

THE Reciprocal

Introducing....



A new look! A new logo! Same great service! We're pleased to introduce our new corporate image that will better reflect MEARIE's overall diversification goals.

Since its inception, the reciprocal has always been known as the Municipal Electric Association Reciprocal Insurance Exchange. In the future, we will now be known simply as The MEARIE Group.

The MEARIE name represents cooperative effort, strength, stability and endurance to survive – even in the toughest times. The brand name MEARIE is already well positioned to enter new markets and is well known throughout the industry.

The addition of "Group" to the MEARIE name positions us to be ready for future opportunities as we diversify and expand our operation. The MEARIE Group represents the corporate entities of both MEARIE and MEARIE Management Inc.

Like you, we too have changed, taking an optimistic and practical look at the future. Our new image incorporates the essence of MEARIE – dynamic, evolving, aggressive, bold, innovative and dependable!

**The MEARIE Group –
Insurance, Risk Management
& Financial Solutions!**

Property Insurance Program

As you may be aware, The MEARIE Group is in the process of developing a Property Insurance Program for all its members.

We would like to thank those members who completed the Property, Boiler & Machinery and Crime Survey back in March 2001. We have compiled the information and responded to those members that participated in the survey with an analysis of our findings. In some instances, we have requested additional underwriting information to allow us to complete the necessary stages prior to product launch.

If your utility has not yet responded to the survey but would like to contribute, the survey can be found on the MEARIE web site under Products and Services at www.mearie.ca. Your input would be greatly appreciated. Stay tuned for more information on this product!

Water Heater Rentals: *Risk Control Measures*

The nature of the beast is such that no one can determine the life expectancy of a tank because each tank is subject to different usage and when a tank leaks there are circumstances beyond the control of the utility that impact on the damages that can be incurred. A few risk control measures could include the following: (Each utility should select method(s) based on their organization's objectives.)

1) Rental Agreements

A utility could consider having all customers enter into a written water heater rental agreement. These agreements should be designed to contain "waiver of responsibility" clauses which would contractually transfer the risk of liability for damages and injuries from the utility to the customer. It is highly recommended that every rental heater be installed only after a written agreement has been signed. A copy of the agreement with the liability waiver clause included should be given to every customer. It should also advise the customer to contact the utility for servicing if they have any concerns regarding the con-

dition of the heater. These contracts should be retained for as long as the tank is rented.

2) Placement of Tank Criteria

The installation process should emphasize selection of the best possible placement of water heater rental units to minimize the chance of damages occurring due to rupture, leakage, etc. For example, installers should be instructed on a periodic basis to en-

continued on page 2

In this Issue...

Ontario Court Updates

Q&A: Telephone Systems

How to Use This Publication

The Reciprocal is for information purposes only, intended for the benefit of MEARIE members. Any information provided by *The Reciprocal* shall not represent confirmation of coverage for specific circumstances, incidents and claims. Individual cases of coverage interpretation are dealt with external to this publication and shall be solely determined by MEARIE policy wordings. Members wishing assistance on specific matters are invited to consult with MEARIE staff directly. (E. & O.E.)

Water Heaters

continued from page 1

sure that water heater units be placed only:

- a) in close proximity to drains;
- b) where a proper slope to drains exists;
- c) if nearby flooring is uncovered;
- d) if the unit is separated from customers' contents; and
- e) on lowest floor of building.

Further, no tank should be installed in an area that does not access a floor drain (such as residences in apartment blocks or second-floor locations). The installation contractors should be informed of this in writing. They should also make sure that basement locations have a clear access to the drain at the time of installation.

In addition, each rented tank should also have a sticker put on it before installation. The sticker should read something like:

This water heater is owned by ABC Hydro. As described in the Rental Agreement, ABC Hydro is not liable for damages to a customer's home or contents should this rental water heater develop a leak. It is advisable to locate water heaters near an uncovered floor drain.

