



Risk Management Solutions

A QUARTERLY NEWSLETTER OF THE ALABAMA MUNICIPAL INSURANCE CORPORATION
AND THE MUNICIPAL WORKERS COMPENSATION FUND, INC.

FALL 2007

Developing a Sidewalk Liability Improvement Program

Compiled by Myra Forrest, Safety Consultant, AMIC/MWCF

It is a well known fact that individuals slip, trip, and fall down. When they occur, falls on sidewalks frequently lead to litigation against the communities in which the falls happened. The basis for these suits is failure to inspect and repair a defect. Since program inception in 1989, the Alabama Municipal Insurance Corporation has paid \$2.9 million in incurred claims described as Slip & Falls and Sidewalk Defects.

According to the Alabama League of Municipalities' publication *Selected Readings for the Municipal Official*, Section 73, the term "streets," in a legal sense, not only includes Alabama streets, but also the roadways, the gutters and the sidewalks. Alabama courts have interpreted statutes as imposing an affirmative duty on a municipality to maintain streets in a reasonably safe condition. The decision in the *City of Florence vs. Stack*, 155 So. 2d 324 (1963) concludes:

A municipality's duty with respect to maintenance of its streets for travel is well established in this State. In general terms, the liability of a municipality in a suit of this kind is governed by the duty and the obligation to exercise ordinary and reasonable care to keep its streets and sidewalks in a reasonably safe condition for travel. This imposition does not make the municipality a guarantor of the safe and unharmed travel to the public. The duty is based on the responsibility and accountability of the city to remedy such defects upon receiving actual notice, or after the same has remained for such length of time and under such conditions and circumstances that the law will infer that the defect ought to have been discovered and remedied... It is well settled that persons using a public street have a right to presume, and to act on the presumption, that the way is reasonably safe for ordinary travel, whether by day or night.

Tree roots, improper drainage, ground settlement, weeds and heavy usage causes sidewalk damage. In addition to the aging population who are more likely to fall, trends in sidewalk liability claims include aging infrastructure, an increase in wheelchair curb cuts, an increase in the use of decorative materials and a decrease in personal responsibility. Most *slip, trip, and fall* accidents, like many other accidents, are **preventable**. Therefore, municipalities can reduce the risk of incurring the costs of sidewalk liability claims. To reduce or control the huge financial burden that sidewalk liability claims create, we recommend you develop a **Sidewalk Liability Improvement Program**. To develop an effective program:



Develop and Enforce a Sidewalk Repair Ordinance. The ordinance should give the municipality the legal authorization to require homeowners and companies to comply and indicate who is financially responsible for maintenance and repair. Some communities hold the homeowner responsible for the cost of the repairs and charge an administrative fee.

Establish guidelines or criteria for sidewalk repair or replacement including homeowner repairs. Develop guidelines for your specific municipality. Review them annually.

Develop and follow a long-term replacement plan that identifies the completion cycle for inspection and repairs. Divide the community into yearly regions. Some communities target two years as a completion cycle. When determining your community's cycle:

- Consider your available resources and the number of sidewalks that you are able to inspect. Estimate the number of sidewalks that are likely to need repair.
- Review your past loss history and the condition of your sidewalks.
- Give priority to areas where more frequent claims arise or where the condition of the sidewalk is worse than others.
- Review the plan yearly, adjusting it as needed.

Develop and obtain council approval of an implementation plan early in the year. Your municipality's governing body should approve the funds that will be available, the targeted geographic area, start and completion dates, the bidding process, prioritization of repairs, reporting and follow-up procedures, identification of resources and staff time needed. Developing and getting approval for the implementation plan will help to keep the project on schedule so that you finish before the winter season.

Assign a responsible individual to be in charge of the project. The individual should be able to make decisions, solve day-to-day problems and oversee the inspectors, the contractors and the notification process. This individual should lead the entire project until it is complete.

Make sure the inspectors have the qualifications to perform their job. Inspectors should be responsible and know your sidewalk inspection guidelines. They should be familiar with the implementation plan and have good written and oral communication skills. Some communities use their

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Sidewalk Safety

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meter readers or hire outside contractors to perform this function. If there is a litigated sidewalk claim, inspectors may need to testify.

