



# Risk Advisor

July 31, 2013

Issue 3

## Utah Risk Management Mutual Association

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### Five Universal Truths

All people want to be ...

1. Treated with respect and dignity
2. Asked— rather than told— to do something
3. Told why they are being asked
4. Offered options rather than threats
5. Given a second chance



Mark Johnson, Board Chairman

URMMA has great potential to each of its members if we adjust to the ever changing environment we all play in. As I begin this time as the Board Chairman, it would be my hope that we can strengthen URMMA and modernize it to be competitive with any other competing entity.

Please help with suggestions and ideas to better this organization and move it in the direction we can all support. Any suggestions you wish to share with me, please send to [mj@ogdencity.com](mailto:mj@ogdencity.com). I look forward to getting better acquainted with each of you in the future. I appreciate and thank the URMMA staff for significant efforts each make benefiting our cities. Have a great summer!

Mark L. Johnson is Ogden City's Chief Administrative Officer. You'll see him around Ogden at local events. He's a patron of local restaurants and retail shops. He enjoys outdoor recreation along the local hiking trails. Whether he's wearing a suit and white shirt with a tie around his neck or hiking duds with a camera around his neck, you will always find him wearing that signature smile that lets you know he truly is happy to be an Ogdenite and is happy to serve.

Having grown up in the greater Ogden area, Mark chose to raise his family there. In his professional life, he has held various leadership positions in business and finance industries that led to a variety of community leadership roles. His service with Ogden City Corporation has included a seat on the Ogden City Council, a member of the Ogden City Planning Commission, and most recently the Director of Management Services.

URMMA is thrilled to have Mark serve as the new Board Chairman and looks forward to some great things under his leadership!



Dean Steel, CEO

Thanks to all who participated in our Summer Conference in Cedar City last month. It was a great conference and it was especially good to spend the time with each of you. It is one of the delightful privileges of life to associate with so many wonderful people. We are excited to make plans for 2014 in Logan.

Congratulations to Mark Johnson who was elected Chairman of the Board for the next two years. We welcome the new committee members, David Dobbins and Rick Holman, joining Bruce Leonard representing Group II and Cory Branch joining Adam Bowler representing Group I.

Thanks to those who have completed their service on the Executive Committee—John Geilmann, who has served as the Board Chairman for the last two years, Chris Davis and Duane Huffman. They have served well and it has been a pleasure to work with each of them.

As always there are challenges to address with our new Executive Committee. The staff looks forward to exploring options and discovering ways to improve the services and operations of the Association. I am confident that like our initial beginnings, we can bring great minds together and find ways to build upon the sound attributes of the Association and improve the model that will continue to serve the needs of our faithful members for decades to come. I look forward to working with our Executive Committee to do so.

It is important to make clear the invitation from the Executive Committee for all to be fully engaged in the Association. The Executive Committee has an open invitation to any who wish to attend their meetings as all are welcome to do so. I have listed the representatives of Groups I and II so others know who to contact with questions or suggestions. All Group III members serve on the Committee. A special welcome to Jamie Davidson from that group. Staff members are also available to take your comments.

Thanks again for your service and support to URMMA. Let's continue to make this Association the premiere risk management organization in the great State of Utah.

“All choices are fraught with peril, but inaction is the most perilous of all.”

Allan Frewin Jones, *The Lost Queen*

Welcome to James P. Davidson (Jamie) who was unanimously appointed by the Orem City Council as the new Orem City Manager in June, 2013.

Prior to his appointment as City Manager, he served as the Orem's Assistant City Manager. Before coming to Orem in 2011, he served for five years as City Administrator of Lehi City, Utah.

His career has also included time as the Human Resource Director, Management Services Director and Assistant Chief Administrative Officer of Sandy City, Utah.

He is a graduate of Brigham Young University's Romney Institute of Public Management with a Master of Public Administration degree (city management emphasis) and also holds a Bachelor of Arts degree, magna cum laude, in public relations from BYU. A credentialed manager with the International City/County Management Association (ICMA), he has also served as president of the Utah City Management Association (UCMA).

