

The Risk Management Review

Federal Swimming Pool and Spa Drain Cover Standard

Contributed by County Technical Services, Inc. (CTSI)

There is an annual average of 283 drowning deaths (2003-2005) and 2,700 emergency room treated submersion injuries (2005-2007) involving children younger than five

in pools and spas. In addition, from 1997-2007, there were 74 reported incidents associated with suction entrapment, including nine (9) deaths and 63 injuries.

On December 19, 2007, the President signed into law the Virginia Graeme Baker Pool and Spa Safety Act, named after the daughter of Nancy Baker and the granddaughter

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Successful 2008 Annual Pool Membership Meeting

With an attendance of 50 Member Representatives and nearly 200 proxies the 2008 Annual Pool Membership Meeting was able to conduct business at its Annual Meeting. This meeting is held each year just prior to the Special District Association of Colorado's (SDA) Annual Conference which was held in Breckenridge. Among the highlights:

▲ Pool Comptroller, Charles Dwyer provided the opening message and introductions of the Board of Directors; staff from County Technical Services; SDA; Light, Harrington and Dawes; Clifton Gunderson; and McGriff who were all in attendance.

▲ Keynote Speaker, Keith L'Esperance discussed issues "From Hire to Fire" which is a tried and true approach gathered from Keith's 20 years as a Human Resource expert.

▲ Auditor's Report declaring the Pool's strong financial performance.

Continued on page 2.

Federal Swimming Pool Standards, continued from page 1.



Remember:

*Additional copies of
the Newsletter are
available by request
or on the Pool
website.*

What This Means for Special Districts

CPSC staff urges all public pool and spa owners/operators, state and local health and safety officials, and those in the pool and spa industry to carefully review the guidance document as they work toward complying with Section 1404 of the Act prior to December 19, 2008.

The guidance document can be viewed at www.cpsc.gov/phth/vgpsa.pdf

For more information, information, contact CTSI Loss Prevention Specialists at 303-861-0507.

of former Secretary of State James Baker. Graeme Baker died in a tragic incident in June 2002 after the suction from a spa drain entrapped her under the water. This Act was first introduced by Representative Debbie Wasserman-Schultz (FL) and was supported by the Baker family and Safe Kids Worldwide.

The new law is aimed at reducing deaths and injuries by making pools safer, securing the environment around them, and educating consumers and industry on pool safety.

The Act specifies that on or after December 19, 2008, swim-

ming pool and spa drain covers available for purchase in the United States must meet specific performance requirements. Additionally, public swimming pools, wading pools, spas and hot tubs must meet requirements for installation of compliant drain covers. New drain covers which meet the current standard are now beginning to make their way into the marketplace. Additionally, in certain instances, public pools and spas must have additional devices or systems designed to prevent suction entrapment.

U.S. Consumer Product Safety

Commission (CPSC) staff has prepared a guidance document that spells out the technical requirements of Section 1404 of the Act, along with CPSC staff's answers to certain enforcement and legal issues. The document takes into account comments provided to CPSC during an open comment period in March 2008. Comments were provided by a member of the U.S. House of Representatives, state government officials, pool industry representatives, safety equipment manufacturers and representatives, consumer safety organizations, and others.

Annual Meeting, continued from page 1.

Pool Administration relaying:

- ▲ Normal to above average performance in operations in 2008
- ▲ Slight decreases in contribution varying by type of district for 2009
- ▲ Coverage enhancements to include Data Compromise, Pollution, and Fiduciary Liability at no extra charge to Members
- ▲ Favorable renewal terms with reinsurers of the Pool thereby reducing fixed costs
- ▲ An overview of the Pool's 24/7 Online University launched September 15, 2008

We truly appreciate those who made the effort to attend the Annual Membership meeting. This is your Pool and we need your input to keep it the best alternative for Colorado Special Districts.

SDA Communication Manager Can Help You!



The Colorado Special Districts Property and Liability Pool understands the importance of public and media relations when dealing with crisis situations your district may encounter. For those of you who haven't had a chance to meet SDA's Communications Manager, Annie Skinner, we want to share some information about her background and the services she provides to SDA and Pool Members.

