One of the things I like most about working at TOIRMA is the staff on our team. Everyone contributes to our mission, “helping townships solve problems... in the most fiscally efficient way.” Periodically our team gets together to discuss claims. It is always interesting to hear from our adjusters on recent claims impacting the TOIRMA Program and our members. It’s common during our review for our team to offer ideas on how to help prevent a certain type of claim or how to better equip our members in the future. At each meeting there is a claims trend that presents itself. At our most recent round table, injuries from dismounting vehicles and equipment were a prevalent theme.

What’s frustrating about these types of claims is that it’s possible for them to be prevented. Although we understand that accidents are bound to happen, and that we are in business to assist when they do, it’s always better to reduce the risk of this type of injury. Recently I looked back at claim review meetings and losses related to dismounting vehicles and equipment are common. Covered members have torn rotator cuffs, injured their backs, broken ankles, and hit their heads from not taking proper safety precautions. People are getting hurt and increasing the cost of claims.

Through innovative management, leadership, and financial administration, TOIRMA will provide the necessary coverage to help townships solve problems and operate in the most fiscally efficient way.

While mounting or dismounting equipment, it is imperative that individuals maintain three points of contact. Individuals should face the equipment while keeping either both hands and one foot, or two feet and one hand in constant contact with the equipment. Three-point contact will help maintain a center of gravity and the prevention of an injury.

TOIRMA helps make it easy to remember the “Three-Point Rule” by offering a free sticker for our members to place on the steps of equipment. This simple reminder assists in the daily use of the three-point contact. We also have available a “Mounting and Dismounting” Risk Reminder which may be downloaded from the “Loss Control Toolbox” page of our website, toirma.org. This and other Risk Reminders may be printed and provided to township employees at safety meetings and discussions.

To obtain “Three-Point Contact” safety stickers for your trucks and equipment, please contact Danielle Smith at (217) 444-1204 or dsmith@ccmsi.com.

Thank you for your attention to these matters, and have a safe summer.

Jim Donelan
Executive Director

Think Safe...Drive Safe...Work Safe

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TOIRMA PO BOX FOR PAYMENTS

Please note that TOIRMA changed the PO Box for payments:

**CURRENT**
- PO Box 4872
- Springfield, IL 62708-4872

**CLOSED**
- PO Box 357
- Danville, IL 61834-0357

Please make sure your accounting system is updated as we no longer have access to PO Box 357, Danville, IL as of October 31, 2019.
(Almost) Everything You Ever Wanted to Know about Discretionary Immunity (But Were Afraid to Ask)

By: Troy A. Lundquist & Stacy K. Shelly, Langhenry, Gillen, Lundquist & Johnson, LLC

The Illinois Supreme Court has said that discretionary immunity is the most significant protection afforded to public entities for tort claims. However, what kinds of actions or omissions are entitled to discretionary immunity, and how townships can avail themselves of that protection, is not susceptible to an easy explanation.

Q. What is discretionary immunity?
A. Discretionary immunity is based on the idea that public officials should be allowed to exercise their judgment in making decisions without fear that a good-faith mistake might subject them to liability.

Q. How far does discretionary immunity extend?
A. Discretionary immunity provides absolute immunity for both negligence and willful and wanton conduct. However, Section 2-201 of the Tort Immunity Act limits discretionary immunity “except as otherwise provided by Statute.” Practically speaking, this exception means that discretionary immunity can be used as a defense by the township in situations that are not otherwise explicitly provided for in the Tort Immunity Act.

Q. How does a township use discretionary immunity as a defense?
A. Because discretionary immunity is an “affirmative defense” to a tort claim, the burden is on the municipality to prove it. In order for immunity to attach, a township needs to prove: (1) The employee held either a) a position involving the determination of policy; or b) a position involving the exercise of discretion; and (2) The injury resulted from an action or omission by the employee in determining policy and in exercising discretion.