Born and raised in Montreal, Canada, he is an avid hockey fan and also enjoys time on the golf course. He and his wife, Judy, are the proud parents of five children.

URMMA is excited to have Jamie as Orem's representative on the Board of Directors and also as a Group Three Representative on the Executive Committee.



Jamie Davidson  
Orem City Manager

“You can have anything you want, if you want it badly enough. You can be anything you want to be, do anything you set out to accomplish, if you hold to that desire with singleness of purpose.”

Abraham Lincoln



# Summer Conference Recap



Paul Johnson  
Claims & Litigation Manager

## **Police Physical Fitness**

Upon the recommendation of the Executive Committee the URMMA Board voted to delete the bench press requirement from the physical testing battery for police officers. Beginning now, the test will consist of vertical jump (16 inches), followed by pushups (25), followed by sit-ups (35/one minute), followed by the 1 1/2 mile run (15:54). At the request of some URMMA cities, we reviewed the validation study and received an opinion from its original authors that the test is still predictive of an officer's ability to perform the essential functions of the job without the bench press, since in our study there was such a high correlation between the bench press requirement and the pushup requirement.

Now that the Board has taken this action, it is essential that all URMMA cities delete the bench press in order for us to be able to defend the testing in court should the need arise. It is also essential that the test be administered in the order described above. URMMA is engaging Tom Collingwood of Fit Technologies to provide us with a new instruction manual and training for all department training officers. This training will take place on September 25, 2013 in West Valley City (see page 10 for more information).

The alternative job task simulation test is still a viable option for those departments or officers who would rather take that test instead of the fitness battery. URMMA is also looking at ways to make it easier for departments to access the necessary equipment to set up a course for the job task simulation test.

## **Impact Fees**

Doug Ahlstrom, Draper City Attorney, taught a session on Draper's recent experience with a class action lawsuit filed on behalf of homebuilders seeking an accounting for impact fees collected over the past few years. The suit also sought the return of impact fees that were collected but not used for their stated intended purpose within the six years required by State law. There have been several similar lawsuits brought recently against cities and other entities which collect the fees.

Draper went through a rather arduous process to find the documents necessary to account for the fees they collected. We ended up settling the lawsuit and Doug has provided a few suggestions so other cities can avoid some of the brain damage from trying to defend a lawsuit.

**Summer Conference Recap (cont'd)**

(Impact Fees cont'd) The suggestions are:

- ◆ Make sure your capital facilities plan is up to date and your fees are justified by the plan.
- ◆ Create an impact fee management committee with representatives from all departments that use or account for the fees.
- ◆ Keep close track of expenditures and don't commingle the fees collected with the general fund or other enterprise funds. Record appropriations promptly.
- ◆ Keep track of project completion.
- ◆ Account for fees paid (amount, address and date) and exemptions (address, reason, funding).
- ◆ Refund fees if not encumbered within 6 years.
- ◆ Prepare an annual report.
- ◆ Use professional help.

**Employment Law**

The session on employment law underscored the necessity to make detailed findings in written decisions made by your Employee Appeals Boards, and to make sure the decisions describe the evidence to support those findings. Each finding must be supported by substantial evidence. It is also important to include language such as the following:

“Dated, Issued and Certified to the City Recorder on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.” There have been four Utah Appellate Court decisions made in the last eight months regarding appeals from terminations of police officers.

Attendees were also given a list of things to watch for when considering the termination of any employee. The list is adapted from a presentation made by Randolph Freking of Freking & Betz in Cincinnati, Ohio. Mr. Freking is a renowned plaintiff's attorney in the employment law arena and in the presentation he informed employers what they did in terminations that gave him great glee. We should take note of what those mistakes are. Here they are:

