Municipalities face potential litigation from exposures ranging from law enforcement to employment practices. Unfortunately, it’s not always easy to evaluate the best way to handle these nearly inevitable risks.

Providing a solid defense in municipal liability claims poses many challenges. Despite their training and experience, governmental officials and employees can’t be expected to execute every action or decision without susceptibility to adverse action. Errors can and do occur, leaving a potential defendant vulnerable to liability.

Decisions that seem appropriate at a given time may later be shown to overlook standards or otherwise create outcomes that courts or juries might find fault with.

We analyze each litigated case from every perspective and evaluate potential resolution strategies, including a trial or a settlement. These considerations include:

- The facts of the case
- Plaintiff injuries and potential exposure
- Rulings on motions
- Strengths and weaknesses of witnesses for and against the member’s position
- Court location and venue
- Potential costs.

After weighing all these factors, even a case that initially appears to be a “no-brainer” to take to trial may no longer seem so clear-cut. It’s important that the litigation team work together in an open and direct exchange. The member representative, defense attorneys, and claims staff each bring important insights that help determine the right approach and provide the best recommendation to the governing board.

Alternative Dispute Resolution
At MMRMA’s Risk Management Workshop in March, a panel of attorneys gave a legal update, including a discussion about alternative dispute resolution (ADR).

Facilitation and other forms of ADR are tools to help evaluate whether it makes sense to settle a claim prior to trial. Most member-litigated claims enter either voluntary or court-ordered ADR.

Facilitation can also force defendants to take a close look at the other side of the coin, assessing potential liability and other factors before drawing final conclusions.

Continued on page 4
Spring Training Preview: Focus on Safety, Law Enforcement

MMRMA is pleased to present its spring training lineup for members. While we are not able to provide individualized training classes at each MMRMA member location, we do our best to schedule regional offerings for our most important and popular courses. Please contact Risk Control to request a regional session or if you have questions or feedback on our courses.

May

Safety and Accident Review Committee
Tuesday, May 2, MMRMA Training Center, 14001 Merriman Road, Livonia

Attend this free half-day Safety and Accident Review Committee (SARC) course to learn about the benefits of creating and implementing a committee to help ensure employee safety and optimize productivity. Topics include:

> Selecting committee members
> Creating a mission/vision statement
> Developing a meeting schedule
> Fostering active committee participation
> Identifying the potential for injuries and other risks
> Analyzing “near misses”
> Reporting accidents
> Reviewing high-risk activities and risk transfer
> Developing safe practices and policies
> Realizing cost savings
> Training employees and improving morale

Conducted Electronic Weapons (CEW): Legal Aspects and Practical Policy Application
Monday, May 22, Bay College, JHUC 900 Building, Escanaba

This one-day course for law enforcement administrators, supervisors, and training officers covers key issues on use of conducted electronic weapons, including:

> Legal evolution of CEW as a police tool
> Michigan and federal CEW case law
> Police use of force
> Training program recommendations
> Policy implications
> Civil litigation and risk management

The instructor, Brett Naumcheff, of Michigan Law Enforcement Training Associates, is a practicing attorney with more than 25 years of police experience. Naumcheff maintains certifications as a Michigan police officer, police legal advisor, and conducted electronic weapons instructor. He is a member of the International Association of Chiefs of Police Legal Advisory Section and the National Internal Affairs Investigators Association.

To register for courses, email Sarah Pogorzelski at spogorzelski@mmrma.org or call 734 513-0300.
MMRMA MEMBERS ARE busier than ever, which is why we design signature events like our Risk Management Workshop to provide concise, incisive training on topics of benefit to Michigan municipalities.

In March, members gathered with MMRMA staff and service providers to learn, share, and grow their skills and know-how. This year’s presentations painted a picture of the state economy, detailed the financial constraints facing local governments, and explained how employee engagement in risk management can have profound financial benefits.

Michigan’s Outlook
Tim Sowton began by sharing Michigan’s rankings on a variety of benchmarks, from jobs to education to traffic congestion. Sowton explained how Business Leaders for Michigan, where he is a vice president, is working to make Michigan among the Top 10 in the nation by improving quality of life and attracting businesses—and workers—to the Mitten.

