



THE MUTUAL EFFORT

Wisconsin County Mutual Insurance Corporation

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2010 County Mutual Highway Safety ROADeo Brings Together Employees for Day of Safety Training

By Michelle Gormican Thompson, Thompson Communications

With nearly 90 percent of roads in Wisconsin maintained by local governments, the role of county and municipal employees around the state in keeping this infrastructure healthy is critical.

Working in less-than-ideal conditions, from clearing snow in blizzards to filling potholes mere feet from speeding traffic, it is an extremely dangerous and important job that impacts nearly every Wisconsin citizen. Without them, our state would literally come to a grinding halt.

To provide ongoing enrichment and safety training for county and municipal highway employees, the Wisconsin County Mutual Insurance Corporation (County Mutual), the insurance carrier for counties in the state, on June 8 sponsored the 2010 Highway Safety ROADeo in Wisconsin Dells.

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[www.wisconsincountymutual.org!](http://www.wisconsincountymutual.org)



“The County Mutual’s Highway Safety ROADeo is an important annual event that allows us to bring together county and municipal employees from around the state for a focused day of safety training,” said Wisconsin Counties Association (WCA) Executive Director Mark D. O’Connell. “The job of these important employees is a dangerous one that is imperative in keeping Wisconsin moving on a daily basis. The County Mutual’s ROADeo gives us an opportunity to work with them to ensure they are safer when they are out on our roads.”

The event was held at the Kalahari Resort and although conditions were less than ideal with rainy weather and cool temperatures, the day was a successful opportunity for highway employees to have a full day of enrichment and safety training.

Attendees of the County Mutual’s 2010 Highway Safety ROADeo



From left: Nicholas Gnas - Milwaukee County, Tyson Barnes - Jefferson County, Clyde Taylor - Milwaukee County, and John Roche - Columbia County.

took part in the following events: redesigned driver skills course, vehicle inspection, written exam, tire care, maintenance and safety, and other educational sessions and speakers.

In addition to county and municipal highway employees, county board supervisors, county and municipal representatives, and highway committee members attended the event.



From left: Francis Bollig, Jr. - Juneau County, and Ken Veitch - Waukesha County

“The 2010 Highway ROADeo is a perfect example of how the County Mutual is unique and goes above and beyond in our training and risk management efforts,” said John A. Dirkse, Aegis Corporation Executive Vice President. “While there is an element of competition between counties and municipalities, I believe all attendees walked away winners because of a full agenda that focused on safety in their day-to-day tasks.”

THE 2010 WINNERS

FIRST PLACE:

Nicholas Gnas, Milwaukee County

SECOND PLACE:

Tyson Barnes, Jefferson County

THIRD PLACE TIE:

Clyde Taylor, Milwaukee County
John Roche, Columbia County.

NON-FINALIST TOP SKILLS COURSE AWARD:

Francis Bollig, Jr., Juneau County

NON-FINALIST TOP WRITTEN TEST AWARD:

Ken Veitch, Waukesha County



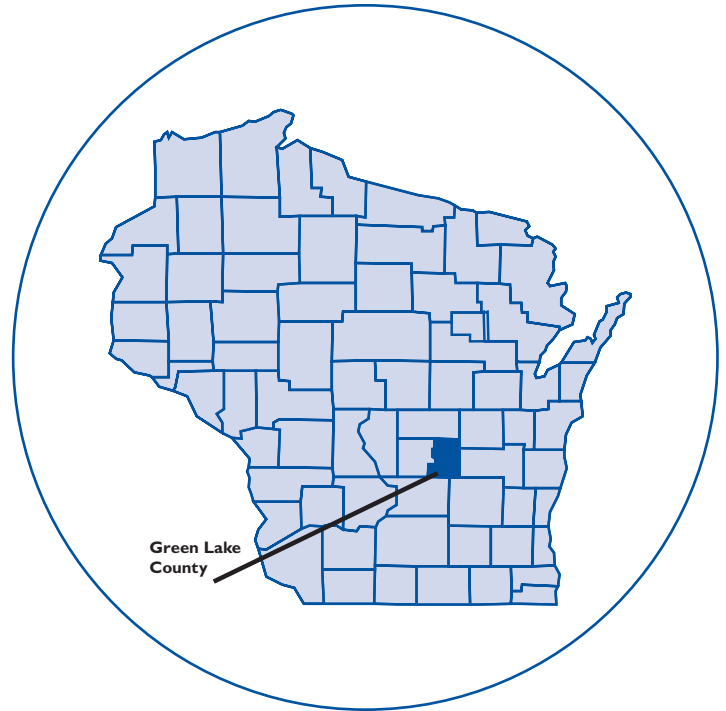
Green Lake ODIP Project: “Safety—The Way it Should Be”