The SDA Board approved the creation of a fulltime Communications Manager position with the goal of becoming more effective in the areas of media and community relations. The Communications Manager position allows SDA to focus even more energy toward increasing public understanding and appreciation of the important services that special districts provide.

Annie graduated Cum Laude from Syracuse University with a dual major in Communications and Political Science. Most recently Annie was employed by FOX 31 News in Denver where she was an Assignment Editor. Her work experience with news agencies across the country provides the SDA and its Members a unique insider perspective on media relations.

Mrs. Skinner is trained in crisis management and has experience

with brand creation and community relations campaign planning. Annie has enjoyed guest lecturing on media relations at several Universities.

One of Mrs. Skinner's roles is to be available to consult with districts that have questions or needs in the area of communication, particularly crisis communications.

"I have been a member of the news media so I know how overwhelming it can be for districts when the media shows up and starts demanding information during an active crisis situation. I can be a resource for districts in these situations to assist in managing the media, allowing the District Board and staff to deal with the situation at hand," said Skinner.

In addition to working with districts on crisis communications, Skinner coordinates quarterly training meetings for special

district communicators and maintains a weekly blog on issues important to communications and special districts.

"The people who work for special districts or serve on district boards are important members of their community. One of SDA's communications goals is to provide districts with the tools to increase positive public awareness of their district and the important community services they provide," Skinner said. "I hope that I can help districts with whatever they need to help create a successful communications plan."

To reach Annie Skinner you can contact her at the SDA office at 303-863-1733 or by email at annie@sdaco.org

... dealing with crisis situations
managing the media ... **HELP**
... successful communications plans

Automobile Collisions

Statistics show that automobile collisions are one of the leading causes of death for individuals between the ages of 2 to 34. Driving behaviors that most often cause crashes are speeding, drunk driving, running red lights, fatigue, distractions, and the use of cell phones.

Injuries are not limited to professional drivers such as long-haul truckers. Whether driving employer-owned vehicles or personal vehicles, even during short trips, you are at risk when your focus on the road and on your surroundings is lost. Employers and employees alike can take practical measures to prevent work-related accidents. Prevention can save lives.

Cell Phone Use

Colorado does not currently have a law prohibiting cell phone usage while driving. However, House Bill 09-1094 (HB) has been introduced for consideration. As written the HB would require hands-free devices or drivers may be subject to a Class A traffic infraction. It is too soon to tell whether or not this HB will pass. We will keep Members informed as information becomes available.

Please do your part to prevent auto accidents rather than becoming a statistic! The Pool's Loss Prevention Specialists offer Driver Training. For more information or to set up a class for your District, please contact County Technical Services at 303-861-0507.



Employers should:

- 】 Enforce mandatory on-the-job use of seat belts
- 】 Ensure that every employee who drives on the job has a valid license
- 】 Incorporate fatigue management into the district's safety program
- 】 Provide fleet vehicles that offer the highest possible levels of occupant protection in the event of a crash
- 】 Ensure that employees receive necessary training to operate specialized vehicles/equipment
- 】 Offer periodic vision screening and general physicals for employees whose primary job duty is driving
- 】 Avoid requiring workers to drive irregular hours or significantly extended hours
- 】 Establish schedules that allow drivers to obey speed limits
- 】 Implement a cell phone policy requiring drivers to pull over if they must talk on the phone while in their vehicle

Employees should:

- 】 Use safety belts
- 】 Avoid using cell phones while driving
- 】 Avoid other potentially distracting activities such as eating, drinking, or adjusting non-critical controls while driving

What can Districts do to help avoid being responsible for an auto accident?

District policy should require that all drivers:

- 】 Take the time to maintain all of your district vehicles
- 】 Obey the speed limit and traffic laws while in a district vehicle
- 】 Slow down and pay attention to the conditions of the road and drivers around you
- 】 Stay alert by getting enough rest and avoid driving when fatigued
- 】 Always fasten your seat belt
- 】 If you must talk on your cell phone pull over or use a hands-free device
- 】 Any driver with a Learner's Permit, regardless of age, cannot use a cell phone while driving (according to the Colorado Department of Motor Vehicles)

Prevention can save lives.

Is Your Sick Leave Policy Too Intrusive Under The ADA?