Q. What kind of action determines policy?
A. A “policy decision” requires the municipality to balance competing interests, such as time, budget, and resources, and to make a judgment call as to what solution will best serve each of those interests.

Q. Are all decisions by township officials “policy decisions”?
A. No. In general, there are discretionary acts and ministerial acts. Discretionary acts are those which are unique to a particular public office, and involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed. Ministerial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official’s discretion as to the propriety of the act.

Q. How can the township official know if an action is discretionary or ministerial?
A. Determining whether an act or omission is discretionary is made on a case-by-case basis, depending on the particular facts and circumstances. However, in the last several years, the Illinois Supreme Court has emphasized that a municipal defendant asserting discretionary immunity must present evidence of a “conscious decision” by its employee to the conduct alleged to have caused the plaintiff’s injury. To prove that a conscious decision was made, the township has to present evidence that demonstrates the decision-making process — that the township employee both had the ability to determine policy or exercise discretion, and then used his judgment or skill in making the decision for which immunity is sought.

(article continued on Page 8)
By: Sean Richardson, Loss Control Consultant

The Highway Commissioner’s Diary was unveiled in 1993 to help reduce the likelihood and costs of claims by documenting weather conditions, inspections, road work, etc. There are several inspection sheets in the back of the diary. The Road/Sign Inspection Sheet had some updates this fall. Just like the diary, it has been streamlined. There are columns for:

- Road/Sign
- Location/ID
- Problem
- Action Plan
- Action Completed

There is now a SAMPLE page in the Highway Commissioner’s Diary to assist you in filling out the Road/Sign Inspection Sheet. Maintaining a consistent road/sign inspection program is not only required, but has historically proven to be instrumental in defending townships and road districts.

DOCUMENT!!! DOCUMENT!!! DOCUMENT!!!

Included is a tear out Road/Sign Inspection Sheet for your use. Feel free to make multiple copies. If you have questions, please call Loss Control:

- Matt Knight (217) 444-1387
- Sean Richardson (217) 444-1384
## Road/Sign Inspection Sheet

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<th>Township</th>
<th>Date/Time</th>
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We receive some very good questions from our members! Below are some “frequently asked questions” and answers.

By: Beth Eyrich, Underwriting Supervisor

1. What should you do if you hit an underground line?
First, clear the area from the scene and assess the problem from afar. Keep your distance from any person that disrupted an electrical line and any vehicles or structures he/she may have been in contact with. Don’t assume the power line was de-energized. Be aware of any natural gas smell and call 9-1-1 if you do detect it. No sparks! Contact the utility company that was responsible for the line. Don’t try to be a hero and fix the problem yourself (taken from mclaughlinunderground.com/5-things-need-hit-utility-line).

2. As a township employee, if I use my personal vehicle for township business, am I covered?
As a rule, coverage follows the vehicle. Your personal auto policy would provide the initial liability in the event of a loss. If the vehicle is being used for township business, your TOIRMA auto liability coverage would come into play when your personal liability coverages were exhausted. Physical damage coverage would not be provided.

3. Do I still need to turn in my renewal packet if it is already past the return date?
Please send your completed renewal packet back to TOIRMA even if it is past the due date. We need the information you provide for us in your renewal packets in order to ensure your township is properly covered.

4. Does TOIRMA offer a Death Benefit?
Your TOIRMA package includes Comprehensive Accidental Death and Dismemberment coverage for elected officials of the township. The coverage provides continuous, non-stop protection against covered benefits that occur whether or not you are on township business. Please refer to your TOIRMA Summary of Coverages for more details.

5. What is Builder’s Risk Coverage?
Builder’s Risk Coverage protects buildings during construction. For example, if a tornado destroyed a building in progress, there would be no coverage unless the township had Builder’s Risk Coverage. Sometimes a general contractor will provide Builder’s Risk Coverage. You may also secure Builder’s Risk Coverage through TOIRMA. Please call the TOIRMA office before construction begins so that we can make sure you are properly covered.