For service call (xxx) xxx- xxxx

After normal business hours call (xxx)xxx- xxxx

3) Transfer of Risk to Independent Contractor

In the event that a utility organization utilizes independent contractors for the installation, repair or removal of water heaters, the utility should ensure that each contractor carries liability insurance.

This insurance should be in an adequate amount (minimum \$2,000,000) and should cover not only the contractor, but also the utility with respect to its risks associated with the contractor's participation in the water heater rental program.

4) Tune-Up Program

Customers typically expect their water heaters to perform as promised without any threat to personal safety or property. To minimize the risk of liability claims that may result from normal deterioration of these units,

the utility could elect to monitor the conditions of water heater units in service as they approach a threshold age, through either:

- a) a systematic, ongoing water heater tune-up program; or
- b) an "as problems are reported" basis.

To determine whether or not to proceed with a "tune-up" program, a utility should take into consideration the cost associated with implementing a more systematic "tune-up" program versus the cost to service customers on an "as problems are reported" basis.

MEARIE reminds you that even a regular monitoring program will not necessarily detect faulty units, especially faults in newer units, or even faulty installations.

5) Lease to Own Program

Another option a utility may consider is a "lease to own" program for water heaters. This, undoubtedly, may be a favourable option to consider. However, the utility continues to bear the burden for customer damages until the water heater ownership is actually transferred to the customer. Any such agreement must be clear in this respect. To the extent that the utility maintains even the slightest obligation to service or remove the water heater units (even on an "as required" basis), some element of liability risk continues to rest with the utility.

Leasing of units under such a program does not guarantee removal of the utility's exposure to liability for customer damages during the lease period. In addition, the utility might also compound its exposure should it install units in residences that clearly have problems. From an exposure standpoint, those residences with problems could be considered even more strongly than just "potential exposure" candidates. In other words, this approach has the poten-

tial to backfire against the utility if it is used simply as a substitute for detecting or removing physical hazards within customers' residences.

Should the utility become aware of physical problems in customers' residences, perhaps the best measure that can be taken to control the risk of liability claims is to ensure detected problems are corrected prior to installation of water heater units.

Preferably, the utility could adopt a "sell only" water heater program and cease the practice of renting or leasing units to customers. This would ensure that possession is transferred immediately upon installation and that the customer has accepted all risks associated with the unit's operation. Any other technique will likely expose the utility to a greater chance of liability claims as even the best-intended waivers or hold harmless clauses contained within rental or lease agreements are susceptible to being overturned when applied to actual court cases.

6) Discontinue Water Heater Rental Program

This would entail either:

- a) removing water heater units from all customers' homes; or
- b) allowing customers to purchase units outright.

In the latter event, it is imperative that written evidence of the property transfer is received. This type of document could also contain a clause that releases the utility from all risk subsequent to the transfer.

Discontinuation of your water heater rental program does not, however, entirely remove the exposure to claims. For example, the actual process of removing water heaters would be a gradual one. During this time, claims could continue to arise throughout the removal process. Additionally, the actual removal of water heaters from customers' homes may result in damages to the property of customers.

The comments expressed by MEARIE herein, attempt to focus on the ways that utilities might consider to control liability risks associated with the business of water heater rentals. By identifying risks and providing optional approaches, MEARIE is in no way recommending or imposing the implementation of any control measures by the utility nor does MEARIE assume any responsibility for claims, actions or suits that may arise against the utility. In the event a utility is considering a new business venture it is a requirement that MEARIE be contacted before finalizing the business in order to confirm coverage and properly assess the liability responsibility with respect to insurance requirements and coverages.

Small Claims Court Limit

Effective April 2, 2001 the Attorney General increased the Small Claims Court limit from \$6000 to \$10,000.

The Small Claims Court provides a forum where litigants can make or defend claims quickly, simply and inexpensively. The necessary forms can be downloaded from the Internet and litigants can present their own cases without legal representation.