Contributed by County Technical Services, Inc. (CTSI)

A federal court recently applied the Americans with Disabilities Act (ADA) to a sick leave policy containing rules common to many workplaces. The court concluded that the policy was too intrusive when it was applied to employees who weren't in safety sensitive positions or suspected of abusing sick leave. Although the courts governing Colorado employers haven't faced this issue yet, the case shows us how our courts may rule.

The employer's sick leave policy required employees to phone in before the start of their shift if they were unable to work because of illness and to describe the nature of their illness. It also required them to complete and sign a sick form upon returning to work attesting that they were too sick



to work during their absence and restating the nature of their illness. A doctor's certificate was required for absences of certain lengths, certifying that the employee was unable to work during the period of absence, explaining the nature of his illness, and verifying that the employee was fit to return to work.

The court found that the parts of the policy requiring either the employee or his doctor to provide

a diagnosis or describe the nature of the illness constituted a "medical inquiry" subject to the ADA because the information could reveal a disability. As a result, those inquiries would be lawful under the ADA only if they were job-related and consistent with business necessity. According to the court, requiring all employees to provide a diagnosis when phoning in an absence was too broad a policy because it isn't reasonable to suspect that all

employees are potential sick leave abusers. The court did approve of requiring diagnoses from employees on the employer's sick leave control list. The sick leave control list consisted of employees who took six absences without a doctor's certification in one year or who had a suspicious pattern of sick leave. The court also approved the employer's requirement that bus drivers who called in sick because of safety concerns provide diagnoses. The danger that may be posed by an unfit bus operator is obvious and undisputed.

The court summarized the inquiries that couldn't be made of employees who aren't in a safety-

sensitive position or on the sick leave control list:

- ▲ The employer may require employees to call in before an absence;
- ▲ The employer may not require employees to describe the nature of their illness;
- ▲ The employer may require employees to submit sick forms upon their return from an absence due to sickness. It may not require employees to state the nature of their illness, however;
- ▲ The employers may require a doctor's certificate for absences of specified lengths stating the employee was incapable of working during his absence and is now fit to resume work. But it may not require the doctor to describe the nature of the illness or treatment.

What This Means For Special Districts

Districts should realize that requiring diagnoses of illness from employees who take sick leave is a medical inquiry under the ADA, and it should only be done when it's consistent with business necessity; when the inquiry serves a legitimate goal and when the requirement is imposed only on classes of employees for whom the inquiry is justified. Any information should be protected on a strict "need to know" basis.

Checking Motor Vehicle Records

It is important for your District to check into an employee's Motor Vehicle Record (MVR). The insurance industry feels that traffic violations are representative of a person's character. When accidents occur Districts can be held responsible for their drivers' actions. Implementation or continuation of a documented "Driver Selection Procedure" may assist in a District's defense against negligent entrustment litigation, when a driver is involved in an accident while on District business.

Protecting your District from unnecessary losses is one of the Pool's top priorities. That is why the Pool conducts random MVR audits.

District Responsibilities:

- ✓ Establish driver guidelines or "Best Practices" outlining specific responsibilities for drivers that may use District vehicles
- ✓ Check MVR's annually; typically performed during an employee's performance review
- ✓ Regularly update your District's Driver list with the Pool
- ✓ It is important that each District have a proactive written procedure in place such as documenting your drivers and reviewing their MVR annually. The Pool will not conduct a MVR Audit on those Districts that are following such procedures.

During the Random MVR Audit the Pool Will:

- 🚗 Notify Districts in advance of an Audit
- 🚗 Have MVR's run on all District drivers
- 🚗 Alert the District Supervisor if an employee's driving record requires attention
- 🚗 Recommend "Best Practices" for use in the hiring process of drivers
- 🚗 Provide annual driver review procedures

The Pool Will Not:

- ✗ Advise your District who can/can not drive District vehicles
- ✗ Share any information on individual drivers due to the Fair Credit Reporting Act, which prohibits an MVR ordered for insurance purposes from also being used for employment purposes

During the annual underwriting process the Pool will evaluate Members commitment to monitoring their employee's MVR's. Where we find a disregard for the above responsibilities or the published Pool MVR monitoring "Best Practices" we have the option to appropriately increase the contribution of the Member along with mandatory deductibles, without the contribution credits otherwise available.



