Gorsuch has been confirmed and sworn in as our newest justice on the US Supreme Court. For those of you who use pictures in your PowerPoint presentations, there is a new official group photo of the US Supreme Court. During his confirmation process much was written and said about Gorsuch’s writing style. Read HERE.

Specifically they focused on a dissent that he wrote about an excessive force case involving a 7th grader arrested for “burping” in class and cited his 4 page dissent in A.M. v Holmes.

A.M. v Holmes, the “burping” case, appeal made its way to the US Supreme Court and Gorsuch recused himself since he had already ruled on this case in the lower court. The remainder of the US Supreme Court declined to allow the appeal and so the lower court’s ruling which granted immunity to the police officer stands.

According to the ABA Journal Justice Gorsuch is off to a running start. The Journal reports that “The U.S. Supreme Court’s newest justice [Gorsuch] took the bench on Monday and began asking questions less than 15 minutes after oral arguments began.”

Just about one year ago Justice Thomas broke his 10 year silence and asked a question. We now have a full bench actively participating in oral arguments.

Michigan Supreme Court

Michigan Supreme Court Justice Robert Young has resigned to return to private practice with Dickinson Wright where he had practiced before joining the Court. His retirement from the court became official on April 17, 2017.

Justice Young’s resignation created a vacancy on the Court. Governor Snyder appointed Court of Appeals Judge Kurtis Wilder to the Michigan Supreme Court to complete the rest of Justice Young’s unexpired term. This maintains the 5 to 2 Republican majority on the Court.

Read 1 Article HERE  Read 2 Article HERE

Also in Court news, Michigan Supreme Court Justice Joan Larsen has been nominated by President Trump to the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. If this nomination is confirmed, it would create another vacancy on the Michigan Supreme Court and once again Governor Snyder would be able to appoint a replacement.

Read 1 Article HERE  Read 2 Article HERE

Other Michigan Courts

The appeal in Pucci v Nineteenth Judicial District Court has been accepted by the Michigan Supreme Court and has broad implications for all court funding units. Rather than attempt to completely summarize this case we refer you to the Court of Appeals decision for the background on this case. Of specific interest to Public Risk Managers is the question of whether the Judge can unilaterally create coverage via an indemnification agreement. READ HERE

In the order granting the appeal, the court “invites” amicus curiae briefs from a long list of organizations which seems to reflect how important the court thinks this case is. The court states, “The Michigan Association of Counties, Michigan Judges Association, Michigan Probate Judges Association, Michigan District Judges Association, Michigan Municipal League, City of Dearborn, and Judge Mark W. Somers are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.”

The specific issues of concern to the Court are outlined in the order. READ MORE

Geoffrey Fieger ”very seriously” considers run for Governor?

In an episode of Off the Record (OTR) that was aired May 12, 2017, Geoffrey Fieger stated that he is seriously considering another run for governor in 2018.
Kathleen Gray who was on the OTR panel that day wrote an article for the Detroit Free Press covering Fieger’s announcement.

Bernstein ‘very seriously’ considers run for governor?
A second high profile attorney is also considering a run for governor. Mark Bernstein, a son of the famous Sam Bernstein, is considering running for governor. Mark’s brother, Richard, was elected to the Michigan Supreme Court in November 2014 and began serving an eight year term in January of 2015. READ HERE

The $10 million dollar comma (or The Oxford comma debate)
If you have not already taken sides on the Oxford comma issue, then you should at least be aware of the debate. For years grammarians have said that when using commas to separate a series, the last comma was optional. Some went so far as to say that since the function of the comma was to replace the word “and” if you used the word “and” then the comma was improper. Throughout the land highly trained editors have been removing this terminal (or Oxford) comma claiming that it was redundant. This may be ok (even good) if you are publishing Pulitzer Prize winning fiction, but if you are drafting contracts or statutes the lack of a comma can cause confusion which in the legal trade is known as an ambiguity and that is never good. Such an ambiguity is said to exist in the lawsuit before a federal appeals court which allowed drivers for a Maine dairy to go forward with their dispute over overtime pay. READ HERE

News reports place the amount at issue at around $10 million so this is getting attention nationally, but the problem is faced by everyone drafting or interpreting contracts or statutes. This issue is laid out in this CBS article.

