

# 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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## FYI

### Lofty Vision

*By Tom Judy*

To be the best, one must aspire to be the best. The vision of the Miami Valley Risk Management Association is to be *“the premier property and liability insurance pool for member municipalities in Ohio.”*

We believe MVRMA absolutely meets this lofty vision. This is as it should be given that MVRMA’s membership consists of some of the premiere cities in Southwest Ohio. Here are few thoughts on why MVRMA is the premier pool in Ohio.

### Selective Membership

When entering into a risk pooling arrangement, it is a good idea to understand with whom you are sharing your community’s tax dollars. This is where MVRMA stands apart. MVRMA has adopted a very selective marketing posture that reflects an understanding of the importance of becoming financially intertwined with only those who share your commitment to managing risk.

Prospective members must demonstrate the following traits even to be considered for MVRMA membership:

- Commitment to risk management practices. MVRMA staff conducts a rigorous review of any prospective member’s policies and practices to determine if they have demonstrated a genuine commitment to risk management best practices.
- Claims losses consistent with existing MVRMA members’ losses.
- A history of financial stability, political stability, and professional management.
- Municipal government with a population from 5,000 to 60,000.

## Articles

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## **The Pool's Money is Your Money**

MVRMA's method of financing the members' claims and other costs of the pool is straightforward and transparent. All funds contributed to MVRMA, if not spent for the intended purpose, are refunded to the members, with interest. ***These refunds must be taken into account when evaluating the cost of membership in the pool.***

When an annual loss year is closed, members are refunded the balance remaining in that fund in the same ratio as it was contributed. Since the pool's inception, members have been refunded 54% of the loss funds contributed, including interest earnings on those funds. There are currently seven open loss years, each with significant equity that will be returned to the members upon closure.

## **Participation in the Pool's Governance**

All 21 member cities literally have a voice at the table as all members are represented on the pool's board of trustees. Members can control their own destiny in designing their risk financing and loss mitigation strategies.

## **Insurance Coverages Tailored to the Members' Unique Needs**

The pool has its own Liability Coverage Document that is approved by the Board of Trustees annually. Members have a direct voice in shaping the coverages offered by the pool.

MVRMA's comprehensive suite of coverages has been shown to be far superior across the board in comparison to other pools and competing commercial carriers.

## **Personalized Loss Control Services**

The relatively small size of the pool enables MVRMA staff to act as an extension of your city's staff. We consider MVRMA to be the Risk Management department for each of our member cities. MVRMA's risk management services include:

- **Unlimited Loss Control Consultation Services.** Members have direct access to MVRMA's full-time Loss Control Manager and other MVRMA staff for consultation and advice.
- **Annual Risk Management Performance Audits.** Annual city-wide risk management best practices evaluations of all city departments of each member city to identify safety and loss control areas in need of improvement.
- **Annual Law Enforcement Best Practices Audit.** Annual audits with each member city's police department to evaluate current practices and work with departments to reduce the frequency and severity of potential claims.

FYI...Continued

- **Training Seminars.** MVRMA offers loss control, legal, law enforcement and safety training for our members and their employees both in person and via online training offerings. The training program emphasizes key loss areas such as employment practices, law enforcement, and vehicle safety, as well as other workplace safety topics.

## **Synergistic Effect of Collaborating with Excellent Partners**

There is a synergistic effect from the group knowledge-sharing and problem-solving with representatives of some of the best cities in our region. We believe this collaboration and interaction challenges, encourages, and empowers MVRMA member cities to out-perform their peers that operate outside the MVRMA umbrella.

In short, MVRMA acts as an extension of our elite group of member cities by forming relationships throughout the members' organizations, understanding their unique needs, and tailoring programs and coverages to meet those needs. We believe it truly is "the premier property and liability insurance pool for member municipalities in Ohio."

