President’s Message

We are already well into 2013 and we are still waiting for “things” to settle down.

Whether I am talking to managers at The City of Battle Creek, to fellow members of the Michigan PRIMA Board of Directors or most other Risk Managers, I seem to hear the same common voice. “Things” just never seem to settle down. We have heard the phrase “new normal” now for several years and I’m beginning to believe that we truly are living in the era of the “new normal”.

With this “new normal” it will be critical to the success of our employers and our career that Risk Managers learn to adapt, integrate and just get smarter about how we bring value to the table. Our goal as an organization is to provide educational and networking opportunities for that to occur.

Make plans to attend our events this year, our planning committee is working overtime to bring quality, timely topics to our membership. They are also looking at a new format for our summer meeting that we hope will make it possible for the largest Michigan PRIMA event to occur this year.

We look forward to seeing you this year.

Sincerely,

Rick Hensley
MIPRIMA President
Risk Manager
City of Battle Creek
Scholarship Program Tops $100,000

The Michigan Public Risk Management Association (MIPRIMA) Scholarship Program has awarded $114,000 since its inception in 2004. In less than a decade, MIPRIMA has provided assistance to 54 students at 7 different Universities. This scholarship program is dedicated to advancing the study of risk management and to encourage students to look at public service as a career.

MIPRIMA provides two different scholarships:

MIPRIMA 9-11 Memorial Scholarship in remembrance of the large loss of life of Public Risk Management professionals at the World Trade Center, and

The Donald Althoff Memorial Scholarship is named for Mr. Althoff in recognition of his significant contributions to MIPRIMA and Public Risk Management.

The amount of the scholarship award will be a minimum of $750.00 and a maximum of $2,000.00. The number of qualified applicants and the amount of funds available will determine the amount of the scholarship(s). The monetary award will be made payable to the scholarship recipient and to the College or University for the recipients 2013 Fall Term tuition costs.

Additional information regarding these scholarships can be found on the MIPRIMA website at www.miprima.org. Questions concerning the scholarship, and the Scholarship applications, are to be directed to the Chair of the Scholarship Committee:

Rick Hensley, ARM, SPHR
Risk Manager
City of Battle Creek
10 Division North, Room 217
Battle Creek, MI 49014

Phone: 269-966-3407
Fax: 269-966-3644
E-mail: rhensley@battlecreekmi.gov
Michigan Public Risk Management Association
2013 Spring Educational Program

Thursday, March 21, 2013
East Lansing Marriott at University Place • 300 M.A.C. Avenue • East Lansing, Michigan 48823 • (517) 337-4440

8:00 – 9:00  REGISTRATION & CONTINENTAL BREAKFAST

9:00 – 9:15  President’s Remarks
Rick Hensley
MIPRIMA President

9:15 – 10:15  Updates to Michigan’s No-Fault Laws and Additional Legal Insights including recent PA 468
Bill Reising,
Plunkett Cooney

10:15 – 11:15  To Share or Go Bare? Pools and Captives in today’s economy.
Michael Ellis, Michigan Municipal Risk Management Authority (MMRMA)

11:15 – 11:30  BREAK

11:30 – 12:30  Tough Lessons: The Dark Side of Success
John Borbi, Speaker and Author

12:30 – 1:30  LUNCH

1:30 – 3:00  Functional Restoration Programs to Treat Long-Term Work Injuries, How it Works and the Cost Savings PLUS Coordinating Care with Providers
Maury Ellenberg, M.D.
Medical Director of Functional Recovery Program,
Maryjo Gavvin, PhD, and
Brenda Blind, Coordinator of Functional Recovery Program
Rehabilitation Physicians PC

3:00 – 4:00  NETWORKING RECEPTION

MIPRIMA 2013
Spring Educational Program Registration
Please Return by March 8, 2013

Name__________________________________
Title___________________________________
Organization____________________________
Address________________________________
City___________________________________
State_____ Zip_______ Tel________________
E-mail (MANDATORY)_____________________

Joining us for lunch? Yes_______ No_______
WE NEED AN ACCURATE COUNT SO THAT WE ARE NOT OVER-CHARGED

Registration Fee:
MIPRIMA Public Entity Member $25
Public Entity Non-Member $50
Non-Public Entity Member $75
Non-Member (Other than a public entity) $150

NOTE: You will be charged if you register but do not attend unless cancellation is received by March 15th.

Please enclose payment payable to MIPRIMA and return to:
Fred Hill
MIPRIMA Secretary
c/o FRAssociates
25817 Arrowhead
Southfield, MI 48075
Phone: 248-943-2448
fdhill221@yahoo.com

Former financial advisor John Borbi’s rapid rise to wealth, the temptations he faced, and the poor decisions that led to his ethical downfall, which he calls ‘The Dark Side of Success.’

