

The Municipal RISK MANAGER

SPRING 2017

A Publication of the Maine Municipal Association

Message from the Director Pat Kablitz

We are very pleased to begin the 30th anniversary celebration of the MMA Property & Casualty Pool and want to thank all our members for their continued participation and trust.

In this article, I want to take a more global review of the concept of pooling. It has been a success for municipal government not just in Maine, but across the entire country. There are three important things that have led to this success. In brief, pools are about *partnership, performance, and service*.

- These partnerships first emerged in the early 1970s, when local public entities formed risk pools to reduce and stabilize long-term insurance costs and ensure access to the coverage and service necessary to sustain critical local government functions.

- It worked: Pools' performance has been consistently strong. Pools have sustained excellent financial performance, generated coverage innovations, and helped focus public entities on risk management as an operational priority.

- Even better, pools have become models of public-sector service – by providing outstanding service to their members, by promoting public entity collaboration, and by showing how local governments and schools can improve service to the public through long-range planning and collaboration.

Today at least 80 percent of this nation's 90,000 or so public entities participate in one or more risk pools. Some pools offer only certain kinds of coverage, such as workers' compensation or liability, or health benefits; others offer multiple lines of coverage.



Some pools serve only certain kinds of public entities, such as school districts.

All pools work to decrease financial risk to taxpayers created by routine, unanticipated and catastrophic events. Pools embody the ideal of local control because pools are crafted to meet the specific needs of their public entity members.

Pools differ from commercial insurers in many ways. For one thing, pools don't measure success by profits. Instead, under the guidance of boards elected by pool members, pools provide services, coverage, and risk management tools with the singular goal of serving their members. They strive to reduce members' risk and, in the process, save public funds and improve outcomes for local governments and their taxpayers.

Pool members share accountability with one another because members essentially co-own the pool. Members rely on one another not just for coverage, claims management, and loss control but also for new ideas, best practices, and help solving problems. This culture of collaboration eases the burden of year-to-year volatility in claims costs, intensifies pool members'

interest in loss control and claim management, and improves the quality of local government.

Pools have sustained excellent financial performance, generated coverage innovations, and helped focus public entities on risk management as an operational priority. And strong financial performance means taxpayer savings. It is estimated that pools have saved taxpayers billions of dollars. They don't seek profits. They spend less on overhead, marketing, and "middlemen." They are exempt from some taxes. While year-to-year pricing may fluctuate, pools have definitively proven to cost less than commercial insurance. And, most importantly, pools understand local government risks and needs and work with members to avoid losses that would otherwise inflate taxpayer costs.

A Swedish proverb holds that the best place to find a helping hand is often at the end of your own arm. Pooling exemplifies that value. Please let me know if I can tell you more. ■

Welcome New Members

Property & Casualty Pool
Town of Baldwin

Workers Compensation Fund
Town of Baldwin

**Unemployment
Compensation Fund**
Town of Randolph

Protect Yourself And Protect Your Staff

Embezzlement Prevention

Fraud isn't just limited to large commercial entities. Unfortunately, it can and does occur here in Maine and even in our local municipalities and utility districts, but with the proper resources and internal controls in place, you can do a lot to prevent your entity from falling victim to a damaging (and costly) claim.

Embezzlement red flags: (What to look for)

Embezzlement is the misappropriation of entrusted funds by someone designated to safeguard. In our municipalities, these people can be town clerks, treasurers, tax collectors, finance officers, transfer station attendants, recreation departments or anyone who is designated to handle your entity's money.

While every case is different, there are three factors that are typically needed for fraud to occur, called the "fraud triangle":

Temptation/Need: An employee that is dealing with financially difficult issues such as a divorce, a sick child or parent, foreclosure, or other financial challenges may resort to desperate measures to try to fix their situation.

Opportunity: The lack of internal controls and duplications of duties creates the "Opportunity" for a fraud event to occur. This problem has become even

more problematic because we are all forced to do more with less. Budget cuts can lead to cutting staff — which can also mean fewer people to manage and monitor your money and enforce internal controls. If this sounds familiar, we recommend that your Boards and Councils step up to assume these duties and ensure that the proper oversight is in place.