By Debra Ann DeWitt, Senior Risk Manager

Making safety a priority and implementing an effective program can be particularly challenging on a construction project. Ever-changing work activities and conditions pose unique hazards where every employee is required to be alert and aware.

On May 20, the Green Lake Law Enforcement Project celebrated 350 days without a lost time accident. Awards were presented to The Samuels Group and Wisconsin County Mutual Insurance Corporation for, “Outstanding achievement in having 359 days without a Lost Time Injury.” Warren Brockmeyer, Wisconsin Department of Workforce Development, indicated, “Your efforts are greatly appreciated in providing a safe workplace for all those who contributed to the work activities at this site.”

The alliance with DWD, Wisconsin County Mutual and The Samuels Group has shown that safety excellence can be achieved when it is a priority. On this project, safety and occupational health has been pre-planned in all phases of construction and is placed ahead of all project activities including schedule. Debra DeWitt credits Sid Samuels as key to the success of the onsite safety program, “Sid is a true example of an owner who puts safety first and leads by example.” Admittedly, Sid has high expectations of himself, his employees and the subcontractors. The depth of his commitment is shown by key employees assigned to this project. Tim Harmann and Dave Barrows, Project Superintendents, and Ray Dundore, Foreman, have been instrumental in making every worker at this project a believer in the safety process. All are believers that when work is a way of life you make safety a way of work.



From left: Joe Moreth and Warren Brockmeyer, WI DWD, present Tim Harmann, Project Superintendent, The Samuels Group, a “Certificate of Recognition.”

The Green Lake Law Enforcement Project has achieved 480 days without a loss time accident as of November 5, 2010! Great Job!



Is Governmental Immunity the Exception or the Rule?

By Patrick C. Henneger, Phillips Borowski, S.C.



In the landmark decision of *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d 618 (1962), the Wisconsin Supreme Court unanimously abrogated the general rule of governmental immunity for municipalities stating: “henceforward, so far as governmental responsibility for torts is concerned, the rule is liability—the exception is immunity.” *Id.* at 39. The court went on to explain: “this decision is not to be interpreted as imposing liability on a governmental body in the exercise of its legislative or judicial or quasi-legislative or quasi-judicial functions.” *Id.* at 40. Finally, the court noted: “[I]f the legislature deems it better public policy, it is, of course, free to reinstate immunity.” *Id.*

In the year following the *Holytz* decision, the Wisconsin Legislature chose not to reinstate immunity but instead enacted Wis. Stat. § 331.43 (1963-64), what is now Wis. Stat. § 893.80. Section 893.80(4) states:

No suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employees nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

Wis. Stat. § 893.80(4)(emphasis added). Despite the court’s holding in *Holytz*, subsequent court decisions have interpreted the “exception” to immunity—acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions—quite broadly and, in fact, some commentators have suggested that the exception has swallowed the rule.