TOIRMA Issues Dividend

The TOIRMA Board of Trustees voted to issue a dividend to all eligible members. To be eligible, members must have been in the TOIRMA Program for the previous five consecutive years. The dividend is 15% of the contribution paid by each member in the June 1, 2014-2015 program year. This is the 29th consecutive year the Board of Trustees has declared a dividend to eligible members. To date, over $45,722,671 has been returned to the TOIRMA members. On March 13, 2020, checks were mailed to the contact of each member. A few checks were delivered before the Stay At Home was enacted. Please remember, according to the Public Funds Deposit Act (30 ILCS 225/1), the dividend check should be deposited within two working days.

Jim Donelan, TOIRMA Executive Director delivered check to Sandy Shaw, Assessor of Wood River Township/Madison County
Beth Eyrich, TOIRMA Underwriting Supervisor delivered check to Tom Smith, Supervisor of White Rock Township/Ogle County
TOIRMA MEMBER CALENDAR

Following are highlights of the upcoming TOIRMA Member Calendar:

June
- Renewal contribution due June 1
- Declaration pages and payroll audit mailed

July
- Payroll audits due

SEEN & NOTED:

Coronavirus (COVID-19)

The State of Illinois also has a dedicated website at https://coronavirus.illinois.gov/s/.

OSHA also has information available at https://www.osha.gov/SLTC/covid-19/controlprevention.html.

In Memory...

Richard Allen Heinkel, 71, of Lena, passed away on January 13, 2020. Rich was a TOIRMA Marketing Representative from 1986 until his death. Rich was instrumental in bringing over 90 members to the TOIRMA Program. Rich leaves behind his wife, Kathy, two grown children and their spouses, and three grandsons.

In response to COVID-19, the Illinois Department of Transportation Technology Transfer Program has shared the following links from NLTAPA (National Local Technical Assistance Program Association) that provide FREE web-based training, videos, training calendar, webinars, and tailgate talks. Keep checking the links for new information:

Calendar of upcoming Webinars:
https://nltapa.org/calendar/

Training Resources:
https://nltapa.org/resources/

Tailgate Talks:
https://nltapa.org/information-exchange/nltapa-tailgate-talks/

TOIRMA Cyber Liability Coverage

TOIRMA will be changing Cyber Liability partners effective June 1, 2020. You will receive more information in the near future.

Please keep the points at right in mind:

- Each member should have a weekly (or more frequent) backup to either the cloud or onto portable media or coverage may be excluded.
- If you are using a third party provider for your IT services, this should be something they can easily offer to you within the scope of their work (if they are not already). Please check with your provider.
- If you are not using a third party to provide your IT services and everything is handled and stored in-house, then this is basic data security practice that can drastically reduce the pain of ransomware attack.

TOIRMA TOTAL MEMBERS As of 5/31/2020

Townships ★ 1389 | MTAD’s ★ 309

Welcome New Member: Cincinnati-Kinderhook-Levee-Pleasant Vale MTAD/Pike County
Due to the Stay At Home orders, our staff has found themselves working in different areas and with different co-workers!

Beth Eynich’s Visitor

Danielle Smith’s Home Office

Jessica Stitt’s Home Office & Co-Worker

Bailey Ellison’s Co-Workers

Sean Richardson’s Office View

Erica Sandlin’s Co-Worker

Simphi Lenover’s Home Office

Kim Rosdail’s Home Office

Katie Musgrave’s Wishful Office

Ashley Bell’s Heart Project


The State of Illinois also has a dedicated website at https://coronavirus.illinois.gov/s/.

OSHA also has information available at https://www.osha.gov/SLTC/covid-19/controlprevention.html.
The best way to understand how discretionary immunity works in practice are some real-life recent examples where the courts considered whether discretionary immunity barred the plaintiff’s claim or not.