Districts can be held responsible for their drivers' actions.

Protecting your District from unnecessary losses is one of the Pool's top priorities.

If you have a contact, mailing address or email address changes the Pool needs to know. Please remember to notify the Pool so that we can continue to keep you informed of important information.

McGriff Administrator Team Contact Information

Main Address

c/o McGriff, Seibels & Williams, Inc.
P.O. Box 1539
Portland, Oregon 97207-1539
Fax Number: 503-943-6622

Overnight Deliveries

McGriff, Seibels & Williams, Inc.
1800 SW First Avenue, Suite 400
Portland, Oregon 97201

Toll Free Number: 1-888-313-7322 OR Pool Direct Number: 503-943-6650
Both numbers go to the automatic attendant; or to reach a specific Pool Team Member, Press:

- | | | |
|----------------|----------------------|-------------------|
| ❶ Noel Paul | ❷ Jenniffer Alvarado | ❸ Christy Medrano |
| ❹ TBD | ❺ Joe DePaepe | ❻ Ashley Lohmeier |
| ❻ Joyce Howell | ❼ Erich Cranor | ❼ Repeat Message |



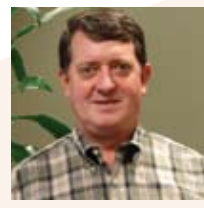
Noel Paul



Joyce Howell



Jenniffer Alvarado



Joe DePaepe



Erich Cranor



Christy Medrano



Ashley Lohmeier

NAME	RESPONSIBILITY	PHONE	EMAIL
Jenniffer Alvarado	Workers' Comp	503-943-6632	jalvarado@mcgriff.com
Ashley Lohmeier	Workers' Comp	503-943-6629	alohmeier@mcgriff.com
Christy Medrano	Property & Liability	503-943-6625	cmedrano@mcgriff.com
Joyce Howell	Property & Liability	503-943-6636	jhowell@mcgriff.com
Noel Paul	P&L/Accounting	503-943-6634	npaul@mcgriff.com
Erich Cranor	Technology	503-943-6643	ecranor@mcgriff.com
Joe DePaepe	Administration	503-943-6628	jdepaepe@mcgriff.com

503.943.6650 888.313.7322

Grant \$\$\$ PLUS
 10
 Great Reasons to Take Advantage of the Pool's Online Training Program

24 Online Training GRANTS are Available !

The Pool still has Training Grants available for Pool Members who would like to test the functionality of the Pool's Online training classes being offered. The Pool rolled out this new program in September and had demonstrations available at the SDA Annual Conference. 60 Districts and 70 employees have already checked out various classes.

Program highlights include:

- 1 Interactive video and voice with written narrative and appropriate testing
- 2 Free Ergonomics course during March and April
- 3 Eight courses approved for Water or Sanitation Operators Certification CE Credits
- 4 270 courses including Safety, Defensive Driving, Human Resources, Leadership, and Office Productivity
- 5 Employee self-enrollment
- 6 Complete control by the designated person at each District for up to 12 departments
- 7 Course monitoring and records by district, department, class, and employee
- 8 Can be used for HR training records to substantiate affirmative defenses on employment and harassment issues where it is being suggested that the district condoned inappropriate behavior
- 9 Can assign training to any or all employees by district designated representative
- 10 Certificates of Completion available after successful completion of the course test

Pricing per training unit, which is the equivalent of a 30-minute session, will be \$8.00. Some multiple hour courses will run up to four training units. Members will receive discounts based on quantity purchases as follows:

<u>Training Units (TU)</u>	<u>Cost per TU</u>
12 - 24	\$8.00
25 - 99	\$7.50
100 - 249	\$7.00
250 - 999	\$6.50
1000 or more	\$6.00

Individual classes can be purchased using the Shopping Cart credit card charge feature for the listed price which is 30 to 50% higher.

Apply for a Training Grant

To apply for a Training Grant simply write a short paragraph on why you feel Online Training could benefit your district; submit it to Joe DePaepe at: jdepaepe@mcgriff.com or fax it to 503-943-6622. We will respond to you within a few days and get you started. You can also visit the Pool website and take our FREE Ergonomic course or try one of our other four Demo Courses to review the quality of the programs offered.