Although not a legal requirement, MEARIE continues to refer all Small Claims Court matters to its counsel for handling. This ensures that our members get the best possible results.

When you are served with a Small Claims Court action, you will note

that the Court has imposed a 20-day time limit for the filing of a Statement of Defence. The court will automatically note a party in default if the matter is not responded to within this imposed time limit. Once a party is noted in default, that party is at risk of having a judgement entered against them without notice and without any opportunity to appeal.

We ask that our members continue to **immediately refer to us any Small Claims Court matters that are covered by the MEARIE policy**, along with the pertinent facts relating to the claim. This will enable us to properly respond on your behalf within the prescribed time period.

Civil Case Management and Mandatory Mediation

In an effort to streamline the civil justice system, thus reducing unnecessary delays and costs while facilitating early and fair settlements, the Government of Ontario has implemented a Civil Case Management process in Toronto courts that includes a Mandatory Mediation component.

Case Management in Ontario provides for court-imposed time guidelines for both Simplified Rules cases (claims for damages from \$10,001 to \$25,000) and Standard Track claims (those in excess of \$25,000).

- Upon the filing of a Defence, the proceeding is assigned to Case Management Teams consisting of Case Management Judges, Case Management Masters and Court Services staff.

- A Mandatory Mediation must then take place within 90 days; however, this can be postponed upon agreement for a further 60 days in Standard Track cases.

- If the matter is not settled at the mediation stage, the required steps in the litigation process (Affidavit of Documents, Examinations for Discovery, Motions, Experts' Reports) must be attended to almost immediately as they must be completed within 240 days of the initial filing of the defence.

- Within the 240 days of the filing of the defence, the matter must

proceed to a Settlement Conference.

- If the matter is not resolved at the Settlement Conference a trial date will be set.

Clearly this process will speed up the litigation process. Counsel, acting on behalf of MEARIE and its members, will be challenged to obtain all necessary investigative documentation at an early stage to be properly prepared to respond to the procedural guidelines.

MEARIE is an active participant in the Case Management process, as the plaintiff and a representative of the defendant, usually the defendant's insurer, must attend the mediation session with sufficient authority to settle the case.

This active participation by all parties to the litigation, at an early stage in the litigation process, enables the identification of key issues of the suit and can facilitate rapid settlements. The mediators typically remind all parties of the consequences of failed mediations, in terms of future costs, in their efforts to promote a rapid resolution to the matter. While not all matters can be resolved at such an early stage, particularly those involving serious injuries or significant damage amounts, it is anticipated that many of the more routine cases will be settled at the mediation or shortly thereafter.

Limitations Act

The Limitations Act, 2000, received its first reading in the Ontario legislature in December 2000. If passed in its present form, it will impose a two-year limitation period for most civil proceedings, and an ultimate 15-year limitation period for most civil and criminal proceedings.

Environmental claims, however, will not be subject to the 15-year limitation. This means that if an environmental problem is discovered over 15 years after it was caused, you will still be able to bring an action within two years of first becoming aware of it.

National Pollutant Release Inventory On-line

Environment Canada has put the National Pollutant Release Inventory (NPRI) database on-line, allowing the public to access information on the pollutants released in their communities. This is yet another sign that, in this age of ever-increasing public awareness, organizations must recognize and continually improve upon their community relations and public accountability. The database can be accessed at www.ec.gc.ca/pdb/npri.

On-line Certificates of Insurance –

only a "click" away!

Simply visit www.mearie.ca and click on Certificates of Insurance. To confirm log-in names and passwords, please call Magdalena Nagy at (416) 484-5355.

The on-line request for Certificates of Insurance is efficient and hassle-free. In most situations, requests are completed within 24 hours!

In the Know: MEARIE Answers Your Questions

This question-and-answer column is intended to provide subscribers with the answers to commonly asked questions regarding risk management or coverage issues. The responses provided in this article are for information purposes only, and are not intended to represent MEARIE's insurance coverage position. MEARIE assumes no responsibility for claims incurred by member utilities that arise out of their decisions to either apply or reject, in any form, the responses provided herein.