Hear how his mistakes re-shaped his future as he served a 30-month sentence in federal prison and learn how you can apply the valuable lessons John learned to your own life.

An inspiring keynote speaker and author, John shares his personal journey through life’s successes, failures and personal redemption. John’s compelling words and engaging speaking style have a powerful effect on those who hear his story, encouraging them to evaluate their actions and make strong ethical choices, and guiding them toward a more fulfilling life.
Michigan Supreme Court – David Viviano - a new Justice:

Justice Marilyn Kelly was not able to run for another term because the Michigan Constitution requires a justice to be younger than 70 years of age when taking office. This set the stage for last November’s election, in which three of seven seats were open. Two incumbent Republicans, Markman and Zahra, were also up for re-election. As we know, the two Republican incumbents were successful and Bridget McCormack became the newest Michigan Supreme Court Justice.

Then trouble befell Justice Hathaway. As the facts about her short sale came out, she first stepped down from the bench, apparently to avoid answering charges by the Judicial Tenure Commission, and then pleaded guilty to bank fraud. This created a vacancy on the court and allowed the governor to name a replacement.

Macomb County Circuit Court Judge David Viviano has been appointed a new Michigan Supreme Court Justice by Governor Snyder. Newspapers report that before he was elected to the bench in 2006, Judge Viviano worked at the Dickinson Wright law firm in Detroit and the Jenner & Block law firm in Chicago. This will give the Republicans a 5 to 2 majority on the Michigan Supreme Court.

Michigan Medical Marijuana Act (MMMA):

The Michigan Supreme Court has spoken on the issue of the MMMA and held that patient-to-patient transfers are not protected and therefore illegal. This effectively shuts down the dispensaries. Brandon McQueen and Matthew Taylor operated the Compassionate Apothecary (CA) in Mt. Pleasant. The local prosecutor sought a ruling that the CA was not protected by the MMMA and therefore not legal. The local prosecutor tried to get the CA closed as a public nuisance under the health code, which gives the prosecutor an interesting outcome. The CA was closed as a public nuisance under the health code.

More on MMMA:

As soon as the McQueen decision was issued, HB 4271 was introduced on Feb 19, 2013. This bill may be cited as the "Medical Marijuana Provisioning Center Regulation Act.” Now instead of dispensaries we have Provisioning Centers, and the argument starts all over again.

Notice of Potholes:

The City of Flint pulled off a major victory by convincing the Michigan Court of Appeals that the notice requirement under the highway defect exception to the governmental tort immunity act requires that the notice be given in person or by certified mail. The unpublished opinion in Watts v. City of Flint was issued on January 17, 2013.

The court decided that, although the statute says “may,” in order give sense to the subsequent words, the statute must be read as “shall.” While it is hard to support what seems like judicial activism, the decision is certainly helpful to all of us who deal with sidewalk claims. From now on, everyone is advised to save their envelopes. The lack of a certified stamp may provide a defense to your case at a later date. For now, all public entity risk managers are encouraged to read the Watts decision.
Open Meetings Act:

Thankfully, House Bill 5335, which would have required physical presence by the officials at an open meeting, did not make it through the lame-duck session.

However, House Bill 5459 did. This Bill adds new requirements to special and emergency meetings. Now an essay is required explaining in detail why the 18-hour notice provision could not be complied with if the public body holds an emergency meeting without providing notice.

The impact of this bill should be considered by public entity risk managers.

Columbia Township recently made the news in an unpublished opinion of the Court of Appeals. In Speicher v. Columbia Township, the court found that Columbia Township had violated the Open Meetings Act by not posting a change to its regular meeting schedule within three days after the meeting at which the change was made.

The public is becoming much more aggressive in asserting its rights regarding open meetings. In an ironic twist, there is litigation contesting the new right to work statute because, during the debate, the state police closed the capital because of protester agitation and now the protesters are complaining that they were denied access to the legislative chambers in violation of the Open Meetings Act.

Public entity risk managers need to stay up-to-date on changes to the Open Meetings Act.

