

## TREE CLAIMS AND DAMAGES

Trees encroaching on public sidewalks, impeding vehicular traffic or interfering with visibility, are frequently governed by local ordinances in North Dakota's larger cities. In smaller towns, there is often no governing ordinance so these problems are responded to in a common-sense fashion. The dilemma is that not everyone agrees on the good judgment solution when trees or their branches are causing difficulty.

Trees located in boulevards are owned and controlled by the municipality, even if the trees are wholly or partially paid for by the adjacent property owner. If it is determined that these trees or their branches are creating an unsafe condition, the city has authority to trim or remove them entirely.

If trees on privately owned premises are found to be dangerous or unsafe, or otherwise constitute a hazard, the trees can be declared a public nuisance and the city can cause the nuisance to be abated. Typically, the municipality will order the property owner to address the hazard and the owner will be provided with an opportunity to remove or trim the tree. Any person who fails to comply with the order is guilty of an ordinance violation. Ultimately, if the landowner does not comply with the order, the city can act on its own to abate the nuisance and will require the owner to pay the bill or assess against the property any costs incurred by the city to get the job done.

A recent claim made against an NDIRF member municipality involved the city trimming several 30 to 40 foot spruce trees that were in the boulevard and assumed to be city-owned. Tree branches were interfering with traffic, especially in the case of larger

vehicles. City personnel went a little overboard by trimming tree branches up about 15 feet from the base. As they were being trimmed, the property owner questioned the city's authority to work on the trees. A city employee assured the complaining resident that the city had authority and continued trimming operations. Subsequently, it was determined

**"...if the landowner does not comply, the city can abate the nuisance and require the owner to pay the bill or assess the cost against the property..."**

the trees were not located in the boulevard and were not the property of the city.

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### INSIDE ...

**Financial Insight  
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Video Library**

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The property owner retained an attorney and sued the municipality for treble damages under N.D.C.C. §32-03-30, alleging the trees were completely destroyed by the city's trimming. This section of the North Dakota Century Code addresses wrongful damage to timber, including the possibility of a plaintiff collecting three times the sum of any actual damages. Legal counsel retained by NDIRF to defend the municipality argued that the "three times" portion of the law did not apply, given the circumstances of the claim. The dispute was ultimately negotiated and settled without the necessity of discovery or trial. This result was appropriate, in our estimation, under the particular facts of the claim.

The moral of the story is to check your local ordinances before abating a tree nuisance and make sure to comply with the law. As the previously discussed claim suggests, before you trim or remove, be positive you know who owns the tree. ■

## RISK SERVICES



The NDIRF is pleased to announce we have placed our video library on the NDIRF web site. This allows us to provide you with a current listing of our training videos. All videos are in VHS format.

The video library is accessed by clicking on "Tools" under the NDIRF banner. This will display the video library option among the selections option displayed on the left. Or, click on the video library selection under "What's New" on the NDIRF Welcome page.

The 80 videos we currently have available are separated into seven categories to simplify your search for the appropriate training video. These categories are:

- Accidents & Accident Prevention,
- Buildings & Grounds,
- Miscellaneous,
- Recreation & Parks,
- Regulatory,
- Risk Management and
- Road Maintenance & Signing.



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## RISK SERVICES

Click on the category of interest. You will be provided a list of the video titles in that category including the year produced, the production company, the run time and a short description of the program.

To have us send you a video(s), click the "Order" check box located under the title you'd like to receive. You can order videos from more than one category by clicking the "Continue Ordering" button at the bottom of the page. When you have finished ordering, click "Check Out" located at the bottom of the page. Fill in the mailing and membership information requested and click send. It's that simple (or complicated, depending on your point of view).

