

# Insuring the most significant liability risk



**Craig Nelson**  
Executive Director

In recent weeks we have received inquiries from several NIRMA member counties in connection with the \$28.1 million federal jury verdict rendered against Gage County in July following a nearly month-long trial in the U.S. District Court in Omaha. This is the case which has been widely publicized and litigated over a number of years and involves the so-called "Beatrice Six" who each alleged their civil rights were violated during the law enforcement investigation surrounding the murder of a Beatrice woman back in 1985. This investigation ultimately led to the arrests and guilty pleas and/or convictions following trial – and then the incarceration of these six individuals for various periods of time before being cleared primarily based on DNA testing conducted years later in 2008.

NIRMA has not been involved in the coverage, defense or the trial of this matter as these allegations involve events which took place in the mid to late 1980s, well before Gage County joined NIRMA in 1997, so we are not privy to the evidence that was presented during the extended trial nor do we have any insight as to the reasoning of the jury when it made its factual findings. Still, we have been continuing to monitor this case because of the implications any decision might pose for all our member counties, and for that matter any city and other political subdivision in the state which performs law enforcement functions. Our law enforcement personnel are called upon to perform a very important and challenging function, and investigatory techniques and testing continue to evolve as does technology, training and the law itself. But the consequences of the actions or inaction of law enforcement can have costly implications even many years after an event, demonstrated by the size of this award, unprecedented so far as I can tell, at least for Nebraska. This award, and others too, confirm the message that NIRMA has been delivering to our members for years, namely that law enforcement and corrections operations represent the most significant and impactful liability risk faced by county government.

Now, it is important to remember this case is far from over. Counsel for Gage County have already filed motions seeking that this verdict be overturned or reduced and also that a new trial be granted due to irregularities in the proceedings. And whatever decision the district court makes can be further appealed. I expect the county has a number of legitimate legal arguments to assert and hopefully those will be given the attention and consideration they deserve. Still, we understand why following a significant court decision like this other members might be prompted to reach out seeking confirmation of the law enforcement liability coverage and limits provided by NIRMA in this regard.

NIRMA does indeed provide law enforcement liability (LEL) coverage to each of our members who have law enforcement and/or corrections operations. This coverage is there to defend and, if necessary, generally pay for damages due to bodily injury, property damage or personal injury arising out of an occurrence which takes place during a period when this policy is in force and involving a member official/employee while performing duties as a law enforcement officer. This would include such things as criminal investigations, custodial arrests and other related activities. While NIRMA aims to always provide to our members coverage as broad as anything that can be found in the public entity market, there are still certain coverage limits and exclusions which apply. For example, there is no coverage for bodily injury or property damage caused by an Insured law enforcement officer's willful violation of the penal code, or for the actions of an Insured that fall outside the law enforcement agency's own governing regulations. But, as I'm sure all are well aware, each

*continued on page 5*

# NIRMA membership growth continues

In our April/May 2016 issue of the **Interchange** we reported our NIRMA family had grown to 89 members with the addition of Hooker County and the Hooker County Agricultural Society.

Effective July 1, 2016, we grew to 90 members when we were pleased to welcome the Dakota County Public Safety Service Agency as our ninth county-related entity.

The Dakota County Public Safety Service Agency was created to provide

services and facilities for its members consisting of Dakota County, Dakota City, the Villages of Emerson and Homer, the Dakota Covington Rural Fire District, the Homer Rural Fire District, and the Emerson Rural Fire Protection District.

Our current membership consists of 81 of Nebraska's 93 counties, six Area Agencies on Aging, the Region 26 Council, the Hooker County Ag Society and now the Dakota County Public Safety Service Agency.

NIRMA is frequently approached by other public entities interested in joining our pools. The NIRMA Board of Directors gives careful thought to expansion beyond our county government core membership. We do not want to jeopardize the stability and success of NIRMA or detract from its focus on counties.

We welcome the Dakota County Public Safety Service Agency to our growing NIRMA family and look forward to serving the agency as a valued member of our organization.

## Nelson Column *continued from page 2*

and every insurance policy contains certain limits, conditions and exclusions and NIRMA is no exception.

As for the dollar limitations applicable to this coverage, NIRMA provides a full \$1 million (any one person)/\$5 million per occurrence (all claims) in coverage, which represents the maximum liability/tort cap limitations counties are exposed to under the Nebraska Political Subdivisions Tort Claims Act. It is not uncommon for counties joining NIRMA to come into the program with lesser liability limits than that, so NIRMA has been able to provide them with this additional coverage, and we have never had a member come into the program with any higher limits.

Now, it is important to remember the "Beatrice Six" case involves a civil rights action brought in federal court, and unfortunately there are no such tort cap limitations in place to protect counties or other public entities. That is why the jury in this case was in a position to award the \$28.1 million it did, and conceivably it could have come up with an even greater amount than was being sought by the plaintiffs. Such an award dwarfs the \$5 million in liability limits NIRMA provides, but in nearly 30 years of operation, NIRMA has never defended or resolved a liability claim that has even come close to a \$5 million payout, thus demonstrating how much of an outlier this "Beatrice Six" verdict is.

Members may understandably now want to consider pursuing the purchase of higher liability limits at next year's renewal, and NIRMA is more than willing to explore such an option with County Reinsurance, Limited (CRL) and our other reinsurance partners if there is that member interest. But no one should expect that \$20 million in limits, \$25 million, or some number even higher is going to be made available with no questions asked or priced in such a way that makes sense for our members. CRL works with approximately 1,100 to 1,200 counties in the United States, more than one-third of all the counties in the country, and the highest liability limit any of those counties in the CRL program currently purchases is \$11 million, and only a relatively small number purchase that higher limit. And even this \$11 million liability limit falls well short of the \$28 million "Beatrice Six" judgment. Insurance coverage, pricing and limits is always a matter of balancing the potential and realistic risks with the costs of insuring against such risks, and what is reasonable and wise in terms of what a public entity is prepared to spend in terms of taxpayer dollars for that coverage, which is why the member-owned and non-profit status of NIRMA exists to assist our members. There simply is no insurance coverage out there designed to respond to each and every event that might occur, so the purchase of higher limits, along with other insurance decisions, always needs to be examined in a broader context.