

PARTICIPATOR

August 2005

WATER, WATER (nearly) EVERYWHERE...

In view of the radically wet weather pattern that has emerged over much of North Dakota in the past couple of months, now might be a good time to revisit some lessons we all learned the hard way in 1997 and 1998.

Experience in those two years, where NDIRF member loss ratios were nearly double the average, taught us that excess water can cause more than widespread crop losses, property damage and added infrastructure repair costs – it can generate injury, loss of life and resulting claims against NDIRF members as well.

The most serious weather-related claims in 1997 and 1998 typically resulted from road, street or bridge washout conditions. In the years since, NDIRF has spent considerable time and resources engaging members with road or street maintenance responsibilities in discussion on how best to avoid these problems in the future. We certainly can't control the weather, but we can influence its results by being extra-attentive to inspection, proper signing and repair of damaged roadways or public works infrastructure.

Working together, we may be able to keep a difficult situation from getting worse. ■

RISK SERVICES

A LITTLE LOSS INFORMATION

From 1991 to 2005 our members have damaged vehicles by hitting numerous types of animals. Included were:

-  393 deer causing damage of \$630,465
-  53 pheasants causing damage of \$13,729
-  36 birds causing damage of \$12,109
-  10 rabbits causing damage of \$5,676
-  9 cattle causing damage of \$26,364
-  5 raccoons causing damage of \$4,822
-  4 partridge causing damage of \$820
-  4 dogs causing damage of \$3,600
-  3 moose causing damage of \$10,789
-  2 buffalo causing damage of \$21,569

-  1 antelope causing damage of \$1,129
-  1 turkey causing damage of \$398

INSIDE ...

**Financial Insight
From the CEO
Guard Citizens' Assets**

NDIRF

RISK SERVICES

GUARD YOUR CITIZENS' ASSETS

Many members do not guard our citizens' assets from liability to the fullest extent possible. Even though the coverage the NDIRF provides is very broad, transfer of liability to other parties should be a priority when the opportunity presents itself. Remember, the lower the NDIRF's losses the greater the possible annual conferment.

During the summer season, we receive numerous inquiries on liability for holiday celebrations, school reunions, centennial celebrations, fairs, music festivals and other special events and provide input on how best to handle the exposures presented. To lessen activity against your NDIRF liability coverage, thus keeping your potential conferment at a maximum, the following steps can be of great assistance:

If your entity is the event organizer:

- Have all vendors hold your entity harmless, and add your entity as an additional insured.
- Have your volunteers covered by workers compensation.
- If competitive events are being held, require each participant to register. Make sure the registration includes a waiver the participant or their parent must sign.
- Make sure access is available to disabled individuals.
- Have emergency medical services available on site.
- Don't indemnify any entity providing equipment or services.
- Make sure your premises are in top condition.
- Have a plan for protection of the crowd in the event of inclement weather.
- If you hire a band or other entertainment, read the agreement closely.
- Amusement Rides (N.D.C.C. 53-05.1-02) require inspection and proof of insurance (\$500,000 per person; \$1,000,000 annual aggregate) be filed with your entity.

If your premises are being used by others:

- ▣ Make sure the premises you are providing is in good condition.
- ▣ Have the organizer of the event indemnify, hold your entity harmless, and add your entity as an additional insured on the organizer's liability policy for any liability your entity incurs as a result of the event, including your sole liability. Require specified minimum coverage limits and a copy of the additional insured endorsement, along with a certificate of insurance.
- ▣ If alcohol is being served, require the same indemnification, hold harmless and additional insured status on the liquor liability (dram shop liability) of the individual or entity providing the alcohol. If they don't carry liquor liability coverage, it is suggested alcohol not be served. Require a copy of the additional insured endorsement and a certificate of insurance.
- ▣ If the organizer allows other vendors on your premises, make sure your entity is indemnified and held harmless by the vendors and added as an additional insured on their liability policies. Require a copy of the additional insured endorsement and a certificate of insurance.
- ▣ If competitive events are being held requiring participant to register, make sure the waivers the participant or their parent signs includes a waiver in favor of your entity. Require your approval of the waiver form.

READ ALL AGREEMENTS CLOSELY!

ASK QUESTIONS!

Certainly, these suggested requirements can be negotiated with promoters and vendors. However, each lessening of the requirements increases your liability coverage's exposure to loss.

NO ONE GAINS BY AN INJURY, BUT WE ALL CAN LOSE!