Joe DePaepe assisting with rollout demonstrations of the Pools' Online University during SDA Annual Conference

Annual Membership Meeting Winner's List

The Pool holds its Annual Membership meeting in conjunction with the Special District Association's (SDA) Annual Conference. The 2008 meeting was held in Breckenridge where Pool Members and prospects came together for the SDA's largest turnout thus far.

We are sure Members attend for the presentation of the Pool's financial and insurance highlights, as well as the keynote address. However, another big draw was the prizes awarded to randomly selected Members for various gifts including office products, golf gear, leather portfolios, and the Grand Prize of a mobile GPS unit!

Thank you to all Members who attended and CONGRATULATIONS to the following District representatives who won prizes:

2008 Winner's List

- | | |
|-------------------|--|
| Bev Allen | John C Fremont Library District |
| Chief Dan Qualman | Parker Fire Protection District |
| David Lightheart | Evergreen Metropolitan District |
| Earleen Brown | GVR Metropolitan District |
| Frank Dobbins | Urban Drainage & Flood Control District |
| Jason Nelson | Daniels Sanitation District |
| Jay Conner | Cortez Sanitation District |
| Karen Steggs | Special District Management Services, Inc. |
| Laura Wilson | Thompson Rivers Park & Recreation District |
| Leslie Isom | Eagle River Water and Sanitation District |
| Lori Gordon | Vail Park and Recreation District |
| Matt Mendisco | RS Wells, LLC |
| Patty Clark | Aspen Fire Protection District |
| Paul Wolf | Pleasant View Metropolitan District |
| Sally Blea | Three Lakes Water & Sanitation District |

GRAND PRIZE WINNER

- | | |
|----------------|--|
| Carmen Modgrin | Red, White & Blue Fire Protection District |
|----------------|--|

FREE General Ergonomics Training!

Colorado Special Districts Property and Liability Pool's Online University is committed to training and we want you to join us for FREE! The Online University is pleased to offer General Ergonomics as the Featured Training Course during March and April 2009.

The course will teach risk factors, as well as the signs and symptoms of musculoskeletal disorders (MSD) and how to prevent injury. We encourage you to visit www.csdpool.com, use the link to get to the Online University and try out this FREE Featured Course.

For more information contact Joe DePaepe at jdepaepe@mcgriff.com or 1.888.313.7322.





Mobile Equipment: Automobile or Inland Marine?

Scheduling tractors, trailers, backhoes, and other mobile equipment can be confusing. Mobile equipment is often on the road but not considered an automobile. The question is, “where does it belong?” Consider the following:

- ☞ If the equipment is licensed for road use it should be scheduled on your Automobile coverage.
- ☞ If the equipment is not licensed for the road it should be scheduled on your Inland Marine coverage.

Mobile equipment that is listed on your Inland Marine Schedule is covered on and off the road under your General Liability coverage. Physical Damage coverage, for both Automobile and Inland Marine, is provided under the Property coverage.

When scheduling your mobile equipment, stop and ask yourself, “is it licensed for the road?” If you answer “yes” then schedule it on your Automobile coverage. If you need assistance in clarifying where to list your District’s Mobile Equipment, please contact a Pool Team Representative at 888-313-7322.

Welcome Christy Medrano

Please help us welcome Christy Medrano who joined McGriff on September 15, 2008 to assist with Pool Administration. Christy’s introduction to Special Districts was to travel with the Pool Team to the SDA’s Annual Conference in Breckenridge. Here she met the SDA staff as well as many participating Members of the Pool’s insurance programs and several prospects.

Christy is a well-seasoned veteran of the insurance industry and has an understanding of client service. She is here to enhance your Pool Team resources. Christy will serve as the main contact for the Pool’s Property coverages. She is an energetic and creative person whom we welcome aboard.

Christy’s outside interests include reading, writing children’s books, kayaking and music. You can reach Christy directly at 503-943-6625 or toll free at 888-313-7322 ext. 7.



Pool Adds Two New Coverages and Finalizing a Third

The improved
financial position
of the Pool
allowed us to
think about
expansion
into additional
coverage lines
not considered
in past years.