Bid out the cement replacement estimate. To provide flexibility to the community, the bid document should include: Estimated expenditure based on past years' experience; options for different bids if the quantities change; scheduled start and completion dates; and other contractor responsibilities. The contractor should be responsible for barricading repair areas to prevent injuries and for insurance coverage if such injuries occur.

Inspect sidewalks in the target area as soon as possible in the spring. This provides adequate time for homeowners to make the repairs themselves and for completion of the bidding process on any remaining work. Monitor inspectors to make sure they are consistent in their evaluations. Have inspectors look at and order work on municipal property early in the season.

Inspect sidewalks after the deadline for homeowner replacement passes to determine if the repair is complete and – if it is complete – is satisfactory. If the repair is complete and satisfactory, remove the homeowner's name from the list. If the repair is complete but unsatisfactory, re-mark the sidewalk and give the necessary information to the contractor. If the repair is not complete, re-mark the sidewalk and give the necessary information to the contractor.

Maintain good records of the inspection and replacement process. Inspectors should document inspections daily. Reports should give the

address(es) and condition of any location(s) on which the contractor has worked. The report should indicate if the work meets guidelines. If not, the project leader should become involved immediately. The inspection report is beneficial for billing purposes and can provide documented proof, if litigation should occur, of the community's good faith efforts to reduce hazards. Maintain these records for at least four years. Some communities use computerized meter reading equipment to create their inspection records.

Make sure surrounding areas are in good repair once the contractor completes work in the target area. This is usually the contractor's responsibility, but the community may wish to inspect the work to make sure the contractor completed it properly.

Solve individual problems as they arise. Problems include homeowner disputes, poor quality work from contractors, and any hazards identified that are outside the target area.

Evaluate the successes and failures at the end of the year. Identify changes you need to improve the effectiveness of your program in the upcoming year. ■



A Sidewalk Repair Ordinance should:

- Give the municipality authority to make repairs;
- Assign financial responsibility; and
- Should be reviewed by an attorney.

The repair criteria should:

- Be reviewed annually;
- Be reasonable and not exceed the community's budget;
- Designate which repairs homeowners may make; and
- Result in making only those repairs that can be completed within the same year.

EMPLOYMENT PRACTICES LAW HOTLINE

1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30 minute consultation.

Certified Law Enforcement Executive Program

The Certified Law Enforcement Executive Program (CLEEP) is open to all active full-time police chiefs in Alabama who are members in good standing in the Alabama Association of Chiefs of Police (AACOP). Participants should declare their intent to pursue certification in advance of starting the program. Also, CLEEP is available to all executive level administrators upon approval by the chief of their departments. They will be given a certificate of attendance but will not be certified until they become chiefs of police and members in good standing with AACOP.

The program was developed as a series of one-day or eight-hour modules. To earn the Certificate of Achievement in Police Management requires attendance at 5 modules (seminars, conference events, etc.) approved in advance by AACOP and UPACE for credit toward the Certificate. To become certified requires an individual to be currently serving as a police chief or admitted to the program by the training committee of AACOP as well as successfully completing 80 hours of instruction (10 modules). These hours include the first 40 hours completed when the Certificate of Achievement is earned.

For a 2008 schedule, visit www.aacop.com.

HOT TOPIC!

Fire Safety and Risk Assessment: Who Is Responsible for Fire Safety?

Everyone entering City Hall or a municipal building – employee, customer, contractor or visitor – should feel assured they are in a secure environment, particularly in regard to fire safety. Therefore, your municipality is strongly encouraged to designate a “responsible person” to arrange for a safety and risk assessment and to deal with any identified fire risks. How is the “responsible person” selected? Sometimes it may be more than one person. In shared premises or larger locations, the responsible person(s) should be someone who supervises the premises – or some areas, departments or systems. This person could be: the mayor, the designated safety coordinator, the department head (for each department) and/or the municipal fire chief. **If you need assistance with this task, call Todd McCarley, Fire Safety Consultant at the Alabama League of Municipalities, at 334-262-2566.**

Loss Control Reps Conduct Successful Seminars

The September Loss Control Seminars held in Wetumpka, Orange Beach, Hoover and Oxford were very well attended. Throughout these one-day sessions, participants heard from the League’s four Loss Control Representatives on the following topics:

- Hiring, Firing and Retention
- Slip, Trip & Fall Hazards for Public Entities
- Developing a Safety Culture
- Coping with Paperless Work Comp Reporting

Be sure to read your quarterly issue of *Risk Management Solutions* to find out when the next set of seminars will be held.