Sowton cited key actions Michigan could take to achieve this goal, including accelerating growth, producing more talent, and leveraging the state’s many assets:

> Natural resources
> Geographic location
> Engineering talent
> Colleges and universities.

Of course, MMRMA member entities and their resources will play an integral role in Michigan’s path to the Top 10.

Financial Trends
Governmental entities throughout the country are facing financial stress, and Michigan municipalities are no exception.

Brian Camiller and Timothy St. Andrew of Plante & Moran examined big-picture trends contributing to this financial stress. On the revenue side, a decline in taxable values and other factors has meant that new development is often a municipality’s only substantial source of revenue.

On the expense side, municipalities face increasing costs, including legacy expenses for retiree pensions and health care benefits. The double bind of lower revenues and higher costs creates many challenges, not the least of which is finding the money to repair an aging infrastructure.

Camiller and St. Andrew highlighted Michigan success stories, including the conversion of a long-vacant Circuit City store into Westland’s new city hall. In other cases, the solutions required creative approaches to delivering services and attracting qualified workers.

Engaging Employees
MMRMA has long known the importance of municipal risk management—it is, after all, in our name. As we look at broad economic issues, we can’t lose sight of the potential impact of sound, sustained risk management programs and practices on member costs statewide.

MMRMA Is Your Valuable Partner
There will never be an absence of risk, economic or otherwise, and there are no easy answers to these problems.

Knowledge and information are your most valuable tools in managing risk—tools that MMRMA has long provided to help member municipalities thrive in an increasingly challenging environment.

Employees become engaged in risk management when they understand how their everyday actions affect their municipality’s risk exposure.

Log into MMRMA.org to download handouts from these sessions.
Claim Settlements, continued from page 1

Defendants typically have their own perspective on a case, but there can often be potential downfalls—both to the individual defendant and the member—that they may not have considered.

While reputation and community perception are important to our members, litigation does involve financial risks. Members with varied self-insured retention (SIR) limits have different exposures in litigation outcomes. What continues to distinguish MMRMA is the input of our members and the voice they have in shaping the outcome of claims. More often than not, the member, the defense attorney, and MMRMA agree on these important decisions.

Preparation is Key
During the legal panel, attorney Peter Dunlap emphasized that before engaging in ADR, municipalities should:

1. Choose the right representative to attend facilitation.
2. Review the summaries provided by both plaintiff and defendant.
5. Maintain control of the negotiations.

The goal is to keep the member’s overall best interests foremost in decision-making.

“Why settle my claim? I want my day in court!”

When members firmly believe they are in the right and have acted properly, they often ask, “Why settle?”

To answer this question, we must consider the best- and worst-case scenarios resulting from a trial. In MMRMA’s history, it has managed and resolved over 12,000 litigation cases, and this vast experience—along with that of our defense firms—provides a sound basis for making the best decision on each case. In addition, it can be helpful to weigh these advantages of pursuing a resolution instead of trial:

- **Certainty.** While settlements provide certain outcomes, trials give no such guarantee. If a jury doesn’t believe testimony or dislikes even a single key witness, the final outcome could be negative despite an otherwise strong case, resulting in significant liability.

- **Control.** Members maintain the ability to provide input and can control the final outcome of the case. As the adage goes, there are three sides to every story, and the jury will most likely come up with a fourth. Even the most experienced counsel cannot make that determination in advance. Many post-jury polls reveal something unexpected.

- **Economics.** Trials have both direct costs—expenses and attorney fees—as well as the indirect costs of municipal resources such as staff time to prepare for and attend trial, and the emotional strain on employees who are called to testify and be part of the litigation team.

- **Structure.** Judges and juries decide who won and who lost. In settlements, victory and loss can be spread among the parties, and the outcome is likely a fair compromise. Settlements can be structured in ways that are much more creative and acceptable to all parties than if a judge or jury decides the outcome.

- **Finality.** When parties reach a resolution, everyone involved can move forward. It may not be everything that either party wanted, but both can focus on the future rather than looking in the rear view mirror. Importantly, the lessons learned can be institutionalized and practices adjusted to prevent similar occurrences in the future.

As the adage goes, there are three sides to every story, and the jury will most likely come up with a fourth.