## **COUNSELOR'S COMMENTS**

*By Surdyk, Dowd and Turner*

### **Off-Duty K-9 Officer Immunity**

Many courts have found that when a police officer and his canine partner are in pursuit of a suspect and an innocent bystander with no connection to the crime is bitten by the canine, the police officer is immune from liability. But what is the outcome when an officer is off-duty and hosting a party or on vacation and his canine bites a party guest, neighbor, or friend? While K-9 officers are generally immune from strict liability claims under what are commonly known as "dog bite statutes," there is no bright-line rule regarding whether officers are immune from claims arising out of injuries caused by their canine partners.

In a recent Ohio Supreme Court case, *Harris v. Hilderbrand*, the high court addressed the issue of whether a sheriff deputy had immunity from liability when his canine partner bit a guest at his home while he was hosting a backyard barbeque. The case hinged on the exception to immunity (that a plaintiff bears the burden of proving) outlined in Ohio Revised Code Section 2744.03(A)(6) (a), which provides that a political subdivision employee is immune from liability for injury caused by any act or omission in connection with a governmental function unless "[t]he employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities."

Counselor's Comment..Continued

Hilderbrand and his girlfriend hosted a cookout at their home in Rayland, Ohio. As required by Belmont County, his employer, K-9 Xyrem lived with Hilderbrand. Before eating dinner, Hilderbrand had Xyrem demonstrate some of his police training. Hilderbrand hid narcotics, kept in his police cruiser for training purposes, in his backyard for Xyrem to find. Hilderbrand also used an alert command, "Belmont County Sheriff's Office," to which Xyrem is trained to respond by barking at the door. About an hour to an hour and a half later, after eating dinner, cookout guest Carrie Harris was setting up a frisbee game in the yard when Xyrem jumped up and bit her on the chest. Harris required medical treatment for her injuries.

Harris subsequently filed a lawsuit that included a claim of negligence on the part of Hilderbrand. Hilderbrand moved for summary judgment on the basis that he was immune from liability because there was no evidence he was acting manifestly outside the scope of his employment or official responsibilities when Xyrem bit Harris. *Harris v. Hilderbrand*, 2022-Ohio-1555, ¶ 11, 191 N.E.3d 1143, 1146, *appeal allowed*, 2022-Ohio-3135, ¶ 11, 167 Ohio St. 3d 1511, 194 N.E.3d 383, and *rev'd*, 2023-Ohio-3005, ¶ 11. The Supreme Court reversed the Seventh District Court of Appeals decision that granted Hilderbrand immunity from liability because he "was not manifestly acting outside the scope of official responsibilities at the time the bite occurred," concluding that this was an issue for a jury to decide. *Id.* at ¶ 33.

In another Ohio case with facts similar to those in *Harris*, the 9th District Court of Appeals came to a different decision. In *Alden v. Dorn, et al.*, 9<sup>th</sup> Dist. Summit No. 27878, 2016-Ohio-554, Akron Police Sergeant Dale Dorn, a canine commander in the K-9 Unit at the time, and his wife hosted a cookout at their residence. Dorn kept one of the City's police dogs, a German Shepard named Gunny, at his house. Jarred and Sarah Alden and their two minor children, B.A. and E.A., were at the Dorns' cookout for the majority of the day. Jarred and Sarah were sitting on the patio with Dorn and his wife as Dorn played fetch with Gunny. At the exact same time that Dorn stopped playing fetch with Gunny and ordered Gunny to lie down near his chair on the patio, B.A. walked onto the patio. All of a sudden, Gunny jumped on B.A., knocking B.A. to the ground, and began to bite the back of B.A.'s neck and his left arm. In seconds, Dorn was able to get Gunny off of B.A. and carry Gunny to his kennel. B.A. required sixteen stitches as a result of the incident.