We are excited to announce that effective January 1, 2009 your District's Coverage is now enhanced to include:

1. **\$25,000 Data Compromise & Data Recovery Expense Coverage.**

This is for the cost of responding to lost or stolen personal information of others in your care, custody or control. This coverage provides for specified expenses incurred as a result of data breach and will reimburse for the following:

- Cost of Notification to all affected individuals
- Forensic Analysis
- Legal Fees - \$5,000 Sub-Limit
- Proactive Monitoring Service
- Public Relations
- Toll Free Help Line
- Fraud Alert
- Identity Restoration Case Management

At this time, Data Compromise Coverage is excluded for Hospital Districts.

2. **Fiduciary Liability Coverage is now incorporated into our Public Entity Liability Coverage Form as follows:**

- \$200,000 Per Member - Per Occurrence and Annual Aggregate
- \$1,000,000 Shared Annual Aggregate for all Members
- \$200,000 Pool Deductible

To some extent all Special District Board of Directors and certain employees have a fiduciary responsibility to their constituents or other district employees. Districts that provide benefits (such as 401K Plans) to their employees have the greatest exposure. Under the Employee Retirement Income Security Act (ERISA) fiduciaries can be held personally liable for losses to a benefit plan incurred as the result of alleged errors, omissions or breach of fiduciary responsibilities.

3. **Pollution Liability Program.**

The Pool is currently working with Zurich Insurance Company to finalize the program structure and design to provide Pollution Liability coverage for our Members as follows:

- \$200,000 Per Member - Per Occurrence and Annual Aggregate
- \$1,000,000 Shared Annual Aggregate for all Members
- \$200,000 Pool Deductible

This would cover the clean-up costs for a new pollution event (on-site or off-site) for first party damages, and third party liability for bodily injury or property damage. Look for additional announcements on expansion into this line of coverage in the very near future.

Workers' Compensation: *Occupational Disease*

By Christopher J. Boggs, Insurance Journal

Occupational diseases cause 860,000 illnesses and 60,300 deaths in the United States annually according to the American Academy of Family Physicians. Illness directly attributable to work conditions and exposures is diagnosed in approximately 10 percent of hospitalized patients.

Judged against the standard that to be compensable an injury or illness must arise out of and in the course and scope of employment, rarely do employers or even employees view an illness as clearly crossing the required threshold. Qualifying an illness as a compensable occupational disease often requires industrial commission or court intervention. Occupational disease claims can be further complicated, in the legal sense, by environmental factors, personal habits, pre-existing conditions and the individual's medical history.

To be considered "occupational" and therefore compensable, the disease must arise out of or be caused by conditions peculiar to the work. Black lung disease (coal workers' pneumoconiosis (CWP) or anthracosis) results from prolonged exposure to coal dust in higher-than-normal concentrations, making the disease peculiar to the coal mining industry. Another example of a compensable occupational disease peculiar to an industry is a healthcare worker contracting an infectious disease such as HIV or hepatitis as a result of exposure to and contact with infected blood.

Sources of Occupational Disease

Conditions attributable to occupational exposure cover the gamut of common and uncommon illnesses, making it all the more difficult to connect the dots between the illness or injury and the course and scope of employment. Injuries commonly connected to work conditions include: carpal tunnel syndrome (and other repetitive-motion type injuries), hearing loss (when around noisy operations), black lung disease, asbestosis, silicosis, contact dermatitis and even Lyme disease contracted by employees working in wooded areas. Some illnesses are less clearly attributable to work-related exposure, including:

- ▶ **Asthma:** Usually affects employees working with animal and plant products, wood dust, metals such as cobalt, cutting oils, and irritants such as sulfur dioxide;
- ▶ **Bronchitis:** Common among employees working around high concentrations of acids, smoke and nitrogen oxides;
- ▶ **Hypersensitivity pneumonitis:** Most often found in workers around moldy hay and cutting oils (common among farming and

agricultural operations, may want to recommend coverage to farms without the requisite number of employees);

▶ **Respiratory irritation and infections:** Affects mainly office workers arising out of indoor air pollution (a.k.a. sick building syndrome);

