

# At Issue

A RISK MANAGEMENT NEWSLETTER FOR  
ELEMENTARY AND SECONDARY SCHOOLS



## You Hit What?

### Hitting Parked Vehicles as a Leading Cause of Loss

By: **Robert Bambino**, CPCU, ARM Wright Specialty Insurance

Every insurer tracks losses by cause of loss, and Wright Specialty is no different. For automobile liability claims, striking a parked vehicle is the leading cause of loss by frequency, and the third leading cause when measuring by severity. That's startling. These losses are avoidable and liability falls against the operator. Drivers must have control over their vehicle for the conditions and circumstances existing at the time. Hitting illegally parked cars, accidents that occur when roads are snow or ice covered and collisions caused by faulty brakes are assessed against the driver and/or owner of the vehicle. Depending on state or local law there may be limited immunity for accidents involving municipal vehicles conducting operations that take place during declared emergencies.

Driver inattention, not properly gauging distances and space, unfamiliarity with the vehicle, driving too fast and distracted driving are all contributing factors.

The typical motor vehicle fleet managed by a school or school district includes different types of motor vehicles (such as cars, trucks, pick-ups, vans and buses), and this presents additional risk. While mandatory licensing

requirements restrict the operation of large or heavy vehicles to qualified licensees, people operating different (often larger) or unfamiliar vehicles within their license classification are at a greater risk for accidents by virtue of the fact that they are not familiar with the vehicle. This makes parking lots particularly dangerous as well as operating on narrow, crowded streets.

#### **DISTRACTED DRIVING**

Distracted driving causes driver inattention and is a growing problem for all drivers. The Centers for Disease Control and Prevention (CDC) cite statistics indicating more than eight people are killed and 1,161 injured in crashes daily in the U.S. involving a distracted driver. According to the U.S. Department of Transportation — National Highway Traffic Safety Administration (NHTSA), *Distracted Driving 2013*, the number of distracted-affected crashes as a result of cellphone use has increased over 50 percent from 2010 to 2013. Not surprisingly, NHTSA reports point to younger drivers as presenting the largest risk to themselves and others.

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## STATE LAWS AND DISTRACTED DRIVING

The majority of the states have some type of law addressing distracted driving. According to the Insurance Institute for Highway Safety — Highway Loss Data Institute, 14 states and the District of Columbia ban talking on a hand-held cellphone while driving. The use of all cellphones by novice drivers is restricted in 37 states and the District of Columbia, and, 46 states and the District of Columbia ban text messaging for all drivers. Novice drivers are banned from texting in two states (Missouri and Texas). Twenty states and the District of Columbia prohibit the use of cell phones by school bus drivers.

## PREVENTIVE MEASURES

Some ways to reduce distracted driving among employees, and improve driver inattention, include:

- Enforce applicable state laws.
- Establish a policy prohibiting the use of hand-held cellphones while driving a school-owned vehicle, except in an emergency. This includes texting and email. The National Safety Council (NSC) has information to prevent distracted driving incidents at: <http://www.nsc.org/learn/NSC-Initiatives/Pages/distracted-driving-awareness-month.aspx> Scroll down for the link to request the material.
- Inform the school community about driving restrictions.
- Make training about distracted driving part of all safety-related training for employees who drive for your school. Have them sign a copy of the policy. Follow-up periodically to enforce the message. Violations should have consequences.

- Use posters to reinforce the message. Posters are also available at the NSC website.
- Install instructional labels in vehicles that prohibit texting, cellphone use, eating and other activities.
- Set an example. Administrators and senior staff must follow the policy as well.
- Follow technology solutions that restrict cellphone use while the automobile is being driven. Blocking software, apps that limit cellphone use when the car is in motion, and docking stations are examples.
- Put public safety announcements on the school website and on social media.
- Distracted driving is not limited to cellphone use. It includes using navigational devices, adjusting the sound system, cameras, lane alerts and climate controls.

There must be penalties for violations of school policies for all employees, regardless of age or position. When fairly and equally applied, consequences such as loss of driving rights, formal reprimands, suspensions or terminations will help reduce the incidents of unwanted behavior. At the same time, use reward systems for drivers who constantly post a clean driving record.

