



RMS Continues the Spirit of Giving

\$1,245,421 Awarded to the Membership

Risk Management Services celebrates the delivery of their dividend checks. Due to the sound management, safe practices and favorable loss histories of its members, the Property & Casualty Pool, Workers Compensation Fund and the Unemployment Compensation Fund distributed a record number of dividends to its Members.



The Property & Casualty Pool distributed \$299,360 in Dividends to **86%** of its Members.



The Workers Compensation Fund distributed \$497,979 in Dividends to **82%** of its Members

Congratulations!



The Unemployment Compensation Fund distributed \$448,082 in Dividends to **78%** of its Members.



All of us at MMA Risk Management Services would like to take this moment to congratulate the efforts of our Membership. Together we are making a difference that pays.

The Effect of the *Rodriguez* case on Town Liability

Many rural communities in Maine have a Town Clerk transacting Town business from the Town Clerk's personal residence. Often this is done for the sake of efficiency and expense. This also provides opportunity and convenience for citizens to transact Town business after normal working hours or on weekends. As the Town does not own the residence and has no control over its condition, it was commonly thought the Town has little, if any, involvement if someone is injured at the Town Clerk's residence while transacting Town business.

On May 29, the Maine Supreme Judicial Court issued its decision in *Rodriguez v. Town of Moose River et al.* The Law court stated the Town could be sued in a negligence action if Town business is transacted at a personal residence.

Facts In the Rodriguez case

The Town of Moose River did not own an office building suitable for conducting Town business. Moose River's Town Clerk, Elizabeth Bell, was expected to conduct her official duties as Town Clerk at her personal residence and this was a condition for her holding the Town Clerk position. The Town brought its computer, file cabinets, desk and office supplies to Bell's home. Bell also placed a sign on the side of her home, which read, "Moose River Town Clerk and Tax Collector." Her responsibilities as Town Clerk included issuing birth and death certificates, marriage licenses, registering motor vehicles and snowmobiles, and collecting property and excise taxes. She was also

responsible for maintaining Town records. Approximately 200 people a year would enter Bell's home to conduct town business.

It should be noted that Elizabeth Bell let her personal homeowners insurance policy expire, and did not renew it. Therefore there was no homeowners liability insurance covering Bell's residence.

In January of 2004, Linda Rodriguez went to Bell's home to register two motor vehicles. After Rodriguez had registered her vehicles and was leaving Bell's home, she slipped or tripped and fell down the stairs to the entryway. Rodriguez was injured as a result of her fall, and sued Bell as an individual and also in her capacity as Town Clerk. Rodriguez also sued the Town of Moose River in the same action.

Moose River then filed a motion for summary judgment arguing that the Town did not rent Bell's home nor did the Town undertake any responsibility for the home's maintenance or upkeep. The Superior Court agreed and dismissed Rodriguez's suit against the Town of Moose River stating that Bell's residence was not a "public building" pursuant to the Maine Tort Claims Act.

On appeal the Law Court reversed the Superior Court's decision, stating, "We conclude that on the specific facts of this case, Bell's home was a "public building" within the meaning of the MTCA." The Law Court reasoned that "although the Town imposed no requirements and did not assist Bell in maintaining her home, it did impose control over Bell's duties as town clerk and tax collector, gave her Town property such as a computer and office furniture, and entrusted her with Town documents and records." Because of this, the Law Court went on to state "...Bell's home was used to provide services to the people on a business basis" and was "under some degree of civic or state control." Therefore the Law Court concluded Bell's home was a "public building" within the meaning of the MTCA.

The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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Impact on Coverage

Once the Law Court reached the conclusion that the Town Clerk's home was a "public building", this created a potential for liability on the part of the Town of Moose River. The MMA P&C Pool immediately examined the Property & Casualty certificate issued to Moose River and concluded the Town is covered for the negligence claims brought by Rodriguez.

Generally, if the Town is named in a negligence lawsuit, and the allegations are covered by the Certificate issued by the MMA P&C Pool, then the Town is covered even if the allegations in the suit are false or groundless.

How does this affect my Town?