**Example 1:**
The building-and-grounds manager for a community college had a policy in place regarding sidewalk defects, including marking the defect with yellow paint to repair in the spring, after the “freeze-and-thaw” process finished. Near the end of winter, the plaintiff tripped on an uneven sidewalk marked with yellow paint. The plaintiff argued that because the college knew about the defect, repairing the uneven sidewalk was a ministerial function; the college argued that the decision when to repair the sidewalk was a discretionary act. The court agreed with the college, and found that the building-and-grounds manager had unfettered discretion to determine how best to proceed with each sidewalk defect, and there was no set of rules or regulations that he had to follow, entitling the college to discretionary immunity.

**Example 2:**
A plaintiff tripped in an unimproved alley behind her home. The city was not entitled to discretionary immunity because the city had established an annual program of regrading all the unimproved alleys, which merely involved the execution of a set task — i.e., a ministerial act. Once the plaintiff’s alley was on the priority list for repair, the city supervisor no longer had discretion whether to allocate resources for the alley’s repair. However, if the city had presented evidence at trial that it had repaired the alley, there would be a question whether the supervisor exercised his discretion in choosing which materials to use in the regrading.

**Example 3:**
The city was entitled to discretionary immunity because the manner of repair of potholes (i.e., how much of the sufficient amount of asphalt and moisture removed) was left to the personal judgment and discretion of each worker, and it was a matter of policy to efficiently prepare the potholes for repair in each area.

**Example 4:**
A city was not entitled to discretionary immunity because there was no evidence that any official made a conscious decision not to repair a sidewalk defect, even though that site was included in the city’s overall evaluation of the sidewalks. There was no evidence of the factors taken into account by the city in deciding not to repair that sidewalk, nor whether anyone took note of a sidewalk deviation at that location or it was simply overlooked.

**What townships can do to avail themselves of discretionary immunity:**

1. **DO** allow for the exercise of discretion by township officials and employees about when, how, or what to use to make repairs that are not otherwise regulated by law.
2. **DO** your best to document your decision making process.
3. **DO** report all accidents/injuries/damage as soon as you become aware of them.

TOIRMA can’t investigate what it doesn’t know about.

**Q. Can a township official or employee make a “conscious decision” if they did not know about a claimed dangerous condition before the plaintiff’s injury?**

**A.** No. If the township employee was totally unaware of a condition prior to the plaintiff’s injury, he or she cannot be determined to have exercised discretion with respect to that condition, and will not be able to claim discretionary immunity. However, other defenses may be available, such as lack of notice.
Road Signs

**Stop** signs should meet MUTCD standards. Clear of debris, graffiti, and meet retroreflectivity guidelines. Retroreflectivity should be tested once a year at night.

**Road May Flood** sign is recommended to help as a warning sign until road can be closed.

White 30"x48" **Road Closed** Signs are to be used when closing a road. Orange **Road Closed** Signs are to only be used by a contractor.

**Loose Gravel Signs** should warn of fresh gravel or changes to the surface of a road. **Road Closed Ahead** Signs should be used to give advanced warning of closure.

Correct **Weight Limit** Signs should be posted at all bridge locations. **Type 3 Object Marker** Signs are used to direct traffic away from objects in the right of way.
STOP SIGNS

Keep tree limbs and weeds cut back so that signs are clearly visible

Old faded signs and graffitied signs need to be replaced with new MUTCD compliant retroreflective signs

All signs must meet MUTCD standards for installation and age

Examples of MUTCD retroreflective compliant signs

Any actions to a sign such as replacing, installing, adjusting, clearing or inspecting needs to be documented in your Highway Commissioner’s Diary or Road/Sign Inspection Sheet. Document!! Document!! Document!! Remember, new traffic control devices need written county engineer approval.

For more information, contact your Loss Control Consultant at (800) 252-5059, ext. 1387 or 1384.
CLAIM REPORTING HOTLINE (844) 562-2720 | Available 24/7
JULIE — Frequently Asked Questions

Do I have to call JULIE?
Yes. Illinois state law requires that anyone planning an outdoor project that requires digging, regardless of the depth or the size of the project, must notify JULIE at least two business days before putting a shovel in the ground.