The erosion of the general rule of governmental liability resulted from the blending of the common law doctrine of

public officer immunity with the exception for legislative, quasi-legislative, judicial or quasi-judicial acts found in § 893.80(4). See *Lister v. Board of Regents*, 72 Wis. 2d 282, 299, 240 N.W.2d 610 (1976); *Lifer v. Raymond*, 80 Wis. 2d 503, 511-512, 529 N.W.2d 537 (1977). The doctrine of public officer immunity is aimed at protecting public officials from private liability for the decisions they make in the performance of their official duties. *Lister*, 72 Wis. 2d at 299. The public policy considerations behind the doctrine are:

- the danger of influencing public officers in the performance of their functions by the threat of a lawsuit;
- the deterrent effect which the threat of personal liability might have on those who are considering entering public service;
- the drain on valuable time caused by such actions;
- the unfairness of subjecting officials to personal liability for the acts of their subordinates; and
- the feeling that the ballot and removal procedures are more appropriate methods of dealing with misconduct in public office. *Id.*

The most common exception to public official immunity is that an officer is liable for damages resulting from his negligent performance of a purely ministerial duty. *Id.* at 300-301. A public officer’s duty is ministerial when it is “absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.” *Id.* at 301.

Ever since the Wisconsin Supreme Court decided *Lister v. Board of Regents*, 72 Wis. 2d 282, 240 N.W.2d 610 (1976), the court has analyzed governmental immunity for legislative, quasi-legislative, judicial or quasi-judicial actions of municipal officers through the lens of the public official immunity doctrine.¹ See *Lifer v. Raymond*, 80 Wis.

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2d 503, 511-512, 529 N.W.2d 537 (1977); *Lodl v. Progressive Northern Insurance Co.*, 2002 WI 71, ¶¶ 20-25, 253 Wis. 2d 323, 646 N.W.2d 314. The impact has been significant. Rather than applying the general rule in *Holytz* that governmental liability is the rule and immunity is the exception, the general rule under the public official immunity doctrine is that public officers are immune from liability for damages resulting from their negligence in the performance of discretionary functions. See *Lister*, 72 Wis. 2d at 300. Immunity for “legislative, quasi-legislative, judicial or quasi-judicial actions” under Wis. Stat. § 893.80 became synonymous with immunity for “discretionary actions.” See *Lifer*, 80 Wis. 2d at 512.

As the analysis shifted to favor immunity for discretionary acts, there was little room for courts to apply the ministerial duty exception to immunity. As noted by the Supreme Court in *Scott v. Savers Property and Casualty Insurance Company*, 2003 WI 60, ¶ 28, 262 Wis. 2d 127, 663 N.W.2d 715, there are few instances where public officials do not exercise some level of discretion. This has prompted several Supreme Court justices to express their desire to revisit Supreme Court precedent regarding immunity for legislative, quasi-legislative, judicial or quasi-judicial actions under Wis. Stat. § 893.80(4). See *Scott* at ¶ 62 (Justice Bablitch, concurring) and ¶ 79-80 (Justice Prosser, dissenting).



The Supreme Court’s dissatisfaction with its governmental immunity precedent may be responsible for a recent trend in decisions where immunity was found not to apply. See *Baumgardt v. Wausau School District Board of Education*, 475 F.Supp.2d 800 (W.D. Wis. 2007); *Heuser v. Community Insurance Corp.*, 2009 WI App 151, 774 N.W.2d 653; *Umansky v. ABC Insurance Co.*, 2009 WI 82, 319 Wis. 2d 622, 769 N.W.2d 1. Most recently in *Umansky v. ABC Insurance Co.*, the Supreme Court ruled that a state official had a duty to install a railing on a platform from which the plaintiff fell because the regulation was highly specific, leaving no room for discretion. *Id.* at ¶ 18. In his concurrence in *Umansky*, Justice Prosser welcomed the correction in the court’s course and stated that he believed more change was necessary. *Id.* at ¶¶ 38-39. The

Umansky decision may signal a shift away from what Justice Prosser described as the “militantly unprogressive state of Wisconsin [governmental immunity] law.” *Id.* at ¶ 78. Nonetheless, until the Supreme Court revisits its decisions since *Lister* interpreting the limits of governmental immunity under Wis. Stat. § 893.80(4), the general rule is immunity for municipal officers and liability is the exception.