'JUST THE FACTS, MA'AM': DOCUMENTING FOR JUDGE AND JURY, PART III

This is part 3 of a 3-part series that provides information on how to make a disciplinary memorandum that effectively conveys your message in a way that won't come back to haunt you in court.

Exhibit quality

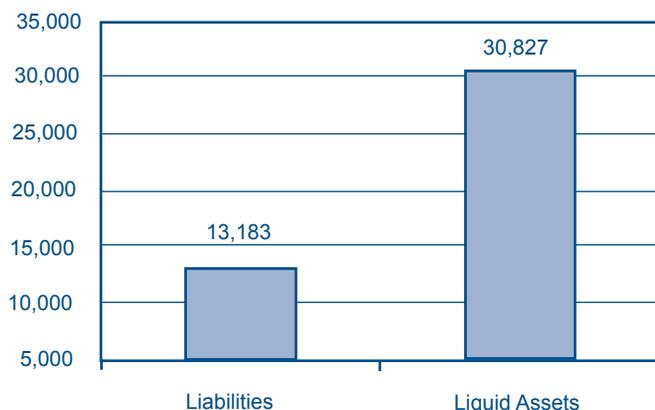
Every disciplinary memo should be drafted with the understanding that it could be--perhaps even *will* be--used as an exhibit in a legal proceeding, whether it's an unemployment compensation hearing, a workers' compensation hearing, arbitration, an Equal Employment Opportunity Commission (EEOC) investigation, or a federal civil jury trial. That means if it's blown up to a three-by-five-foot poster with your name at the bottom, you'll still be able to stand by it as a fair, accurate, and comprehensive statement of the discipline meted out.

Disciplinary memos shouldn't contain poorly chosen words, incomplete sentences, obvious grammatical or spelling errors, or any statement that requires you to testify under oath, "I don't know why I wrote that." A write-up should be carefully preserved and given to the employee, with his signature or refusal to sign it confirmed in writing on the document itself. If he refuses to sign it, you should note when it was presented to him and include a statement reflecting his refusal to acknowledge it with his signature.

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FINANCIAL INSIGHTS

Liabilities to Liquid Assets Ratio (000 omitted) As of June 30, 2005 Ratio= 43%



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, with a 43% ratio, is in a very strong position, with liquid assets more than twice as large as liabilities. ■

FROM THE CEO

Rarely has the United States Supreme Court provided such a concentrated batch of reading material for local governments as its most recently concluded term. While these decisions are not candy for the intellect on the order of your typical summer beach novel, they may have far broader impact on our lives.

Whether your interests run to the duty of law enforcement to act on behalf of specific persons (*Castle Rock v. Gonzales*); posting of the Ten Commandments or other items of a religious / historic nature (*McCreary County v. American Civil Liberties Union of Kentucky* and *Van Orden v. Perry*); or use of eminent domain power for economic development purposes (*Kelo v. New London*); the cited Court opinions are important new information.

Consultation with your attorney is always a wise move on matters of policy dealing with the subject areas of these most recent Court opinions, but even more imperative now that the rules have been re-interpreted. ■

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'JUST THE FACTS, MA'AM': DOCUMENTING FOR JUDGE AND JURY, PART III

Electronic memos

The rise in the use of electronic memos for creating and saving employment data has brought about new difficulties in employment law. Here are some things to remember:

- ✓ First, keep in mind that there's virtually nothing that can't and won't be produced in litigation unless it's specifically protected by confidentiality rules.
- ✓ All e-mails, electronic memos, and the like are fair game during discovery (the pretrial fact-finding process of civil litigation).
- ✓ You can't assume that just because you prepared a draft memo on your computer (including your home computer) but later refined it, the original drafts won't have to be produced during discovery or in response to an EEOC charge.
- ✓ For now, the best course of action is to produce a hard copy of any disciplinary memo and include it in the employee's file unless you have adopted a totally paperless human resources department. If that's the case, be sure you create and maintain electronic memos with all the same rules for hard copy in mind. Also, ensure that your memos are kept in a static condition that doesn't allow them to be edited once they're final. ■

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C *Mark Your* CALENDAR

Aug 30-

Sept 1: ND Recreation and Parks Association
Annual Conference,
Radisson Hotel, Bismarck

Sept

15: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

22-24: ND League of Cities
Annual Conference,
Holiday Inn, Fargo

Oct

9-11: ND Association of Counties
Annual Conference & Expo
Ramkota Inn, Bismarck

28-29: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

Fred Bott, Devils Lake Steve Cichos, Jamestown 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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