Suggestions to reduce accidents involving parked vehicles include:

- Match the driver to the vehicle. Don't force someone to drive a vehicle they are not familiar and comfortable with.
- Assess the location. Pick a safer location to pick-up materials, park or drop off passengers. Sometimes an alternative location is needed.
- Check your speed. Posted speed limits are for regular driving conditions. Slow down when needed.
- Get out and look over the area.
- Make a safe choice. If you can't easily pull in, it's safe to say that backing out will be even harder.

## RESOURCES AND REFERENCES

Centers for Disease Control and Prevention – Injury Prevention and Control: Motor Vehicle Safety. Distracted Driving. March 2016. ([http://www.cdc.gov/motorvehiclesafety/distracted\\_driving/](http://www.cdc.gov/motorvehiclesafety/distracted_driving/))

Governors Highway Safety Association. Distracted Driving Laws [http://www.ghsa.org/html/stateinfo/laws/cellphone\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html)

The Insurance Institute for Highway Safety – Highway Loss Data Institute. Distractive Driving , Cell Phones and Texting. March 2016 <http://www.iihs.org/iihs/topics/laws/cellphonelaws>

U.S. Department of Transportation – Driver Distraction in Commercial Vehicle Operations. 2009 [www.distraction.gov/downloads/pdfs/driver-distraction-commercial-vehicle-operations.pdf](http://www.distraction.gov/downloads/pdfs/driver-distraction-commercial-vehicle-operations.pdf)

U.S. Department of Transportation – National Highway Traffic Safety Administration (NHTSA), Distracted Driving 2013 ([http://www.distraction.gov/downloads/pdfs/Distracted\\_Driving\\_2013\\_Research\\_note.pdf](http://www.distraction.gov/downloads/pdfs/Distracted_Driving_2013_Research_note.pdf))

U.S. Department of Transportation – National Highway Traffic Safety Administration (NHTSA) Young Drivers Report the Highest Level of Phone Involvement in Crash or Near-Crash Incidences. April 2012. <http://www.distraction.gov/downloads/pdfs/traffic-safety-facts-research-note-04-2012.pdf>



# Retaliation Claims

## Let's Hope Common Sense Prevails

By: **Ken Jones**, Esq. Hall, Booth, Smith

The Equal Employment Opportunity Commission (EEOC) is in the process of updating its guidance on workplace retaliation. For the frontline professionals dealing with employment matters, it should seem obvious that it is prohibited to retaliate against an employee that files some type of discrimination complaint with the EEOC. The grey area has always been trying to determine what "retaliation" is. The easy examples are termination, demotion, or a reduction in pay. Doubtless, we can all agree that an employer that takes one of these actions in response to an EEOC complaint will be met with another claim.

It is clear employers and human resource officers are faced with the reality that from the claimant perspective, every action taken is "in retaliation" for their having filed an EEOC complaint. Any perceived slight, real or imagined, could trigger a follow up retaliation claim to the underlying claim. The pendulum is swinging further to the employee's side. Wright Specialty policyholders, as employers, may feel the pendulum has swung too far.

According to a recent EEOC press release, retaliation claims have doubled since 1998 and now comprise about half of all EEOC claims. Numbers like this suggest there may be true acts of retaliation, but it could be that any perceived slight, or just claimant vengeance, is driving this statistical increase, too. It is not just follow up retaliation claims by "Employee Al" that are on the rise; many are first-time retaliation claims filed by "Employee Betty" after she has spoken in favor of, or supported, Al's claim. If there is a causal connection, Betty can have a retaliation claim for a "protected activity" and "opposition activity" related to Betty's support of Al.

Employers must be critical of their own actions, and take seriously any allegation of retaliation if it is raised. The best defense is a record trail that documents the complainant's job actions and performance measurements. Secondly, don't get caught punishing Betty because she supported Al's complaint.

If Al files an EEOC complaint, it is critical to document and keep files on his actions. Other than immediately terminable actions, if Al is constantly a problem or pushing the envelope on the job, you should already have each incident



documented if you foresee terminating Al. Do the same for Al's EEOC complaint. Keep a record.