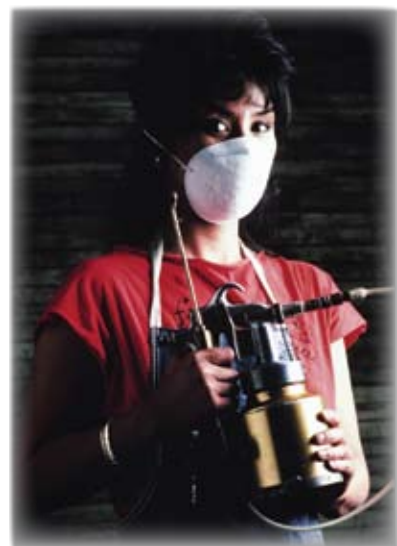
▶ **Liver cancer:** Generally results from exposure to vinyl chloride common in plastics manufacturing;

▶ **Bladder cancer:** Found in employment exposed to benzidine (common in plastics and chemical manufacturing);

▶ **Skin cancer:** Common in workers with long-term exposure to ultraviolet light (i.e. landscapers, construction workers, etc.);

▶ **Brain and other tumors:** May be the result of employee's long-term exposure to radiation;

Continued on page 13.



Occupational Disease, *continued from page 12.*

◆ **Spontaneous abortion:** Often results from exposure to ethylene oxide;

◆ **Sperm abnormalities:** Can result from exposure to dibromochloropropane commonly used in the manufacture of pesticides;

◆ **Birth defects:** Usually the result of exposure to ionizing radiation (may open the employer to an Employers' Liability claim (discussed in a future article));

◆ **Coronary artery disease:** Mostly attributable to employees exposed to carbon monoxide and stressful working conditions;

◆ **Neurologic disorders:** Nervous system disorders are generally the result of employee exposure to toxins, organic solvents, metals and pesticides. Prolonged exposure or exposure to a high concentration of these substances can cause headaches, fatigue, cognitive disorders and even depression;

◆ **Parkinson's disease:** Associated with employment exposed to carbon monoxide poisoning and/or chronic exposure to manganese fumes or dust;

◆ **Stress-related illnesses:** Heart attacks, stroke and other like injuries will be explored below; and

◆ **Eye and sight problems:** Office-bound employees often experience eye and sight problems due to the need to focus on a computer screen for long periods.

Medicine and the Courts

Classifying illness as an occupational disease, making it compensable under workers' compensation requires the combination of medical opinion and testimony and a legal finding of fact. Each case is judged on its own merits and its encompassing circumstances, thus there is no singular test that can be applied to every case to declare the illness as compensable or non-compensable.

Medical opinion leading to the conclusion that an illness is work-related is not necessarily based on the disease but on the facts surrounding the patient's sickness. Physicians will investigate:

◆ The timing of the symptoms relational to work: Do symptoms worsen at work and improve following prolonged absence from work (in the evening and on weekends);

◆ Are coworkers showing similar symptoms: Do coworkers show some of the same symptoms currently or in the past (may not be to the same degree as the patient as each individual has varying tolerances);

◆ If such illness is common to employees in that particular industry;

◆ If the employee has a predisposition that may lend itself to the illness such as an allergy; and

◆ Personal habits and medical history of the patient: Patients in poor medical condition (overweight, smokers, unrelated heart disease, etc.) and poor family med-



The process by the industrial commissions and courts that study the case can sometimes take years.

ical histories may be more likely to contract a disease or illness that others would not in similar circumstances, clouding the relationship between the occupation and the illness. For example, smokers may be ill-equipped to fight off the effects of chemical concentrations to which others may have no problem being exposed.

Industrial commissions and courts 1) compile the opinion of the treating physician and the opinions of other expert medical witnesses; 2) couple the medical evidence with the facts surrounding the case; and 3) compare the subject case with precedent to render a compensability ruling. This process can sometimes take years.

Continued on page 14.

Stress-Related Illness

Establishing an illness as work-related is difficult even with ample evidence to show a causal connection between the exposures applicable to the position and the contracted disease. It is made more difficult when the “cause” of the illness leading to bodily injury is a concept as intangible as “stress.”

Stress is most commonly pulled into occupational injury claims when the employee is seeking compensation for a heart attack, stroke or some other related cardiovascular injury. Case law surrounding the compensability of a “stress-induced” heart attack is less than consistent.