Previous issues of this publication can be found by visiting www.amicentral.org or www.alalm.org and clicking on the MWCF link.

2008 Premium Discounts Available from MWCF

As medical care costs continue to rise, the Municipal Workers Comp Fund (MWCF) works to keep your premiums as low as possible. In 2007, 42% of the 621 MWCF members received a full 10% off their premium by appointing a Safety Coordinator, signing a *Statement of Commitment*, *Post Accident Drug Testing Agreement* and having an approved Medical Protocol in place.

2008 Statement of Commitment

The *Statement of Commitment* is a two-page document comprised of safety standards that each member endeavors to follow. It is updated annually and mailed to every member of MWCF in November. If it is signed and returned by **December 1st**, a 3% discount will be reflected on the 2008 – 2009 billing. This two page document must be renewed each year.

Post Accident Drug and Alcohol Testing Program

The Municipal Workers Comp Fund provides an additional 3% discount for those members that commit to a *Post Accident Drug and Alcohol Testing* program. In order to qualify, a member must sign a “Participating Commitment”, which will be enclosed with the above-mentioned document, and have such program certified by their attorney that the member’s drug and alcohol policy is Fourth Amendment compliant. Unlike the *Statement of Commitment*, this document does not have to be renewed each year.

Medical Protocol

Another 3% discount is available to those members who establish and implement a *Medical Protocol*. This program is a great benefit to both the member and the claims management team. A sample protocol is included in the mail out for those members without one on file. For further information regarding this discount, call Tom Roper or Matt Graham at Millennium Risk Managers at **1-888-736-0210**.

MWCF members who participate in all three of these programs will receive a bonus 1% discount giving those members a full 10% discount on their annual premium for 2008! All members are encouraged to watch for the *Statement of Commitment* information packet coming to you in November and return it promptly to take advantage of these benefits. It will also be available for downloading on our website by going to the MWCF page at www.alalm.org.

Defining Moment

Adjuster or Appraiser?

What is the difference between an adjuster and an appraiser? The easiest way to remember is you generally use an appraiser **before** a claim and an adjuster **after** the claim has been made. However, to define the terms accurately, an “appraiser” performs a survey to determine a property’s insurable value, thus allowing underwriters to determine what premium to charge to cover that property. An “adjuster” or “claims adjuster”, on the other hand, is an individual employed by a property/casualty insurer to evaluate and investigate losses and determine the insurance proceeds that might be payable for the claim. It is possible, however, for an adjuster to sometimes consult an appraiser – who would be considered an expert in property valuations – to help determine the monetary value of a piece of property that was damaged as part of the claim. Therefore, you may actually see both when a claim is being processed.

2007 SKIDCAR SCHEDULE

Pelham Oct. 9 – Oct. 19
 Orange Beach/ Nov. 6 – Nov. 16
 Gulf Shores
 Montgomery Dec. 4 – Dec. 14

**For more information, contact
 Donna Wagner at 334-262-2566.**



Dates/locations subject to change.

Popular Safety Videos

Recent Additions to the Safety Video Library:

- 3.009 Electrical Arc Flash Safety
- 3.010 Understanding and Working Safely With Electricity: The Basics
- 4.014 Disaster Safety: Aftermath and Cleanup
- 5.059 The Extreme Driving Quiz
- 5.060 Electrical Safety: Basic Principles
- 5.061 Road Rage: Highway Havoc
- 5.062 A DUI Story...What If?
- 7.090 Overexertion: Injury Prevention
- 7.091 An Extra Effort for Safety Sake
- 7.092 Dealing With Stress
- 7.093 Fire Extinguishers: Ready to Respond
- 7.094 Pro-Active Safety: The Self Inspection
- 7.095 Don't Bet Your Life on Unsafe Acts
- 8.011 Hazard Communications: Elements of Safety

**To check-out a safety VHS cassette or DVD:
 call, FAX or e-mail your request to
 Rachel Wagner at: 334-262-2566;
 rachelw@alalm.org; or FAX at 334-263-0200.**



*For more information, call:
 334-262-2566.*



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