

PARTICIPATOR

February 2007

AGENTS AND CLAIMS

NDIRF's business policy is that claims be reported to the insurance agent servicing your entity. The agent will report the claim to the NDIRF. The NDIRF will then set up the claims file and handle as necessary.

Reporting claims directly to your agent instead of the NDIRF is more efficient for several reasons. First, your agent is paid a commission to service your entity. The compensation contemplates the agent reporting claims to the NDIRF on your behalf. The agent is familiar with the claims reporting procedure/forms and with the types of claim information to be submitted. Another reason is the agent often has a comfortable business relationship with the entity or person reporting the claim, which makes the process of reporting a claim go smoothly.

In certain situations, it may be necessary to report claims directly to the NDIRF. These claims usually involve litigation that may be time sensitive such as a requirement to file a Notice of Appearance or Answer to a Complaint within 20 days after service. Even in those rare circumstances where a claim is first reported to the NDIRF, the NDIRF asks that you subsequently also contact your agent and advise the agent of the claim. The agent can then make its own record that the claim has been submitted.

One final thought. If a potential claim has not actually been made by the claimant, but circumstances suggest that a claim will ultimately be made, the NDIRF encourages the reporting of a claim to your agent. The NDIRF claims staff has the experience to determine if these potential claims have a liability exposure. Early reporting allows us to take immediate action to protect the interests of your entity. ■

IS IT ME? REVISITED

"Is It Me?" Last year a *Participator* article was written on this subject. From questions received in the interim, it has become evident that a revisit of the issue would be opportune. In the article, it was pointed out that "Is it Me?" is a question often heard on radio call-in shows when the caller is finally connected to the show's host. This is also a question that is appropriate for NDIRF members to ask themselves to determine if liability coverage applies.

Before attempting to clarify the persons or entities to whom coverage applies, let's take a look at who is covered under the NDIRF Liability Memorandum of coverage. Coverage is provided for:

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- You (The NDIRF member entity); and
- Your past or present employees, elected or appointed officials and individuals serving as authorized volunteers while acting for you or on your behalf; and
- All commissions, agencies, boards, districts, authorities, or similar entities which operate under your supervision or control.

It is clear that the NDIRF member entity is covered. After that, there is sometimes confusion. First, let's take a look at employees, officials and volunteers.

How is employment status determined? The North Dakota Department of Labor has guidelines to make the determination of an employee vs. an independent contractor. A useful rule of thumb is, if you withhold taxes and pay workforce safety and insurance premiums for an individual who performs work for your entity, they are likely an employee who would typically be provided coverage. A question we have received on occasion is whether an elected official is covered if they are paid to remove snow from the streets? Since an elected city official is precluded by state law from also being a city employee, the official would be acting as an independent contractor and not covered.

What about an individual who provides a service and is paid only for their expenses incurred in providing the service? An example might be an individual blowing snow from sidewalks and then reimbursed the cost of the gas used. This individual would be considered to be a volunteer, if that was the NDIRF member's intent, and provided coverage as such. What if the person was paid \$5.00 an hour for time they spent blowing snow? In that case, the individual would be considered to be an independent contractor (even if the member had a different intent).

We are aware of a situation in which an employee's duties included cutting grass on a tractor with an attached mower deck. In more than one instance, the employee had his son mow grass the employee was supposed to cut. We would not consider the son to be either an employee or authorized volunteer. Therefore, coverage would be provided for only the NDIRF member in the event of injury or damage to others. In this case, the son was not legally old enough to be operating a tractor with a mower attachment for any employer. All in all, this was a bad situation.

Volunteers of another organization providing a service to your entity are not volunteering to you. Therefore, they are not provided NDIRF coverage as volunteers. An example of this situation would be a volunteer to a civic group planting trees on an NDIRF member's premises causing injury to another party. The volunteer would have to look to the civic group for insurance coverage.

The majority of questions we receive involve what is meant by "similar entities which operate under your supervision or control." All questions that may arise on this topic cannot be answered here but we will address some that commonly occur.

