



InTrust

The Newsletter for Risk Management Trust Members

January 2009

RISK MANAGEMENT TRUSTEES

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HOW TO ELIMINATE LAWSUITS

The headline above would imply that there is a way to eliminate lawsuits. Unfortunately, there is no way to avoid lawsuits but there are several proactive steps managers, officials and administrators can take to reduce judgments and damage awards when lawsuits occur.

Unquestionably, there is an ever increasing amount of litigation directed at all segments of government operations these days. Years ago the idea that someone would bring a lawsuit against a school or local government was a rare thought indeed. Today, local governments, schools and their employees are on the receiving end of claims that range from personal injuries to discrimination. Some of these claims are federal in nature and seek damages well beyond the boundaries of the Tennessee statutory tort caps set forth in the Governmental Tort Liability Act. There are even claims directed against individual employees, some of which are unfortunately directed against Directors of Schools, County or City Mayors and managers. Is it any wonder that today's local government or school CEO feels pressured to serve as part-time administrator and full-time attorney?

While no one expects managers and administrators to serve as full-time attorney, here are some basic reminders to assist you. The basics are awareness, documentation, and reporting.

1. Challenge employees to be aware of that which does not look right. It is a basic approach but one that is practically useful. If a fellow-employee or staff member is engaging in some activity that seems in-

appropriate, your employees need to see it and take notice of it;

2. Once your employees take notice of the activity, challenge them to document it. An employee who is seemingly engaged in inappropriate conduct, whether the conduct is directed toward a student, fellow employee, subordinate, or any other person, must have his or her actions documented; and,

3. Once documented, challenge your employees to report the activity to the appropriate administrator. Then, the administrator is enabled to make the appropriate response. The meaning of "appropriate response" varies widely. In some instances an investigation will be necessary, and in other instances corrective measures must be implemented. That is when a competent administrator takes over and makes an immediate and appropriate decision to mitigate any potential fallout from action or inaction of fellow-administrators or employees.

Following these three simple steps will drastically reduce the implications and cost of any potential lawsuit, saving trouble and money for both your entity and your Risk Management Trust. Again, you do not have to serve as full-time lawyers; just teach your employees to be aware, to document, and report to the appropriate administrator, who will in turn provide a prompt and effective response. Following these basic steps will not end the litigation, but your implementation of them will greatly assist you and your local government or schools in defending any lawsuit.

99% RENEW TRUST MEMBERSHIP

The Tennessee Risk Management Trust is pleased to report that 99 percent of its members renewed July 1, 2008. Although the 2008 renewal was offered with no increase in premium rates, Mark Farley, chairman of the board of the TNMRT, feels that the outstanding result is a testament to the loyalty of the Trust members as well as the excellent service rendered by the claims and underwriting staff. Our members realize they have a stake in the Trust, continue to appreciate the current benefits of low price and excellent service, and no doubt also realize the long term rewards of staying with the Trust. The Trust was formed by and for its members, and with their continued commitment; they can rest assured that the Trust will always be there for them.

COULD THIS HAPPEN TO YOU?

XYZ School District owns an old school building that has been turned over to a community organization for use as a community center. A neighborhood mother who was accompanying her children to the old school turned recreational facility had attempted to find the restroom in the old building. As she opened the door to what appeared to be the restroom in the dim lighting, she fell down a flight of stairs just beyond the door. Her neck was broken and she is now a paraplegic.

The premises liability claim was submitted to TNRMT for resolution. After investigation, it was determined that negligent maintenance of electrical wiring and lights were the proximate cause of the accident. The claim will cost well over \$1 million for lifetime care of the injured woman.

Did this claim really happen? No, not yet. But many similar claims have occurred because of burned out light bulbs, wet floors and many other hazards that we are all too familiar with. These claims can be reduced or eliminated with proper attention to maintenance and meticulous daily scrutiny of your facilities.

The subject of the hypothetical claim above was an old school building that was no longer operated, maintained or supervised by the school board. It was simply loaned to a community for their use. While this may appear to be one of the few uses for a worn out school building, the gracious act of a school board in allowing its unsupervised use for unrelated purposes opens the school board to a broad range of liability and expense.

What to do with old school buildings is a frequent issue in many school districts. Some are fortunately located on otherwise choice commercial property and can be sold for a good price. Others unfortunately, are located in rural communities where an old school

building or the land on which it is located has little value.

If your school board, city, or county ponders what to do with this surplus property, please consider that the liability of continuing to own these buildings means that your school system, city, or county continues to be liable for anything that happens on the land or in the building, regardless of whether it is supervised by you. If you do not supervise the activities taking place in these old buildings, you have no way of knowing the state of maintenance of the buildings nor do you know if the current occupants may be playing lawn darts on the gym floor. One thing is certain and that is any event or accident on these premises will be found to be the responsibility of the building's owner, absent any legal agreements to the contrary.