¹ Interestingly, the court in *Lister* applies the public official immunity doctrine without ever mentioning that it abrogated governmental immunity in *Holytz*. To add to the confusion, the court has recognized that public official immunity and governmental immunity are synonymous. See *Kierstyn v. Racine Unified School District*, 228 Wis.2d 81, 89, 596 N.W.2d 417 (1999).

We Want to Hear from You

This newsletter is provided as a service to you. Our goal is to provide informative and interesting articles. Your input and suggestions will assist our publication of this newsletter.

For suggestions, please write or call:

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Wisconsin County Mutual Insurance Corporation Announces 2009 Performance Awards

The Wisconsin County Mutual Insurance Corporation (County Mutual) has highlighted the close relationship between member counties and the company with its “2009 County Mutual Performance Awards.”

“The County Mutual works in unison with our member counties and these awards recognize the importance of our risk management efforts together,” said County Mutual President and Oconto County Board Chair Lee Rymer. “This year’s award winners have demonstrated their commitment to safety and risk prevention and we congratulate them for their dedication to making safety a top priority.”

The County Mutual is the insurance carrier for over 75 percent of counties in the state, with the awards going to those member counties that have proven their commitment to safety and risk prevention efforts.

The 2009 Performance Award winners, which were announced and presented by President Lee Rymer at the County Mutual’s 2010 Annual Representative Assembly at the Wisconsin Counties Association (WCA) Annual Conference on September 27, 2010, include:

- Overall Best Loss Ratio: *Kewaunee and Menominee Counties*
- Overall Best Loss Control Program: *Calumet County*
- County Sheriff’s Department Best Loss Ratios: *Ashland, Calumet, Green, Green Lake, Iron, Kewaunee, Langlade, Marquette, Menominee, Oconto, Trempealeau, Pepin, Waushara and Waupaca Counties*
- County Sheriff’s Department Best Loss Ratio Honorable Mentions: *Buffalo and Door Counties*
- County Highway Department Best Loss Ratios: *Buffalo, Burnett, Kewaunee, Menominee and Washburn Counties*
- County Highway Department Honorable Mentions: *Oconto and Vilas Counties*



Leland Rymer, Wisconsin County Mutual Insurance Corporation President (left), presents the Overall Best Loss Ratio Award to James Barlow, Kewaunee County Board Supervisor (right).



Leland Rymer, Wisconsin County Mutual Insurance Corporation President (left), presents the Overall Best Loss Control Program Award to Bill Barribeau, Calumet County Board Chair (right).

“This year’s winners prove the collaboration between member counties and the County Mutual is highly effective and is what continues to make us unique in the industry,” said Jon H. Hochkammer, Director of Insurance Operations for the Wisconsin Counties Association. “We work closely to partner with our members to focus on a safe workplace and the 2009 winners exemplify what makes our partnership successful.”

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The County Mutual offers a wide array of services to member counties. Some of these services include free on-site safety visits from loss control staff, loss control incentive programs, safety newsletters and educational seminars on a wide variety of topics, online safety training with extensive training modules and highway safety rodeos.

“This year’s winners have proven their dedication to risk prevention and safety,” said John Dirkse, Executive Vice President of Aegis Corporation, which administers the County Mutual. “Because the County Mutual is in the insurance marketplace, we have been able to keep our

communities safer and save taxpayer dollars. We are proud of this strong partnership and commend all of the 2009 recipients.”

The Wisconsin Counties Association, along with county officials from around the state, created the Wisconsin County Mutual Insurance Corporation in 1987 to provide quality liability insurance to its members. Fifty-four of the 72 counties in the state are covered by the County Mutual. For more information, visit www.wisconsincountymutual.org.