Or if you would like a more light hearted coverage – here is The New Yorker’s coverage of this concern.

Also for those fascinated by punctuation here is more by the author above, a self-confessed Comma Queen.

Here is a discussion of comma designed for the claims professional.

Covenant v State Farm
The Michigan Supreme Court has finally issued a decision in the Covenant case and has ruled for the State Farm (the insurance company). This fight was about whether a medical provider had the right to sue a no-fault auto insurance company for the value of services provided to a covered accident victim.

In a decision published May 25, 2017, a four member majority of the court held that, “The Court of Appeals’ opinion in this case is premised on the notion that an injured person’s healthcare provider has an independent statutory right to bring an action against a no-fault insurer for payment of no-fault benefits. This premise is unfounded and not supported by the text of the no-fault act. A healthcare provider possesses no statutory cause of action under the no-fault act against a no-fault insurer for recovery of PIP benefits. Plaintiff therefore has no statutory entitlement to proceed with its action against defendant. Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the Saginaw Circuit Court for entry of an order granting summary disposition to defendant.”

Justice Bernstein dissented and Justice Wilder did not participate in the disposition of this matter. The entire decision as well as the official Syllabus can be read HERE.
Annual MIPRIMA Scholarship Golf Outing
June 14, 2017
Lyon Oaks Golf Course

Jim Cylkowski, Matt Hersey & Jim

Chuck Sheaffer, Chris Muscott & Dana Muscott

Eric Genske, Tyler Drouaire, Keith Avallone & Andy Golota

Bill Brown, Donna Clanciola, Erin McBride & Keith Avallone
Usually, impersonations are funny. When a criminal poses as a CEO of a company via email and directs employees to wire hundreds of thousands of dollars—sometimes millions—into an account overseas, it’s anything but.

You would think impersonating a CEO would be difficult. According to James Barnacle, chief of the FBI’s money laundering unit, “It’s as easy as having a computer.” Business email crime, also known as CEO Email Fraud, is an up and coming version of identity theft that has increased dramatically over the last three years. In fact, between October 2013 and August 2015, about $1.2 billion globally was lost to CEO Email Fraud.

The rise in CEO Email Fraud can largely be attributed to one simple fact: the scam can be run from literally anywhere in the world where there’s an Internet connection. Criminals looking to swindle companies out of large sums of money often use look-alike domain emails that are unlikely to set off spam traps. They also take the time to understand the target organization’s relationships, activities, interests and travel and/or purchasing plans, allowing them to mimic the CEO’s mannerisms more easily.

In addition to the scheme being relatively easy to execute, the money often ends up in offshore bank accounts located in Asia or Africa, where it’s harder for the U.S. to acquire assistance from local authorities. The FBI advises companies to be more guarded with their information, even if it means taking additional steps that are not cost-effective.

Also recommended is being aware of the latest version of CEO Email Fraud. The most recent being urgent requests from criminals posing as CEO’s asking employees to send them copies of their W-2’s. These documents are a gold mine of personal information and, since employees aren’t likely to question a request from the head of the company that pays their salary, relatively easy to obtain in these cases. The unfortunate reality of CEO Email Fraud is two-fold: Not only does it put employees at risk for identity theft, but it also puts companies at serious risk for financial loss.

To prevent falling victim to these scams, make sure both Accounting and Human Resources are aware of what CEO Email Fraud is and how it works. Encourage employees to check email addresses and confirm directives by asking before acting. Minimize risk by trusting Mackinac Partners to put preventative measures in place within your network systems. Using our extensive suite of Business Intelligence and Corporate Security services, our experts will work with your IT department to create checks and balances so that employees can make better informed business decisions, protecting themselves—and the company—from ongoing risk and challenges.