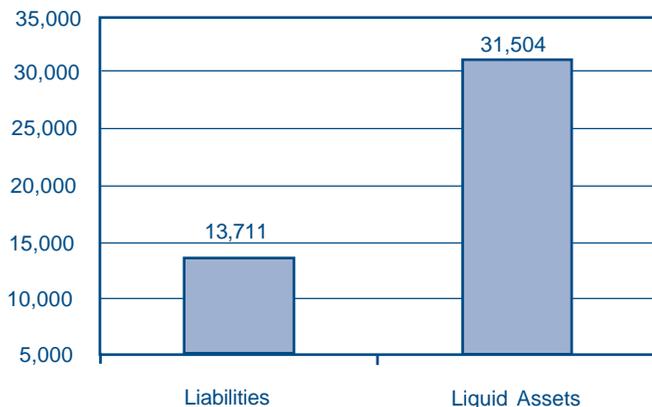
We have reviewed all videos contained in the library to ensure they are relevant and not stylistically outdated. These videos should keep your viewers attention and provide a valuable learning experience.

If you have any questions on this process, contact Doug Griffin, Mark Verke or Ross Warner. ■

## FINANCIAL INSIGHTS

### Liabilities to Liquid Assets Ratio (000 omitted) As of June 30, 2003

Ratio= 44%



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities by liquid assets (cash and marketable investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF is in a very strong position, with liquid assets more than twice its liabilities. ■

## FROM THE CEO

The United States Congress is in the process this year of addressing limited reform on the subject of class-action lawsuits. A bill has passed the House of Representatives and companion legislation will soon be brought to a vote in the Senate. None too much and none too soon.

Many of us have been pulled along for the ride as participants in class actions about which we knew little or nothing and from which we received the same. That's probably a fair outcome for unwitting plaintiffs but it is expensive for someone - ultimately, all of us. Perception and (too often) reality is that only the lawyers who file a class action have a significant financial stake in the outcome. We are ill-served by the cynicism this encourages regarding our judicial system and public institutions in general.

Class actions are a legitimate legal tool intended to address real problems but the concept has frequently been hijacked and applied to claims of dubious merit for purposes of leveraging settlement. To the extent the modest reform currently proposed becomes law, it will be a good start. ■

## Meet Your Board



Corene Vaughn joined the NDIRF Board of Directors in May, 2003 upon her election by the Fund's county members during the 2003 Annual Meeting.

Corene is a lifelong resident of North Dakota, having been raised in Pembina County. She is presently a Pembina County commissioner and is the immediate past president of the North Dakota County Commissioner's Association. Corene has been active in area and community work, as well, now serving as chairperson of the Red River Regional Council and as a volunteer on several community and church committees.

The number 5 has played a prominent role in Corene's life as she and her husband, Arthur, raised 5 children (now grown) on their 5<sup>th</sup> generation family farm near Cavalier, ND and are looking forward to harvesting their 50<sup>th</sup> crop of sugar beets this fall. Corene's hobbies include reading, quilting and gardening, as time allows.

When asked about her vision for the NDIRF, Corene expressed that it should continue to grow and provide for the changing needs of its members at an affordable cost. Her interest in continuing education shows when she described an advantage of the NDIRF as having a membership small enough to be known by the company, making training efforts easier. ■

## Mark Your CALENDAR

- Sept  
10: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck  
16-18: ND Recreation and Parks Association  
Annual Conference,  
Seven Seas Hotel, Mandan  
18-20: ND League of Cities  
Annual Conference,  
Ramada Inn & Holiday Inn,  
Grand Forks
- Oct  
5-7: ND Association of Counties  
Annual Training Conference & Expo  
Ramkota, Bismarck  
30-Nov 1: ND School Board Association  
Annual Convention,  
Ramkota Inn, Bismarck

## North Dakota Insurance Reserve Fund Board of Directors

Fred Bott, Devils Lake    Hjalmer Carlson, Minot    Robert Frantsvog, Minot    Burdell Johnson, Tuttle    Mark A. Johnson, Bismarck  
Rod Landblom, Dickinson    Steve Neu, Bismarck    Connie Sprynczynatyk, Bismarck    Corene Vaughn, Cavalier

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