The best risk management practice regarding these old buildings is *GET RID OF THEM*. You can sell what is left of the buildings to pay for other needs or give them away to a community organization if they have little value otherwise. The point is that the school, city or county's name must come off the deed. If it is not possible to convey the deed to the property, you may choose to lease the building and grounds to others with a "hold harmless" agreement whereby the lessee assumes responsibility for insuring the building and its associated operational liability while protecting your interests as the building's owner. Conversely, if you acquire or annex property, secure documentation of same as it will greatly assist the Risk Management representative in clarifying pertinent coverage issues.

Don't allow yourself or the Trust to be burdened with liability for a serious claim that could have been prevented. TNRMT is always available to help you work through a process to manage your liability and control your losses. Please contact us at 615-532-5173 if we can help in any way.

TRUST WELCOMES NEW TRUSTEES

The Trust says goodbye, and thank you to longtime Trustees, Tony Tucker and Robert Stidham. Each had contributed immensely to the success of the Risk Management Trust. Their insight and dedication will certainly be missed by all.

The Trust would also like to welcome new Trustees, Denise Brown of Unicoi County and Paul Ward of Carroll County.

Denise has served as Director of Schools of Unicoi County since July of 2003, and has been dedicated to the students of Unicoi

County for the past 22 years. Additionally, Denise serves on the Chamber of Commerce for Unicoi County, the Library Board of Directors, YMCA Board, Executive Committee of the Superintendent's Study Council, and is Chairperson for the Superintendent's Study Council of Upper East Tennessee. Denise' back-

ground in educational environment will be an asset to the Trust

Paul Ward has been employed by Agri General Insurance for the past 23 years and is currently the Marketing Supervisor of the states of Tennessee, Arkansas, and Louisiana. Agri General sells and services crop insurance as well as farm property and casualty. Paul was elected to the Board of the Huntingdon Special School District in 2004. His background in insurance and service will give Paul great insight into the operations of the Trust.

Welcome Denise and Paul.



AN OUNCE OF PREVENTION

In 2004, perhaps as the result of a claim investigated by the Risk Management Trust, Amana issued a "Notice of Repair Program for Commercial and Institutional Owners for Amana brand Package Terminal Air Conditioner (PTAC). Amana markets the units under the brand name of Amana, Trane and American Standard. You will recognize these package HVAC units as those located on the vertical exterior walls of most portable classrooms and other mobile storage or office units.

Amana stated that if the airflow becomes restricted (by a plugged air filter, or furniture/obstructions being too close to these units) the heating elements can get hotter and activate the safety limit switches. Over time, the safety limit switch can then wear out due to the continuous cycling and a fire hazard can result. Amana went on to say that the unit owners should clean or replace the air filters every thirty days and replace the safety limit switch with a new one provided by the manufacturer.

Unfortunately, the Trust has been notified of yet another claim involving one of the units affected by the Notice of Repair. Please take note of this potential hazard and investigate to determine if you have any of these units in use. Please check to determine if you have these units in use. To find the model number, lift the units' front cover and follow instructions available at www.regcen.com/PTAC.

Amana brand recalled units have serial numbers that begin with:

96 97 98 99 00 01 02 0301 0302 0303

and have model numbers that begin as follows:

PTH073A35	PTH074A35	PTH093A35	PTH093A50	PTH094A35
PTH094A50	PTH123A35	PTH123A50	PTH124A35	PTH124A50
PTH153A35	PTH153A50	PTH154A35	PTH154A50	PTC073A35
PTC074A35	PTC093A35	PTC093A50	PTC094A35	PTC094A50
PTC123A35	PTC123A50	PTC124A35	PTC124A50	PTC153A35
PTC153A50	PTC154A35	PTC154A50		

The Trane and American Standard brand recalled units have serial numbers that begin with:

A96 A97 A98 A99 A00 A01 A02

and have model numbers that begin as follows:

PTHC0701G	PTEC0701G	PTHC0702G	PTEC0702G	PTHC0901J
PTHC0901G	PTEC0901J	PTEC0901G	PTHC0902J	PTHC0902G
PTEC0902J	PTEC0902G	PTHC1201J	PTHC1201G	PTEC1201J
PTEC1201G	PTHC1202J	PTHC1202G	PTEC1202J	PTEC1202G
PTHC1501J	PTHC1501G	PTEC1501J	PTEC1501G	PTHC1502J
PTHC1502G	PTEC1502J	PTEC1502G		