First, corporations are not considered to be under the supervision or control of our members and therefore are not subject to NDIRF coverage. They are separate legal entities. This includes nonprofit

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corporations set up to raise funds which are ultimately used to benefit our NDIRF member. Examples of such nonprofits include, among others:

- Booster clubs organized by coaches, teachers or parents
- Nonprofit corporations organized by elected officials
- Nonprofit corporations to which our member provides all operations
- Nonprofit corporations organized by firefighters to raise funds to support a rural fire district or city fire department
- City Chambers of Commerce
- Economic Development Corporations
- Civic Clubs

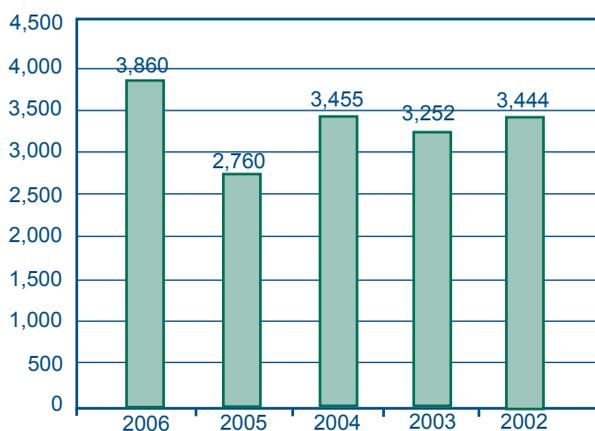
Second, in many cases, the NDIRF is able to provide coverage for nonprofit corporations as an added covered party under a member's coverage. We underwrite the added exposure and make an appropriate additional charge for the coverage requested.

Lastly, we have had coverage questions regarding an official or other employee of an NDIRF member being assigned as part of their duties to serve on the board of a nonprofit corporation. Although this is an assigned duty, the individual's fiduciary obligation is to the corporation when acting in that capacity - they cannot also be acting for or on behalf of the NDIRF member entity. Therefore, no coverage would apply. The corporation should be purchasing insurance coverage to protect its board members or employees. As mentioned, the NDIRF may be able to list the nonprofit as an added covered party for an additional cost.

If there are questions on the information provided, please contact your agent or Ross Warner at the NDIRF office (1-800-421-1988 or 701-224-1988); or via email at ross.warner@ndirf.com. ■

FINANCIAL INSIGHTS

LOSSES PAID (in thousands)



This graph represents losses paid by NDIRF over the past 5 years, including payments made to adjusters and attorneys assisting in the claims settlement process. Since its inception in 1986, NDIRF has paid losses totaling more than \$57.6 million. ■

FROM THE CEO

Each legislative session in North Dakota, it seems there is at least one issue of significant importance to the NDIRF and this year is no different. Senate Bill 2242 would amend the definition of “political subdivision” within the North Dakota political subdivision tort claims act to include “administrative or legal entities responsible for administration of joint powers agreements”.

NDIRF and your various state associations strongly support this amendment for the following reasons: A series of North Dakota Attorney General Opinions have suggested that managing entities of joint powers agreements may not be considered political subdivisions, at least for certain purposes. It has always been the NDIRF's position with regard to coverage of joint powers agreements that they simply accomplish collectively what the participating political subdivisions were otherwise doing individually. We feel that passage of Senate Bill 2242 would remove any ambiguity. Please support Senate Bill 2242 to your state legislators and feel free to contact me if you have any questions. ■

ARE YOU BETTER THAN YOUR WORST BOSS?

One of the best questions a manager can pose for himself or herself is this: "Am I avoiding the behaviors I abhorred of past bosses I have had?" Think about it. Everyone has had at least one terrible boss, it seems. What were your experiences? What feelings did that person's behavior inspire in you?

Now ask yourself honestly whether you've avoided falling into the same traps of your old boss. This exercise can get you in touch with how your workers may be experiencing you.



ON TRUE LEADERSHIP

True leaders don't always want to be the leader of the pack. Instead, true leaders are always working on launching others in life. They actually delight in the success of others. They are not threatened by the forward movement of those they lead. They lift them up and give them a hand. They are proud of people when they advance, and they like having had a small hand in helping someone along the way.

Ralph Nader said it succinctly in these words: "The function of leadership is to produce more leaders, not more followers." ■

Mark Your CALENDAR

February 2007

14: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

April 2007

24: ND League of Cities Regional Meetings,
NE Region, Fordville
25: SE Region, Wahpeton
26: SC Region, Gackle

May 2007

1: NW Region, Williston
2: NC Region, Rugby
3: SW Region, Hazen
10: NDIRF Annual Meeting
Ramkota Inn, Bismarck
10: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

Richard Aberle, Edgeley Fred Bott, Devils Lake Burdell Johnson, Tuttle Mark A. Johnson, Bismarck Shawn Kessel, Wahpeton
Rod Landblom, Dickinson Steve Neu, Bismarck Connie Sprynczynatyk, Bismarck Corene Vaughn, Cavalier

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