Ability to justify illegal behavior: Employees may have a need that arises, and "borrow" money to fulfill that need. They rationalize taking money by saying that they intend to pay it back or they feel that they are overworked and under appreciated so they deserve the funds they have stolen.

Other employee red flags can include someone who is:

- Always at work and never asks for vacation.
- Reluctant to delegate duties to others and doesn't share information.
- Defensive, and wants to protect their job responsibilities related to accessing money.
- Living a lifestyle beyond their apparent means.
- Inappropriate relationship with vendors or other employees.

How to reduce your risk of fraud

Essentially all you need to do is protect your employees and limit the opportu-

nities for theft.

• **Establish and maintain an effective internal control structure:** This may be the single most important tool you can employ to reduce your exposure of a loss. Internal controls set policies and procedures for employees who handle money, as well as the people who manage them.

• **Segregate job duties:** Don't just trust one or a few employees to manage your finances. If you're a small entity and your resources are limited, ask your elected officials to keep an eye on things, too.

• **Conduct inspections and annual audits:** While the main purpose of an audit isn't to find fraud or to analyze your internal controls, your Auditor can help identify any issues or discrepancies which may lead to an embezzlement and assist you with recommendations to prevent such an event.

Sometimes, even having all the right controls and policies in place can't prevent fraud from occurring. And if it does, and you are a member of the Property & Casualty Pool we have you covered. Our crime coverage includes employee theft and embezzlement with policy limits starting at \$100,000. However, if you find that you are in need of higher limits we do offer optional limits of \$250,000, \$500,000, \$750,000 and \$1 million. For more information please contact your underwriting representative. ■



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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Property & Casualty Pool Renewal Reminder

We would like to thank our Members for their cooperation with the completion of the Property & Casualty renewal applications. The Property & Casualty Pool renewal application was due by March 31, 2017. Your 2017 Pool renewal application is an important part of the renewal process. We want our Members to know that help is available. If you would like assistance with the completion of your application or just have a question, please contact Marcus Ballou (mballou@memun.org) at 1-(800) 590- 5583, so that we can help.

Serving Maine Communities Is What We Do And All We Do

Spring into Action to Avoid Trouble

Now that spring “is just around the corner”, this is a good time to look for trouble spots that may have crept in over the winter months. Spotting hazards early, especially when they are small, can save you money, time and trouble if they are addressed before turning into a big problem. Water intrusion in particular can cause huge problems if not corrected promptly.

Once the snow is clear, inspect roof lines, roof condition and the integrity of structural members.



Roof Exterior

- Is the ridgeline sagging?
- Is there any sagging or bowing of rafters?
- Is there any dishing or “swale” development noted in the roof itself?
- Any bowing or deformity at the eaves?
- Is flashing intact?
- Are shingles curled, “fish mouthed” or missing?
- If a membrane roof, is roof membrane intact, with no cracking, uplifting or blisters? Are there areas of ponded water? Are seams intact?
- Are roof drains functioning and clear of debris?

Roof Interior

- Inspect for cracking of rafters, trusses, or structural members.
- Any water staining, “dry rot”, or insect damage to sheathing and structural members?



This photograph displays evidence of water damage and staining.

- Any separation of rafters, joists or trusses from wall headers or from other structural members?
- Any wet or moldy insulation?
- Any signs that rodents may have moved in over the winter, such as droppings, chewed insulation, etc.?

Building Interior

- Any signs of water intrusion such as stains on ceilings or walls, peeling paint, mold or mildew?
- Any signs of building deflection such as jammed or sticking windows or doors, cracking in walls, shifting ceiling or door moldings?

Steps, Walkways and Parking Areas

- Any frost damage, such as cracking, missing masonry, heaving or potholes?
- Is walkway lighting and parking area lighting working properly?
- Is water pooling near entrances which may cause water infiltration?

Basements:

- Any standing water?
- If sump pumps are in place, are they operational?
- Any signs, of mold, mildew, water staining or excessive moisture?
- Any signs of rodent infestation?

General housekeeping:

- Check exits and stairwells and remove any clutter that may have accumulated over the winter.
- Boiler rooms are not storage areas! Remove any clutter that may have snuck in over the winter.

Heating and Cooling

- Check the air conditioning system before the summer heat uncovers any “surprise” issues.
- Check the boiler and heating system for any issues that may have developed over the heating season.