Gross Negligence:

It is always tempting to see “gross negligence” as ordinary negligence, but a little worse. However, under the immunity statute, gross negligence has a very distinct meaning and it is not merely ordinary negligence on a bigger scale. In a recent unpublished Court of Appeals opinion, Russell v. Weingartz, the court reaffirmed this distinction. Carrie Weingartz, a Southfield high school schoolteacher, was showing her class that even metals burn under the right circumstances when what is usually a low-risk experiment went astray and a student was burned. The student’s parents sued and the court pointed out that “gross negligence” means conduct substantially more than negligent. To be gross negligence, Weingartz’s behavior must be “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” In this case, she had done significant research on how to make this experiment safe, so the court granted her summary judgment based on governmental immunity. It is good to see the distinction between ordinary negligence and gross negligence under the statute reaffirmed.
MARIJUANA
Is an employer required to pay for marijuana treatment for a work related injury? If there was any question about this before, the workers’ compensation law in Michigan now contains a specific provision rejecting this treatment for any work related condition. Effective December 28, 2012, the workers’ compensation act was amended to provide: “Notwithstanding the requirements in section 315, an employer is not required to reimburse or cause to be reimbursed charges for medical marijuana treatment”.

NEW MAGISTRATES FOR WORKERS’ COMPENSATION
You would think that the facts and the law would be the controlling factors in a decision to settle or take a case to trial. With this in mind, when I was a new lawyer, I asked the senior partner for help in evaluating a claim. I went to his office, file in hand, with all the facts and law at the tip of my tongue.

Did he ask me anything about the facts or the law? No. His first question was “Who is the judge?” I did not know. He told me to come back when I had that information.

The background information about the judge and prior decisions by that judge can be very helpful in deciding whether to settle a case or take it to trial. With Governor Snyder’s recent appointments we have four new magistrates deciding the cases. We have no prior decisions by them to look at to evaluate our chances at trial. The best we can do at this point is to look at their education, training and experience.

The new appointees include Keith Castora of Canton, Michigan. Magistrate Castora is an experienced workers’ compensation attorney. Since 2000 he has been with Foster, Swift, Collins & Smith. He holds a bachelor’s degree in political science from State University of New York at Stony Brook and received his Juris Doctor from MSU/DCL. He replaced Magistrate Michael Mason.

Jane Colombo is replacing Thomas Moher. Magistrate Colombo has been active in the University of Detroit Mercy Law School Alumni Association and Catholic Lawyers Society. She previously served on the Workers’ Compensation Appeal Board and has, in private practice, played a significant role in bringing important workers’ compensation issues before the appellate courts through briefs she has written. She lives in Grosse Pointe.

Another Grosse Pointer, Dave Williams, has also been appointed to the bench. He replaces Ken Birch. He has been with the firm of Kluczynski, Girtz, Zamler and McCubbrey, P.C. since 1986. Before that, he was with the firm of Sommers, Schwartz, Silver & Schwartz P.C. He received both his B.A. and J.D. from Wayne State University.

Lisa Woons is replacing Paul Purcell. Magistrate Woons is an excellent workers’ compensation attorney from Grand Rapids where she worked as a shareholder with Kluczynski, Girtz and Vogelzang since 1990. Woons holds a bachelor's degree in political science and a law degree, both from Valparaiso University in Indiana.

That’s it for new appointments. The governor reappointed Dave Kurtz, Tim McAree and Robert Timmons. The balance of the magistrates will not be up for reappointment for another two years. Michigan employers, including governmental entitites, should be buoyed by the refreshing change in the judges who will be deciding claims in workers’ compensation matters.

MEDICARE
Now that we succeeded in getting the SMART Act signed into law to address the past medical bills paid by Medicare, we still need to fix the roadblock that future medical presents when trying to settle a case where the claimant is likely to become Medicare eligible.
The concern arises out of the experience that employers and insurance companies have had in dealing with CMS (Center for Medicare and Medicaid Services). There is a general free floating anxiety among employers, insurance companies and TPA's, as well as the plaintiff's bar about CMS's unwillingness to provide specifics beyond the vague requirement in the Code of Federal Regulations, which requires that Medicare's interest "be taken into consideration".

This vague requirement has given rise to some plaintiff attorneys, employers, insurance companies and TPA's use of a voluntary Medicare Set Aside in order to show to CMS that Medicare's interests have been taken into consideration, if CMS looks at it in the future after the claimant becomes Medicare eligible. But there is no guarantee that CMS will find this acceptable.

To address the problem, members of the risk management community are preparing to introduce the "Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2013". The drafters of the legislation are working to ensure that it is consistent with the SMART Act, which dealt with Medicare conditional payments. The coalition includes the AIA, PCI, the National Council of Self Insurers, the American Bar Association, the American Association for Justice and the Workers Injury Law and Advocacy Group. We anticipate the bill will be introduced in the spring. We will keep you informed on this issue.

Denice LeVasseur is an attorney with LeVasseur & LeVasseur, P.C. She represents employers in workers’ compensation claims and litigation. She can be reached at 248-356-8600 or dlevasseur@levasseurlaw.com.
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