Wisconsin County Mutual Insurance Corporation

Scholarship Winners 2010

The winners of the 2010 Wisconsin County Mutual Insurance Corporation (County Mutual) scholarship program were announced at WCA’s Annual Conference on September 27, 2010, in Milwaukee. Scholarship recipients were selected by an independent panel of current and former educators based on scores received in the following categories: future goals and career plans, grade point average, community involvement, the quality of their writing and a letter of recommendation.

To qualify for the County Mutual scholarship, applicants must have enrolled in a full-time undergraduate course of study at an accredited two- or four-year Wisconsin college or university no later than the fall of this year and the applicant or the applicant’s parent, grandparent or guardian must be a county supervisor or employee

of a County Mutual member county. The program sought to award up to five scholarships of \$2,000 each. The County Mutual Scholarship Program was created in 2007 in honor of the company’s 20-year anniversary.

Jacob Behringer

A freshman at UW-Madison, Jacob is majoring in Linguistics. He is the son of Deb Behringer, the Waushara County Administrative Coordinator.

Cayle Damrow

A junior at UW-Stout, Cayle is majoring in Industrial Design. He is the grandson of Frank Kempf, an Ashland County Board Supervisor.

Paul Fredrick

A freshman at UW-Fox Valley/ UW-Platteville, majoring in Mechanical Engineering. He is the son of Jim Fredrick, a Waushara County Highway Worker.

Lucas Rank

A senior at UW-La Crosse, Lucas is majoring in Physical Education/School Health Education. He is the son of Judy Rank, the Shawano County Human Resource Coordinator.

Kevin Yeska

A sophomore at UW-Madison, Kevin is majoring in Landscape Architecture. He is the son of Carolann Yeska, a Waushara County Social Worker.



De-Escalation and Defense Training

An educational seminar on recognizing and dealing with conflicts, threats and violence in the workplace.

**Register today: Call 1-800-236-6885 or
Fax 1-262-783-6091**

Four sessions to choose from—select either the morning
OR afternoon session that works best for your schedule.

December 15, 2010 - Adams County

February 9, 2011 - Langlade County

De-Escalation and Defense

For those working in the field of public service, the likelihood of encountering aggressive individuals is quite high. The purpose of De-Escalation and Defense Training is to provide instruction in dealing with conflict, threats and violence in the workplace. Key elements of the program include intelligent pre-planning, attentive behavioral observations, de-escalation techniques and physical escape responses.

Who Should Attend?

This educational seminar is created specifically for risk managers, administrators, insurance contacts, counselors, principals, business managers, superintendents, social services, child support and officials for counties, municipalities and school districts. Employees who have direct service with the public and employees who work late or off-shift hours are encouraged to attend.

What is the Cost?

This educational seminar is offered to Wisconsin County Mutual Insurance Corporation and Community Insurance Corporation members at *no charge*. The cost is \$25 per person for non-members and includes all course materials. Please remit payment with registration, with checks payable to WCMIC.

Instructor

“De-Escalation and Defense Training” is taught by Don Everhard, founder of Elite Management Services. Mr. Everhard’s vast experience includes 19 years as a social worker and eight years as a police officer. In addition, he has an advanced degree in counseling and is a martial arts expert and has been an instructor for over 20 years. He brings a unique level of expertise in the area of conflict resolution and protective behaviors.

De-Escalation and Defense Training

Intelligent Risk Preparation

- Research
- Sign-out
- Teamwork
- Prediction

A.D.A.P.T.

- Successful practices

Message Delivery

- Dialogue, volume, rate and content
- Sending positive relationship messages with a negative context message
- Space and cultural issues

Expanding Your Tool Box

- Identify increased tension and improving de-escalation skills through the use of improved interpersonal skills

Report Writing

- Elements of a good report

Physical Self-Defense

- Protective stance; escape techniques
- Distance; cover vs. concealment; street survival

Note: Each date has a morning session from 8:30 a.m.–12:00 p.m.
OR an afternoon session from 1:00–4:30 p.m. Please arrive a half-hour early to register. Refreshments and snacks will be provided.