The Aldens filed a complaint against Dorn and Police Chief James Nice in their official and individual capacities. The trial court ultimately determined they were statutorily immune. The Court of Appeals affirmed, stating that since there were no factual disputes between the parties, the only issue that the Court had to determine was whether Dorn and Nice were entitled to immunity from liability under ORC § 2744.03(A)(6). The Court held that Dorn and Nice were entitled to judgment as a matter of law, noting that there was evidence in the record "that they were employed by a political subdivision on July 4, 2010 and that Sgt. Dorn was training and harboring Gunny on the day in question pursuant to City of Akron policy." Additionally, the Court determined that the

Counselor's Comment..Continued

Aldens did not meet their reciprocal burden of proving that any of the exceptions applied, including that “[t]he employee’s acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities,” under ORC § 2744.03(A)(6).

It is noteworthy that the Court’s analysis of the issue of whether Dorn was acting within the scope of his employment or official responsibilities was very brief and clear-cut. Dorn was sitting on his patio, hosting a cookout, just like Hilderbrand, and playing fetch with Gunny. However, the Court quickly concluded that the evidence in the record demonstrated that Dorn was both employed by the City and was training and harboring Gunny on the day of the incident in accordance with City of Akron policy, which was enough to show that Dorn was acting within the scope of his employment and entitled to immunity as a matter of law.

There are limited cases in Ohio with facts like those in *Harris* and *Alden*. However, courts in other states have had to address the issue, and their analyses and rulings vary. For example, in an Arkansas case, *Harris v. Beth*, 2017 Ark. App. 186, 518 S.W.3d 126 (2017), the Court of Appeals denied that Officer Jason Harris of the Little Rock Police Department K-9 Unit was entitled to immunity as a matter of law. Harris, who was partnered with canine Ammo, was required to house Ammo at his home. Harris and Ammo were also required to be on call twenty-four hours per day to help other officers if needed. One day, while Harris was not home, Ammo escaped from his backyard and bit Harris’s neighbor, Norman Beth, on the leg as Beth did yard work.

Beth filed a complaint and Harris eventually asserted that he had immunity based on Arkansas Code Annotated § 21-9-301(a). Harris contended that immunity under the Code “extended to a municipality’s employees for acts of negligence committed in their official capacities and that he was acting in his official capacity for the Little Rock Police Department by maintaining Ammo at his residence and remaining on call twenty-four hours a day.” Beth maintained that Harris was not acting in his official capacity at the time of the dog bite.

The trial court held that Harris was not provided immunity under the statute because if he was, “there is absolutely in my mind no way that [Harris] could be liable for whatever that dog did anytime, anywhere. I can’t believe that’s what the statutes were intended to do and, therefore, the Motion for Summary Judgment is denied.” On appeal, Harris cited a Georgia Supreme Court case, *Eshelman v. Key*, 297 Ga. 364, 774 S.E.2d 96 (2015), in which the Court held that a police officer K-9 handler is responsible for the care and maintenance of the canine “at all times, even when she is not working”; therefore, her failure to secure the dog outside her house related to her doing an official function and she was presumptively immune from liability. However, the Arkansas Court of Appeals was not persuaded by Harris’s arguments and affirmed the trial court’s decision denying immunity.

Counselor's Comment..Continued

In contrast, an appellate court in Michigan did the opposite when it reversed the trial court's decision and granted summary judgment to a canine handler in *Foster v. Szlaga*, 2016 WL 805583, Mich. App. No. 324837 (Mar. 1, 2016). Kevin Szlaga, a Macomb County Deputy Sheriff, was partnered with a canine named Zeke. Whether he was on or off-duty, Szlaga was responsible for Zeke's care twenty-four hours per day. On the date of the incident, Szlaga and Zeke were at a cottage in Clare County. Gail Foster entered the cottage and when she eventually approached Zeke, Zeke bit her. Foster filed a complaint against Szlaga and Macomb County. The trial court granted Macomb County's motion for summary disposition on the basis that the County was immune from liability under Michigan Compiled Laws Section 691.1407(1), akin to ORC § 2744.03(A)(6), of the Governmental Tort Liability Act. Szlaga also moved for summary disposition on the same grounds, but the court denied the motion. *Id.*