If either "Al" or "Betty" makes a complaint, meet with the appropriate supervisor and employee, and have a clear and concise plan of action in place to review the complaint. Document what occurs during the meeting and all responses as a record of what was said. It is likely the complainant employee will say "I never said that" or some other denial of what transpired in the meeting, but in the end, if it is contemporaneously documented, and on file, that may prove to be invaluable evidence in front of the EEOC, or a jury.

While the EEOC is looking to expand or clarify retaliation claims coming in, EEOC officials should strike a balance, recognizing the concerns of both employers and employees. The EEOC is an investigative body, and its function is to enforce antidiscrimination laws that are designed to provide a fair workplace with equal opportunities for all job applicants and employees.



## Playground Monitors

Lack of proper supervision is often alleged in playground litigation cases that occur in a supervised setting. All playground monitors and supervisors need playground supervision training. Training suggestions for playground monitors include these points:

- **Consistently enforce the rules** so children use the equipment safely and correctly.
- **Move around.** See and be seen.
- **Stay calm.** Don't lose your patience.
- **Use effective words** when correcting children. Avoid lengthy explanations.
- **Keep your voice low,** since yelling only encourages yelling. Model the behavior you want. Repeat things calmly. Don't escalate arguments.
- **Have positive interaction.** Speak to potential troublemakers early. Don't give all your attention to negative behavior.
- **Learn kids' names.**
- **Try to involve clingy children** in a game or activity.
- **Use proximity praise.** Compliment children who are following the rules to correct those who are not.
- **Position yourself in trouble spots** — near challenging equipment or high activity areas.
- **Close off part of the playground** if hazards such as broken glass are found.
- **Be specific** when making corrections. Tell children that their action was inappropriate and ask them not to do it again.

## News & Views

**School-related civil rights complaints** surged to a new record last year as the U.S. Education Department fielded an unprecedented 10,392 grievances, with nearly half of them related to alleged discrimination against students with disabilities, new data shows. Since the Office for Civil Rights (OCR) began tracking the complaints in 2011, the number of alleged cases reported annually has essentially doubled with 46% of the complaints, or 4,806, related to disability.

(Source: USA Today May 4, 2016. Using data from the US Education Department)

### Litigation against employers continues to rise.

Employers in the United States faced a record number of class-action lawsuits in 2015, with more than 1,300 rulings across the nation.

(Source: Risk and Insurance. April 2016)

### Health, Higher Ed Most Vulnerable to Cyber Attacks.

Sensitive information, high turnover and low security budgets are the reasons cited.

(Source: *Cyber Threats*. Risk and Insurance, May 2016  
<http://www.riskandinsurance.com/health-higher-ed-vulnerable-cyber-attacks/>)



### Atlantic Hurricane Season.

2016 Atlantic Hurricane Season to be at a near average level, with 12 named storms, five hurricanes and two major hurricanes.

(Source: *Hurricane News*. Weather.com

<https://weather.com/storms/hurricane/news/2016-hurricane-season-forecast-atlantic-colorado-state-csu>)

## ResourceCenter

**Training or information about today's risk management-related subjects can be found in the Wright Specialty E-Learning or Title IX Learning Centers online.**

Wright Specialty is host to a number of online risk management resources. Take advantage of the free safety education courses available on Wright's 24/7 web-based training center. Visit our Title IX Resource Center to keep up with changing developments or browse our seasonal Risk Alerts to stay up-to-date on school-based risk management and safety issues. With years of experience insuring school risks, Wright Specialty Insurance provides valuable guidance for school administrators to help reduce injuries to students, staff and visitors, and to prevent damage to property. You can access our national Employment Liability Hotline for help with every day employment-related issues. The Hotline is available Monday - Friday from 8:30 a.m. to 6:00 p.m. eastern time. Call 866-758-6874.

**For easy registration for our e-Training Center and for access to the Resource Center, contact Erica Gotay, your Wright Specialty representative, to receive your access code at: 516-750-3902 or [EGOTAY@wrightinsurance.com](mailto:EGOTAY@wrightinsurance.com)**

# What Drives Loss Experience in Summer Recreation Programs?

## Check Your Program With This Easy Analysis

By: **Robert Bambino**, CPCU, ARM Wright Specialty Insurance

Speak with any camp counselor and ask about the most popular program activities and it's unlikely it will be arts and crafts, but rather sports, swimming, camping, boating and offsite excursions. All great fun? You bet, but they are activities that present a greater risk for accidents and injuries. Unless the activity is avoided, a loss exposure exists for the school.