Is JULIE a utility company and/or government agency?
Based in Joliet, JULIE is a non-for-profit corporation dedicated to keeping Illinois safe and connected. JULIE’s mission is to prevent damages to underground utilities, the environment and property, reduce service interruptions and costly repairs, and save lives. As an important reminder, JULIE does not own, locate and mark any underground utility lines.

How much does it cost to use JULIE?
The notification to JULIE and the locating service provided by utility members are free to homeowners and professional excavators.

When is the Call Center open?
Call Center agents and self-service online options are available 24 hours a day, 365 days per year.

Will JULIE tell me the specific location or depth of the public utilities?
No. JULIE does not have information on the specific location or depth of underground lines.

If I am the subcontractor on a job, do I have to get a locate request ticket or will the general contractor’s ticket protect me?
According to state law, the person (company) doing the digging is required to call JULIE with the locate request information at least 48 hours/two working days in advance of the start of the excavation, not the homeowner or company for whom the work is being done. The general contractor’s locate request only applies to its company. The general contractor should only request a locate if the general contractor itself is planning to dig at the site.

Should I pre-mark the work site?
Yes. State law requires excavators to pre-mark the dig site when practical. If the excavation site cannot be clearly and adequately identified through the locate request, JULIE recommends that the excavator designate the route or area to be excavated using white paint, flags, stakes or a combination of these methods prior to contacting JULIE. Black may be used when snow is on the ground.

May I dig after the 48-hour advance notice?
State law requires that the excavator exercise due care at all times to protect underground utility lines. If, after waiting the required 48 hours, the excavator observes clear evidence that there is an unmarked utility line in the area of the proposed excavation, the excavator should not begin excavating until two (2) hours after an additional call is made to the Statewide One-Call Notice System (JULIE) for the area or until all facilities have been marked, whichever is shorter.

What are the excavator’s responsibilities while digging?
The excavator has an obligation to honor all time/marking requirements and then to dig in a reasonable and prudent manner, taking all reasonable and required precautions to avoid damaging underground lines. Always do a visual observation before digging. The Law requires extra precautions, such as hand digging and/or vacuum excavation within 18 inches on either side of a marked underground line.

I have hit an underground line — what do I do now?
First, if you have created a potentially dangerous situation (i.e., damaged gas line, etc.), evacuate the area and immediately call 911 and/or the proper emergency responders. State law also requires the excavator call JULIE and the owner of the damaged utility.

How long do I have to wait after calling in an emergency locate request?
An emergency locate request call is processed immediately by the JULIE system. According to state law, excavators must wait at least two hours (or until the date and time requested on the notice, whichever is longer) before digging. If an earlier start time is needed, the excavator must demonstrate that site conditions warrant the earlier start time. If a member(s) does not respond within the required wait time, call the member company directly and/or JULIE again. JULIE will send another request to the member(s) not responding.

Are all underground line owners members of JULIE?
While all underground line owners and operators (except for the Illinois Department of Transportation, the Illinois Toll Authority and railroads) are required by state law to be members of JULIE, there may be some owners and operators who are not current members. Non-members can be reported to the Illinois Commerce Commission at (217) 558-4010 (see Law & Enforcement).

There is no reason to take a chance when it comes to safety. JULIE’s call center agents are available to receive and process requests 24 hours a day, seven days a week at either 811 or (800) 892-0123. E-Request is a free, online option via illinois1call.com. Readers are encouraged to visit our website and follow us @Julie1Call (Facebook or Twitter) for more information.
Executive Office
3217 Northfield Drive
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(217) 744-8011 Fax
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kmusgrave@ccmsi.com

Human Resources Help Line
Don’t forget to call for help with employee issues. (888) 472-6785

CLAIM REPORTING HOTLINE
(844) 562-2720 | Available 24/7 | toirma.org/claims-management