Again, at issue, was whether Szlaga was acting in the course of his employment at the time Zeke bit Foster. The Court of Appeals said yes, as a matter of law, he was. In making its determination, the Court considered the following factors: (1) an employment relationship existed between Szlaga and Macomb County; (2) the circumstances of the work environment included Szlaga maintaining and possessing Zeke twenty-four hours per day, whether he was on or off duty, vacationing or in a county other than Macomb County; and (3) Szlaga brought Zeke to the cottage in furtherance of Macomb County's purpose. The Court concluded that "[s]tated simply, as [Szlaga] was required to possess and maintain Zeke at all times, this included times when he was off duty and outside of Macomb County." The Court further noted that caring for a police dog was an activity that Szlaga would not have done if he had not been employed by Macomb County. Ultimately, the Court determined Szlaga acted in the course of his employment and, therefore, was entitled to immunity.

Altogether, the foregoing cases demonstrate that there is nuance to K-9 bite cases, and whether an officer will be entitled to immunity is a fact-driven decision that courts or juries must make. Unlike the strict liability dog bite statutes, there is no bright-line test, and the outcome for an off-duty officer depends upon the court and/or the judge. What becomes important is the officer's ability to articulate how events leading up to a K-9 bite injury that occurs while the officer is not technically on the job, fall within the officer's scope of employment or official responsibilities. As such, it is important that departments make sure that there is a policy in place that requires that a K-9 officer keep and care for the K-9 at all times—including when off-duty.



## Loss Control Lowdown...

*By Starr Markworth*



### Safeguarding Your City-Cybersecurity for Public Entities

In the digital age, cybersecurity has become a critical concern for public entities, including city employees like yourself. The growing reliance on technology and the increasing sophistication of cyber threats mean that safeguarding our digital assets is more important than ever.

#### Understanding Cybersecurity

First, let's break down what cybersecurity means. Cybersecurity is like a protective shield that guards our digital world against malicious activities. It involves strategies and measures to protect computer systems, networks, and data from unauthorized access, breaches, and damage.

Small to medium-sized cities in Ohio, like any other areas, can be attractive targets for cyberattacks for several reasons:

1. **Critical Infrastructure:** These cities often have essential infrastructure such as utilities, transportation, and healthcare facilities. Disrupting these services can have significant consequences.
2. **Data Stores:** They may store sensitive data, including personal and financial information of residents, making them valuable targets for data theft or ransomware attacks.
3. **Limited Resources:** Smaller cities might have limited budgets and resources for cybersecurity, making them more vulnerable to attacks.
4. **Lower Security Awareness:** Cybersecurity awareness and training might be lower in smaller communities, leading to potential vulnerabilities.
5. **Dependency on Third-Party Services:** Smaller cities might rely on third-party vendors for IT services, which can introduce additional risks if these vendors have vulnerabilities.

## Loss Control Lowdown...Continued

### Reducing Cyber Exposure: What You Can Do

Now, let's explore what you, as a city employee, can do to mitigate cyber risks and help bolster your city's cybersecurity posture:

1. **Stay Informed:** Keep yourself updated on the latest cybersecurity threats and best practices. Being aware of potential risks is the first step in prevention. [MVRMA's compilation of resources](#)
2. **Strong Passwords:** Use complex, unique passwords for your accounts. Avoid easily guessable passwords like "password123."
3. **Two-Factor Authentication (2FA):** Enable 2FA whenever possible. This adds an extra layer of security by requiring a second verification step, like a text message code or an authentication app.
4. **Phishing Awareness:** Be cautious of suspicious emails or messages. Phishing attempts often trick users into revealing sensitive information. Verify the sender's identity before clicking on any links or providing personal information.
5. **Updates and Patches:** Regularly update your computer's operating system and software. These updates often include security patches that address known vulnerabilities.
6. **Secure Wi-Fi:** When working remotely or on public Wi-Fi, use a secure connection, such as a VPN, to protect your data from prying eyes.
7. **Data Classification:** Handle sensitive information with care. Encrypt or protect sensitive data and only share it with authorized personnel.
8. **Incident Reporting:** If you suspect a security incident, promptly report it to your IT department. Time is crucial in mitigating the impact of a cyberattack.