**Summer Conference Recap (cont'd)****(Employment Law cont'd)**

1. Failure to document poor performance.
2. Inaccurate/dishonest performance evaluations. Firing an employee with excellent reviews and trying to say he or she was a terrible employee.
3. Close timing between an adverse employment action and a protected activity (FMLA leave, whistleblowing, discrimination complaint, etc.), keeping in mind that sometimes it's inevitable.
4. Not using progressive discipline. Juries want to see fairness.
5. Failure to take into account the length of service. Juries don't appreciate us firing long term employees right before they are eligible for retirement unless they have done something very bad.
6. Not providing for independent review of termination decisions.
7. Using a RIF as an excuse to get rid of a problem employee.
8. Not treating employees with dignity upon separation.
9. Not responding to requests for information. They are going to get it anyway and it makes them mad.
10. Hiring inexperienced defense counsel. We hire either Stan Preston or Camille Johnson to do our employment law work. They are not only knowledgeable, but they are experienced litigators.

**Current URMMA Lawsuits**

URMMA is currently defending 56 lawsuits:

- |   |                              |  |
|---|------------------------------|--|
| * Police, excessive force, wrongful arrest or improper investigation (12) | * Sidewalk trip and fall (4) | * Failure to install improvement (1)                             |
| * Land use and development suits (11)                                     | * Property disputes (4)      | * Covering of canal and alleged obligations to abut property (1) |
| * Wrongful termination (9)  | * Street design (2)          | * Swimming pool injury (1)                                       |
| * Street maintenance (5)  | * Cemetery (2)               | * Conduct of an elected official (1)                             |
|   | * Vehicle accidents (2)      |  |
|   | * Flood control (1)          |  |

# Back to School



Carl R. Parker  
Loss Control Manager

I walked through the store yesterday and noticed all the ‘Back to School’ isles are fully stocked with note pads, pencils and supplies. As we enter this time of year, please take a minute to review your sidewalk maintenance plan.

Your sidewalk program should include a complete inventory of all sidewalks within the city. Details as to condition and type of defect are appropriate. This inventory should be completed no less than every five years.

After the inventory is completed, prioritize the defects so that any budget allowances will be spent to repair or replace the highest priority areas first. Remember, the most serious defects are holes and displacements between 1/2 inch and 1 1/4 inches. Special attention should be given to sidewalks adjacent to schools, churches, senior centers and retail districts. A defect in a high traffic zone is much more likely to be tripped on than one on a seldom used residential sidewalk.

While you are out and about, look at your crosswalk markings and school zone signs. Let’s do our part to help keep our children safe!

Congratulations to Bruce Chesnut on his recent retirement from Orem City. He had been with Orem City since 1981. He served as Water Resources Division Manager, then was appointed as Public Works Director in 2003.

He took over as the City Manager following the death of Jim Reams and in January 2011, the City Council made the job permanent.

“His contribution has been immeasurable,” Councilwoman Margaret Black said.

Mayor Jim Evans stated, “It’s been an honor to work with him. There is no finer person I’ve associated with. I’ve been blessed working with him.”

Bruce has served and contributed as a member of URMMA’s Executive Board.

We wish him every success in his future endeavors!



Bruce Chesnut



Joanne Glantz  
Education Manager

## Pre-Planned, Practiced Responses

Incivility is more and more common in public, and therefore, also in the workplace. How do we provide a decent level of customer service when we are dealing with angry frustrated people?

First, we have to understand that frustrated citizens come to us UNDER THE INFLUENCE. This may not be drugs or alcohol, but rather fear, ignorance of codes and ordinances, embarrassment for not paying bills in a timely manner, etc. Gary Williams, Ogden City Attorney, penned the following:

*“City employees are entrusted with significant power. From the information desk clerk to the billing clerk, to the parks and recreation supervisor, to the highest executive, city employees have tremendous power to mess with people’s lives. Our citizens are often frustrated and upset over an issue that brings them into city offices. They don’t know how to successfully access city services; we do and we can help them be successful or cause them to be unsuccessful by our words and attitude or by sharing or withholding information. With power comes responsibility. We need to take care that our interaction with the public furthers the city’s mission to serve, rather than the employee’s*

So if we understand our power and our citizens perceived lack of it, this is a good place to start. Then we need to understand that if we do not provide DIGNITY and RESPECT to others, even those who have not earned it, then others may want to RETALIATE. We must ACT in a way to prevent others from retaliating and always allow others to SAVE FACE.