It is important to note the Law Court's decision states: "We conclude that on the **specific facts of this case**, Bell's home was a "public building" within the meaning of the MTCA." (bolding added) In other words, the Law Court did **not** say every Town Clerk's home is a public building. Whether the residence of the Town Clerk (or any other Town employee or official) is a "public building" will be determined on a case-by case basis. Factors to be considered include the degree of control the Town has over the individual's activities, whether the Town supplies furniture and equipment to be used in the individual's home, whether other locations are available to transact Town business and the nature and frequency of Town business being transacted in the individual's home. Other factors may come into consideration as well.

If these factors are examined and it appears the individual's home may be a "public building", then the Town may have obligations with respect to maintenance and upkeep of the premises.

As noted above, Elizabeth Bell had no homeowners liability coverage on her home. Towns may wish to inquire as to what arrangements their town clerk and/or tax collector (or other employees/officials) have made with respect to liability insurance for their home and if their homeowners insurance

company has been made aware that Town business is conducted on the individual's premises. Many homeowners insurance companies exclude coverage for business activities conducted at a private residence. The homeowners insurance company may be willing to add on coverage for business activities for an additional premium charge.

Conclusion

If a Town Clerk and/or Tax Collector is transacting Town business in a personal residence, then the residence may be a "public building". The Town may have liability exposure depending on the circumstances; however, this will depend on the circumstances in each individual case. If the Town is a member of the MMA Property & Casualty Pool and the Town is named in a negligence lawsuit, and the allegations are covered by the Certificate issued by the P&C Pool, then the Town is covered even if the allegations in the suit are false or groundless. If the Town is insured with a commercial insurance company, officials should check with their local agent or company underwriter to see how their coverage would apply.

VOLUNTEER FIREFIGHTER BLANKET ACCIDENT INSURANCE PROGRAM NOW AVAILABLE!!!

The Volunteer Firefighter Program (VFF) coverage is underwritten by The Hartford and is designed to pick up coverage for fire department activities that fall outside coverage provided under the Maine Workers Compensation Act. VFF is available to municipalities for an annual premium of only:

**\$52.48 per volunteer
firefighter**

For further information please contact:
Marcus Ballou at 800-590-5583, ext 244,
or via e-mail at: mballou@memun.org

Tenant User Liability Insurance Program

Another Way That Risk Management Services Is Looking Out For You

MMA Risk Management Services is pleased to announce the sponsorship of another protection for members of the Property & Casualty Pool. Requests to use municipal property and facilities by the public have become a common occurrence. While it is comforting knowing that the municipality is covered through MMA, independent entities that use your municipal facilities are not. This opens the possibility of the municipality becoming drawn into unnecessary claims.

The solution to this dilemma is the Tenant Users Liability Insurance Program (TULIP). TULIP is a low-cost insurance policy that protects both the "Tenant User" and the municipality. A "Tenant User" is any outside party using town or school facilities. The policy applies to bodily injury or property damage arising out of the use of municipal premises by Tenant Users. Premium costs are traditionally paid by the Tenant Users or by the department inviting the Tenant User into the facility. The premium is based on the nature of the event, the duration of the event, the number of participants, the level of risk of the event and any special requirements.

How the program WORKS For You:

- ✿ At no cost, the Municipality registers to use the TULIP program account through MMA's exclusive broker, HUB International New England, LLC.
- ✿ When a Tenant User wants to use the facility, the facility management directs the Tenant User to www.ebi-ins.com/tulip and provides a six digit ID code that identifies the facility.
- ✿ The Tenant User enters the ID code and answers a few basic questions in a three-step process that provides an online quote.
- ✿ If the Tenant User decides to purchase coverage through the facility's program, they simply enter their credit card information and coverage is bound, including forwarding a Certificate of Insurance to the facility, the Tenant User and the agent or broker.

Your Tenant User now has access to generate a quote and bind General Liability insurance via the TULIP online system! For more information contact Marcus Ballou at Maine Municipal Association, 1 (800) 590-5583, mballou@memun.org. Theresa Lee at HUB International New England, LLC is also available to help answer your questions at (800) 370-2106 or you may visit the Entertainment Brokers Web site at www.ebi-ins.com/tulip

This advertisement explains the general purposes of the coverage described, but in no way changes or affects any such coverage as actually issued on the policy for any insured.