To learn more about our services, visit us online. If you have questions, or would like to set up a consultation, contact our team of professionals and we’ll get back to you within 24 hours.

For more information contact Katherine Johnson, CFE @ Ph: 586-747-7478
The views set forth below are those of Charlie Stevens and do not necessarily reflect the view of his employer MMRMA, or the MIPRIMA organization.

At the Michigan Public Risk Management Association Spring Conference, the General Counsel for PROTEC, Michael Watza, shared that the growth of cell phones, the expansion of wireless devices, and the potential deployment of autonomous vehicles is leading to an increased demand for cell towers as there is a need for constant connection to broadband signals. The cell industry has stated that there is a need for millions of more cell towers throughout the United States—and tens of thousands here in Michigan. The four major cell companies (AT&T, Verizon, T-Mobile, and Sprint) all want their own towers. However, the cell industry does not want to pay for the towers, the right of way, or franchise fees. Mr. Watza cautioned municipalities to be very careful in approving one tower, because that opens the door for the other cell companies to demand access approval. The demand for access, particularly without compensation, has led to disputes and legal challenges. Therefore it is recommended that municipalities, with advice of legal counsel, have in place specific policies, with terms and conditions, and a permit process before entering into a contract allowing cell towers.

### Cell Towers – Beware!
*By Charlie Stevens*

---

**2017 Corporate Sponsors**

### Claims, Investigative and Financial Service Companies

**Advantage Consulting, Inc.** Michigan’s leading occupational therapy centers. Contact: Kathleen Dunning (248) 689-0468.

**ASU Group** service line includes adjusting, case management, third party administration and medical bill review. Chad Johnson (517) 381-7923.


**Optum Co.**, pharmacy benefit management and ancillary benefit service provider. Contact: Matt Hersey, VP National Sales. Office: (614) 212-6237; Cell: (248) 982-0701; matthew.hersey@optum.com.

**Integrated Therapy Works Inc.**, an integrated rehabilitation network of health professionals bridging traditional and complimentary medical modalities; specializing in long-term chronic pain management solutions, including focus on reduction of opiate usage. Contact Margaret Lee Kammerer, Director of Programs. Cell (248) 910-2888 or Office: 800-552-8646.

**Plante & Moran**, PLLC, public accounting and business advisory firm. Terry Olejnik (248) 223-3388.

**ServPro** professional emergency restoration, whether its water, fire or mold. Available 24 hours / 7 days a week. Contact: Mike Snyder (989) 239-9170, msnyder@RDMCHC.com.

**SWF Restorations Inc.** Provides restorative cleaning services and restoration services to residential and commercial customers in metro Detroit. Contact Steve Daniels President 313-561-3400; or 24/7 emergency service 855-479-3669.

### Insurance Companies or Agencies

**Arthur J. Gallagher & Company**, provides benefit planning services. Mary Beth Bullen (248) 430-2778.

**IBEX Insurance Agency** is an all lines independent insurance agency. Keith Potter (248) 538-0470.

**Midwest Employers Casualty Company**. Excess Workers’ Compensation Coverage. Contact: Phil Giljum (636)-449-7000.

### Law Firms

**Cummings, McClure, Davis & Acho, P.C.** mission is simple - we must help our clients be successful and improve their bottom line to assist our clients to achieve their business objectives with the least amount of legal risk. Ron Acho, (734) 261-2400.

**Johnson, Rosati, Schultz & Joppich, P.C.** is a full-service law firm. Chris Johnson (248) 489-4100.

**Pedersen, Keenan, King, Washberg & Andrzejak, P.C.** is a full-service law firm. Diverse defense of personal injury, property, and contract cases. Paul Pedersen (248) 363-6400.

**Plunkett & Cooney, P.C.** is Michigan's leading litigation defense and trial practice law firm. William Reising (810) 342-7001.