When avoidance is not possible, schools need to find ways to reduce the risk – making the program as safe as possible. One way to accomplish this is to identify the conditions or circumstances that increase the likelihood of accidents and then develop a safety or risk control program to treat the conditions that are identified.

Inspect facilities and equipment and review policies and procedures before camp starts. Make note of and correct the following:

### SPORTS AND ATHLETIC ACTIVITIES

- Lack of supervision by staff of campers and other counselors (especially counselors-in-training) by trained supervisors
- Uncertified lifeguards or instructors
- Improper or poorly maintained equipment
- Improper instruction
- Not enough staff trained in first aid
- Defective playing fields or courts
- Inadequate security

### EXCURSIONS AND TRAVEL

- Activities that are not suitable for the students (age, experience or development level)
- Improper accommodations
- Insufficient supervision
- Poorly trained chaperones
- Failure to enforce rules, policies and/or the school's code of conduct
- Not properly evaluating and planning foreign travel

### HOUSING

- Inadequate supervision – poorly trained counselors or an insufficient number of counselors
- Unsafe bunks, dorms or cabins
- Missing or inadequate emergency management plan
- Failure to enforce curfews and housing rules



### FACILITIES

Physical hazards found in facilities are usually a result of improper maintenance and poor housekeeping. What are the most common cited reasons for maintenance and housekeeping issues? They are inadequate funding, insufficient staff (given the size of the facility) and improperly trained staff.

- Sidewalks and Stairs – unlevel, debris and loose handrails
- Grounds – untrimmed bushes and trees, unhealthy trees that can fall during windstorms and the presence of poisonous plants
- Parking Lots – inadequate parking spots that lead to illegal and unsafe parking; potholes and depressions
- Pools – improper depth or missing markings, poor housekeeping (such as excess water around the pool), improper lifeguard protection, unfenced pool area, and no safety equipment in the pool area

## SECURITY

- Poor perimeter security
- Inadequate screening of employees and volunteers
- Not using a badging system
- Poor lighting
- Not developing appropriate rules and codes of conduct; failure to communicate and enforce rules

## EMERGENCY MANAGEMENT PLANNING (EMP)

An EMP, suitable for the type of program being offered, must be developed and distributed. Emergencies, whether weather related or as a result of fire, motor vehicle accident or sports activity, never occur at a convenient time.

Every administrator, leader and camp counselor needs to know what to do in the event of an emergency, as do campers. Many states require a written emergency management plan that addresses fire safety and prevention, emergency evacuation, exit maintenance, drills, weather emergencies, intruders, medical care, contact numbers, supplies and emergency communications. The EMP should also address offsite emergencies, including methods to contact emergency services and the camp in the event of an accident during a trip.

## ADMINISTRATIVE ISSUES

- Required licenses, certifications and permits are not in place
- Staff credentials
- Written plans and policies
- Missing employment records and forms
- Not complying with medical and health requirements
- Not obtaining waivers and releases

A waiver is a voluntary surrender of the right to sue for injury or damage. A release is a voluntary release of the institution from liability for injuries that may occur. The effectiveness of waivers and releases varies by state. Make sure to speak to

your legal counsel before drafting or using these documents.

Often, a waiver and release form will include assumption of risk language – language outlining the risks particular to the activity or program. This is a good way of letting participants, parents and guardians know the risks of physical injury that exist when participating in an event or activity (e.g., if boating, the type of watercraft and specific activity planned – such as rafting or canoeing).

Although the effectiveness of waivers and release forms are questioned, they should still be obtained. Waivers and release forms have the greatest likelihood of passing legal muster if they are specific and related to the events and activities at hand.

If these or similar hazards are identified, correction or elimination is in order. If it's too late to make corrections, or resources are not available, then consider restricting access to an unsafe area, or discontinue the activity.



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