Tennessee’s Supreme Court provided some relevant guidance regarding the compensability of stress-related injury in its March 2007, *Lane v. City of Cookeville* ruling. After considering the disparate medical evidence and the facts surrounding the heart attack Lane suffered allegedly due to the stress related to his police detective role, the Court ruled that Lane’s heart attack was not the result of any extraordinary stress and subsequently denied his petition for permanent total disability benefits.

Tennessee’s Supreme Court declared in this ruling that a heart attack is compensable if caused by the worker’s physical exertion or by mental or emotional stimulation. The stimulation would have to result from a specific acute or sudden stressful event rather than a generalized condition of stress. Presumably, a long build up of stress would not fall into the compensable category.

Other published court findings and general “rules of thumb” require that the stress be of an unusual or abnormal nature, not normal stress as would be common to a certain job.

Which Policy Responds?

Occupational illnesses generally have a long “gestation” period. Employees may be exposed to the harmful condition for many years before the illness manifests. It is also possible that the employee doesn’t contract the disease until years after the exposure ends.

The workers’ compensation policy specifically states that the policy in effect at the employee’s LAST exposure responds to the illness. Even if the employee is working with another employer at the time the disease manifests itself.

Conclusion

Occupational disease resulting in bodily injury tends to lend to litigation. Since there is rarely a definable place or time of the injury, industrial commissions and courts will likely continue to play a large role in these claims.

Employee’s personal habits and medical histories will, likewise,

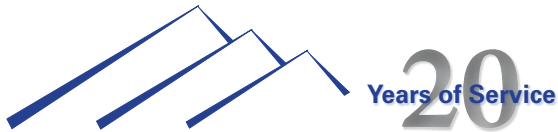
The workers’ compensation policy specifically states that the policy in effect at the employee’s LAST exposure responds to the illness.

continue to find their way into the piles of evidence as workers’ compensation carriers look for legitimate ways to deny coverage. Employees who are overweight (or even obese), with high blood pressure and smoke will likely have to prove that those conditions in no way contributed to the “work-related” heart attack for which they are seeking benefits.

Employees contracting cancer from long-term exposure to radiation may see carriers digging into their medical history to find a family history of cancer.

Not to blame or accuse, but the nature of occupational disease claims will see and has seen both extremes in court.

The preceding excerpt was taken from “The Insurance Professional’s Practical Guide to Workers’ Compensation: From History through Audit” newly introduced by Wells Publishing, the Insurance Journal and MyNewMarkets.com. The book details many aspects of the workers’ compensation policy and contains several charts to aid the reader. It can be purchased at www.insurancejournal.com or www.mynewmarkets.com. Questions about the book should be directed to Chris Boggs at cboggs@mynewmarkets.com or by phone at 800-897-9965 ext. 137.



Colorado Special Districts Property and Liability Pool

*This is your directory of people to contact
and telephone numbers for various services
and questions about your Pool program.*

CONTACT LIST

TO REPORT A CLAIM

County Technical Services, Inc. (CTSI)
To report claims, information & claims status

Phone: 303-861-0507
Toll Free: 888-559-6829
Fax: 303-861-1022

Property & Liability Janet Grossnickle
Workers' Compensation Norma Stimmler

QUESTIONS?

**About coverages, new quotes, loss control,
or about the Pool in general**

Toll Free: 888-313-7322
Fax: 503-943-6622

Property & Liability Joyce Howell
Christy Medrano
Workers' Compensation Jenniffer Alvarado
Ashley Lohmeier
Accounting Noel Paul
Loss Prevention Joyce Howell
Jenniffer Alvarado
Account Service Representatives Noel Paul
Ashley Lohmeier

PRE-LOSS LEGAL SERVICES

County Technical Services, Inc. (CTSI) Janet Grossnickle
*If you are contemplating an action or if an event has occurred that
could result in liability, call immediately for Pre-Loss Legal Advice.
Discuss your plans or your situation with skilled attorneys.*

Phone: 303-861-0507
Toll Free: 888-559-6829
Fax: 303-861-1022

SPECIAL DISTRICT ASSOCIATION ~ Pool Liason

Donna Alengi, Deputy Director

Phone: 303-863-1733
Toll Free: 800-886-1733
Fax: 303-863-1765

Note: If your district has an AGENT you should contact your agent first for assistance.



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