So how do we provide dignity and respect to people who are angry, hostile or downright mean? It’s a concept called SHOWTIME. SHOWTIME is ACTING. It’s not taking things personally, but is thinking for other people as they would think 48 to 72 hours later. It is responding as if you were being videotaped. It is you, being the representative for your entity. You, personally, don’t have to like anyone, but as a city employee must treat everyone with dignity and respect and must pretend MMFI (MAKE ME FEEL IMPORTANT) is tattooed on their foreheads. The more difficult people are, the better your acting and SHOWTIME skills need to be. It’s also called always using your PUBLIC FACE and never showing your PERSONAL FACE at work.

Think of actors preparing for a “take.” They have rehearsed the lines (we call them PRE-PLANNED, PRACTICED RESPONSES). Every department should develop PRE-PLANNED, PRACTICED RESPONSES for the most frequent examples of verbal assaults each department deals with. Rehearse these! Share them with coworkers! Teach them to new hires! Always make sure that responses do not illicit revenge or retaliation.

Here are two examples:

## **(Scenario 1) Suspicious Person Deflector Script**

**Employee:** Sir/Ma'am, excuse me. Can I talk to you for a moment?

**Citizen:** Why are you bothering me? Don't you have anything better to do than to mess with someone who pays your salary?

**Employee:** I can see that you are upset. I'm sorry sir/ma'am...but this area is closed. I am just trying to find out who you are and why you are here. Will you help me do my job so I can get you on your way?

## **(Scenario 2) Preplanned Practiced Response**

**Employee:** Can I help you?

**Citizen:** (angry) Help? Are you a moron or what? Do you know how many times I've tried to talk to someone at this freakin city?

**Employee:** Sir/ma'am, I can see you are upset, and I'm sorry you feel that way, but your problem is important and I need to understand it to help you. Let's work together on this...Would you give me a chance to help you with this?

## **(Scenario 3) Peace Phrases + Deflectors**

**Citizen:** You people are idiots! I have no idea what you people really want! Do you even know what you are doing?

**Employee:** Sir/Ma'am...I'm so sorry.. Sometimes I go a little too fast and I might have confused you. Do you have a moment for me to go over this with you again?

## **Summary:**

- Our gift to others is DIGNITY and RESPECT, even if they have not earned it.
- Upset individuals are UNDER THE INFLUENCE of rage, fear, ignorance or embarrassment.
- Think of others as they may think for themselves 48 to 72 hours later.
- Use PUBLIC FACE, never PERSONAL FACE.
- Don't ever say anything that will cause someone to want to retaliate.
- Let others SAVE FACE.



Kathy Kenison

Support Services Manager

## Auto Physical Damage Coverage Now In-House

At the annual URMMA Board meeting, our Board of Directors voted unanimously to bring the auto physical damage coverage for city vehicles in-house. Cities have the option of purchasing this coverage for vehicles with an initial value of less than \$50,000.00. The program became effective July 1, 2013.

What does this mean for our Members? The insurance coverage that they have purchased in the commercial market for many years will now be handled by the URMMA staff.

Our goal is to provide the same personalized service that our cities receive for liability coverage to the auto physical damage program. Fast, friendly service by people who know and trust.



If you would like more information on the auto physical damage coverage, please contact a member of the URMMA staff at (801)225-6692.



## Police Physical Fitness Coordinator Training

Date: Wednesday, September 25, 2013

Time: 8:00 a.m. to 4:00 p.m.

Location: West Valley City Fitness Center

5415 West 3100 South, West Valley City, Utah

Presenter: Robert J. Hoffman

Who should attend: All officers desiring certification or re-certification (every 3 years) as a Training Coordinator for URMMA Police Physical Fitness Programs

See the URMMA Website ([URMMA.org](http://URMMA.org)) for additional information and registration