Q Our utility owns the poles to which a telecommunications utility's systems are attached. From time to time, we have installed separate pole anchors to support the equipment belonging to the other utility. This has been done only by request and not as a standard assignment under the joint use agreement. Should we continue this practice, and if so, how can we best control any liability implications?

A If a utility has installed separate anchors for other parties (i.e. telecommunications utilities) then the utility could be vulnerable to liabilities that are the result of the electric utility's improper or negligent installation of these anchors.

Ideally, if it elects to continue installing anchors to property belonging to other parties, the electric utility should aim to be responsible for no more than the damages or injuries it causes to third parties **during the anchor installation process**. The utility should aim to exonerate itself for any legal responsibility once the job is complete. The utility must bear in mind that it is only applying its equipment and manpower to install the anchors, and theoretically it should be doing so within the guidelines and specifications set by the telecommunications utilities with respect to proper installation. These specifications should be established with full consideration for the safety of anyone who may venture near these anchors.

To shift the burden to the telecommunications utilities, your utility could stipulate, in the joint use agreement, that the other utility (as the owner of the anchors) shall be responsible for supervising, inspecting and approving the installation work. The electric utility would then be seen as a "contractor" to the other utility and operating according to their standards and specifications.

Under this kind of arrangement, the electric utility should also ensure that it is **held harmless** for the other utilities' legal responsibilities. This would serve to shift a considerable burden of responsibility back to the telecommunications utilities, especially for any third-party injuries or damages, which might occur after the anchors are in place. It is especially important that the electric utility avoids assuming responsibility for the upkeep and safety of the anchors.

The more extensively that utilities insist upon these kinds of terms and conditions in written agreements, the better equipped utilities will be to assess the legal liabilities to which they may be exposed. This response applies not just to anchor installations but to other situations where electric utilities perform work on equipment belonging to another party.

Q Our utility is currently involved in tendering out for a new telephone system and services. We are wondering if we need to include any risk management factors in the decision-making process, in order to avoid future liabilities attributable to making the wrong purchase decision. Can MEARIE please comment on this?

A Since a utility's telephone system is the most vital link with the public and emergency services during an emergency situation, one of the most important factors to be considered in the selection decision is the existence of back-up provisions.

MEARIE is unable to comment on liability case jurisprudence associated with telephone system failures and incompetencies; however, as a life-line to your utility's vital service, it is a natural conclusion that the risk of claims can be a direct consequence of the quality of your telephone system. Thus, your utility should realistically weigh the potential costs of third-par-

ty claims for damages against it that would arise if your telephone system fails, versus the incremental costs of implementing a back-up system that virtually eliminates the downside effect of failures. If the expected cost of risk for liability claims exceeds investment costs associated with the back-up support (made up of one-time start-up costs plus ongoing servicing), then the decision becomes much more obvious.

Practical methods for determining the expected cost of claims associated with telephone system problems may vary, but one example is as follows:

- Look at the possible costs of customer complaints and claims following a system failure (of average length) that your utility has experienced in any single previous year; and
- Multiply this by the probability of future system failures based on the average number of previous system problems/failures per year for the existing system.

Any risk analysis performed in the tendering and selection process will likely support the degree of sophistication required from your new system.



Chair
Pauline Storks

Vice-Chair
Dave Sinclair

CEO/Attorney-in-Fact
Charlie C. Macaluso

The Reciprocal is published by The MEARIE Group for its members – some 100 municipal electric utilities.

For further information or material submission, please contact the Executive Editor at 20 Eglinton Avenue West, P.O. Box 2004, Suite 500, Toronto, Ontario M4R 1K8. Telephone: (416) 483-7739; WATS: 1-800-668-9979; Fax: (416) 483-9039; E-mail: mearie@mearie.ca

Executive Editor
Andrea Greto

Editor
Sheree Bond