The inspections of the exterior of your buildings are a good practice to make sure exterior lighting is working properly, siding is intact, gutters and downspouts are in good condition, and no water is pooling against the foundation. If the building is located in an area prone to accumulations of surface water, check nearby culverts and drainage ditches to make they are flowing and free of debris.

Now is the right time to inspect and detect problems so they can be addressed before bigger problems develop. For more information, please contact your MMA Risk Management Services Loss Control Consultant. ■



Sewer Backups – Don't Step into a Mess

When a sewer backup occurs, homeowners often look to the municipality or sewer district for help with cleaning up the mess. For many folks it seems almost impossible to imagine that a backup might not be the responsibility of their service provider. Furthermore, it may be



tempting for a municipal sewer department or a sewer district to pay small losses as a gesture of good will, even when they know the loss is not the result of their negligence. However, it is never a good idea to pay losses for which you are not liable. Doing so only creates an expectation by the public you serve that all sewer backups they may suffer will be paid by your entity. When the large loss occurs for which you are not negligent, and you decide it is too expensive to make the good will gesture to pay the loss, you can imagine how your reputation will be damaged. You may well find yourself the target of a lawsuit by an angry customer. Municipal or sewer district employees or representatives should never tell a property owner that the municipality or the district will “take care of” damages incurred from a sewer backup.

The governing state sewer statute Title 30-A §3403 states:

“After a public drain has been constructed and any person has paid for connecting with it, the municipality shall maintain and keep it in repair to afford sufficient and suitable flow for all drainage entitled to pass through it, but its course may be altered or other sufficient and suitable drains may be substituted in its place. If the municipality does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the municipality for damages sustained by the municipality’s neglect”.

Therefore, a municipal sewer depart-

ment or sewer district with a regular, annual sewer line maintenance program in effect (that is being carried out and documented) may be found exempt when a sewer backup claim is presented. If the line has been maintained and an unforeseen event such as a flushed towel or a heavy rainstorm or flood causes the back up, then there is no negligence and hence no legal obligation to pay for the claim. One must remember that Pool coverage or commercial insurance coverage is not intended to replace the necessary expenditures for regular maintenance.

Due to the potential of a costly claim, it is important to develop a regularly scheduled maintenance and inspection program for your sewer system. When determining a schedule, remember that in the event of a sanitary sewer backup, you will be liable if you are found negligent if reasonable maintenance and documentation of that maintenance has not been done. Unfortunately, no definition of “reasonable maintenance” exists in State, Federal or case law. Since the statute and the Courts have not defined what constitutes reasonable maintenance, the Pool’s legal advisors have recommended the cleaning and inspection of every line at least once a year. This action would include pump systems that move the sewage as well. An entity that fails to properly maintain its sewer lines and public connections is running the risk of paying for claims under the statute. We understand that cleaning every line at least once a year may not be possible for some entities to accomplish. However, a yearly documented inspection of the line for suitable flow may constitute reasonable maintenance. Please keep in mind that if you are aware of a problem line or a sanitary sewer component that needs more frequent servicing, you should modify your maintenance

schedule to allow for more inspections. Once there is knowledge of a need for increased maintenance, it is unlikely to be considered reasonable if that need goes ignored.

Whether a municipal sewer department or sewer district is provided coverage by the Maine Municipal Association Property & Casualty Pool or a commercial insurance company, the only amounts that should be paid for sewer backup claims are those for which the entity is legally liable. Sewer backups can be the result of many different events and causes. It is important to report all claims to MMA or your commercial insurance company and allow them to investigate the circumstances of the loss, determine whether or not there was negligence on the part of your entity, and to properly administer the loss.

If you would like assistance in developing a line maintenance program or have questions with regards to proper claims handling procedures, please contact us and we will be happy to assist you. ■

What to do if there is a sewer backup claim:

Document:

- What you observed
- What was said to you and by you
- Extent of the damages
- Report the claim to your insurer

Physical Evidence:

- Preserve all evidence
- Take photographs
- Write down items impacted by the loss

Do:

- Be courteous
- Be compassionate
- Be concerned
- Provide insurance contact information

Don't:

- Admit fault
- Say: “We will take care of this”
- Promise to pay
- Offer to clean their property