**Regular Training:** Participate in cybersecurity training programs provided by your organization. These programs equip you with the knowledge to identify and respond to threats effectively.

### Conclusion

Cybersecurity is a collective responsibility, and as a city employee, your actions play a vital role in safeguarding our digital assets and ensuring the privacy of our citizens.

By understanding the basics of cybersecurity and following best practices, you can help reduce our exposure to cyber risks and contribute to the overall security of your city. Remember, a little knowledge goes a long way in protecting our digital world. Stay informed and stay secure!

If you are looking for specific resources or information, please contact MVRMA.





## Broker's Beat

### Q3 STATE OF THE MARKETPLACE

As we begin Q4, the public entity insurance market continues to evolve and face challenges. Hurricane season was relatively calm, but convective storms quickly became an industry loss leader. Cyber liability has softened, as seen by rate relief and premium stabilization. There are still concerns over AI and its' inevitable impact. Nuclear verdicts (settlements exceeding \$10M) are creating stress on insurers and their capacity. In preparation for 2024 and what's to come, we've highlighted a few concerns on the minds of public entities, insurers, and brokers nationwide.

#### Climate Impacts

The annual average disaster/weather-related claims experienced by insurers over the past decade is \$44.1B – an alarming increase from the \$23.8B experienced from 1980-2012. Catastrophic storms are no longer limited to coastal regions. The Midwest is experiencing record-setting convective storms, where hail damage is anywhere from 60-80% of convective storm losses in any given year. It is important for public entities to become, or remain, insured to value. This is accomplished through appraisals and providing clean, accurate data. Information is being collected earlier and more frequently than in years past.

#### ChatGPT

Since going live on November 30, 2023, ChatGPT now has close to 3 Billion users worldwide. The platform, while insightful and convenient, creates a flurry of risks for organizations such as:

- Inaccurate information/responses
- Cyber fraud
- Output bias
- Plagiarism

## Broker's Beat...Continued

Many organizations in both the public and private sectors have banned ChatGPT, which has been viewed as a short-term solution to a long-term challenge. Identifying appropriate uses for ChatGPT/other forms of AI, implementing AI policies, and remaining vigilant against bad actors are some of the practices seen by organizations of all sizes.

### Violent Events

Active assailants continue to threaten businesses, houses of worship, schools, and public events across the United States. Unfortunately, 1/3 of active shooter events occur at school or a government location. Active Shooter and Violent Acts coverage is a growing line of coverage entities use to protect themselves in such unforeseen acts. Political violence is also becoming more common. It is important to consider:

- Plan for the unthinkable
- Conduct threat assessments
- Provide mental health assistance for first responders

## Calendar of Events

### Upcoming Training Events

Forklift Training — November 13th and 15th, Fairfield

Snow and Ice Training — November 13th, December 12th, December 13th, West Carrollton

### Upcoming Board Events

#### **Committee Meetings - Via Zoom:**

Risk Management - November 30th 10:00 AM

Finance - November 30th - 1:30 PM

#### **Board Meeting & Annual Holiday Luncheon**

December 18th, Kohler Catering, Kettering, Ohio

## *From The Board Room* *September 18, 2023*

- Approved Revised Litigation Management Policy
- Approved CyberSure Contract
- Approved Annual Comprehensive Financial Report for Year Ending 12/31/22
- Approved 2024 Preliminary Budget
- Approved Claims Audit Contract with Praxis
- Approved Revisions to Pool Coverage Policy
- Approved Revisions to Limits Policy
- Approved Revisions to ADA Policy