

PARTICIPATOR

October 2007

CLAIMS MEDIATION

In a normal year, approximately 1,800 new claims are reported to the NDIRF claims department. Most of these claims have a financial exposure of less than \$10,000 and are usually settled very quickly. Larger claims, while smaller in number, average around 87% of NDIRF's open reserves at any given time. About 25% of the larger claims are in litigation or some type of legal proceeding. It takes longer to settle these larger claims because of disputes regarding negligence and damages. Often, it takes several years to resolve the most serious claims.

When an NDIRF member or covered party is sued, the NDIRF assigns legal counsel. The assigned attorney represents the NDIRF members who are named as defendants. Some of these litigated claims are dismissed as a matter of law, others are defended through trial or resolved during the litigation process. One of the methods of settling disputes during the litigation process is for the parties to agree to resolve their differences through mediation.

Mediation is a process where the parties meet face to face with a mediator, usually an experienced trial attorney. The mediator's function is to promote and facilitate voluntary resolution of the matter. Typically, the mediation starts with the mediator convening all parties to a lawsuit and explaining the mediation process. The plaintiff's and defendant's attorneys are sometimes allowed to make an opening statement. The parties then go to separate rooms and the mediator shuttles back and forth, interacting privately with each group. The plaintiff makes demands and the defendant makes offers through the mediator, all trying to narrow the dollar gap between the demand and offer.

While this practice may seem somewhat elementary, mediation often results in a settlement. It is appropriate only when each party is willing to make a good-faith effort to settle. Sometimes, just the fact that the plaintiff can tell their story at a mediation session and have someone listen to them is helpful. The procedure is confidential so that anything said or done at mediation cannot be used in a subsequent trial. The fees of a mediator are usually paid equally by the parties to a lawsuit.

From NDIRF's perspective, we believe mediation allows the plaintiff to better understand the downside risks of litigation versus settling their claims. The plaintiff's attorney may not have told their client of certain legal obstacles or other issues that the plaintiff may be required to overcome in order to prevail at trial. Mediation provides the NDIRF with an opportunity to point out negatives to the plaintiff's case not previously considered. We do this through the mediator, who will carry the message to the plaintiff. This often results in the plaintiff more reasonably evaluating their own case.

Litigation can be a risky, very expensive process that is emotionally exhausting for both plaintiffs and defendants. Studies show that a high percentage of mediated cases settle. When appropriate, the NDIRF uses mediation as a cost effective tool to resolve litigated disputes. ■

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NDIRF

RISK SERVICES

Broadened Coverage Approved for NDIRF Members

Effective July 1, 2007, the NDIRF received approval from the North Dakota Insurance Commissioner to provide its membership with broadened liability, automobile and public assets coverage. These changes are in effect and provide significant enhancement to our members' current coverage.

We have received a number of questions on the impact of these coverage changes. This article is provided to detail the changes and provide an indication of actions our members may need to take to ensure coverage is not duplicated.

Liability Coverage Memorandum:

1. The coverage provided for damage to property taken for use in an emergency situation is expanded. In the past, coverage was only provided if our member took actual physical control of the property. Now, coverage is provided for damage to equipment of which the operation is being managed by our member. **For example**, if a farmer is using his tractor to plow a fire break to assist a fire district and the tractor is damaged, our coverage will respond to make repairs to or replace the tractor.
2. Medical payments coverage is expanded to now afford up to \$1,000 coverage for injury to emergency personnel while responding to an emergency. This coverage is excess of other collectible health insurance, workforce safety and insurance, accident insurance or similar coverage or insurance. The intent is to provide a limited coverage for emergency personnel. It is meant to pick up deductibles, co-payments, and other unpaid medical expenses incurred by emergency personnel. Emergency personnel include, but are not limited to, law enforcement, firefighting, and first responder personnel. **This coverage is only afforded to rostered volunteers, employees or officials of a member's organization acting as emergency personnel.**
3. Pollution coverage is increased to \$100,000 from \$25,000.

Automobile Memorandum:

1. The reporting period during which physical damage coverage applies to newly acquired vehicles is increased to 60 days from 30 days.
2. Auto liability coverage is provided on an **excess basis** (after personal auto liability limits have been exhausted) for employees, officials, and volunteers when using their personal vehicles while acting on a member's behalf. **Coverage DOES NOT APPLY if the employee, official, or volunteer does not carry personal auto insurance that meets the North Dakota Financial Responsibility Requirements.**
3. Pollution coverage is increased to \$100,000 from \$25,000.
4. Coverage for physical damage to emergency personnel's personal vehicles while responding to an emergency is increased to \$5,000 from \$2,500. **This coverage is only afforded to rostered volunteers, employees, or officials of a member's organization acting as emergency personnel.**
5. Coverage is broadened for your entity's personal property used in law enforcement vehicles, fire fighting vehicles, and ambulances or other rescue vehicles. Coverage is provided for the normal complement of such equipment or property, installed or portable, that is consistent with such operations. This is a significant broadening of coverage. **For example**, as it applies to a law enforcement vehicle that has physical damage coverage, included is member-owned property such as cameras, radar, alcohol sensor, traffic vest, cassette recorder, tape measure, weapon, spot light, light bar, mobile radio, and AED. This short list of items is not meant to be definitive. Other items that are part of the normal complement would also be included for coverage.

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RISK SERVICES

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A few items (see page 16 of the auto memorandum for details) are not covered under this broadening of coverage. These items should be scheduled for coverage under a Public Assets Memorandum of Coverage. The coverage described is only provided to the extent of the physical damage coverage that applies to the vehicle associated with the equipment. If a vehicle does not have physical damage coverage, personal property in that vehicle can be provided coverage under a Public Assets Memorandum of Coverage.

6. Stated Amount Coverage – Values will increase 1% per quarter for a loss and 4% at coverage renewal. This coverage is provided to assist our members in keeping values as current as possible. Please note, this does not mean your annual review of values should be eliminated.

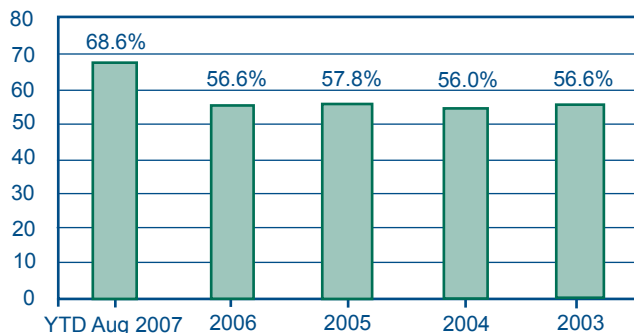
Public Assets – Mobile Equipment and Portable Property Coverage Memorandum:

The coverage provided for personal property (excluding autos) of individual emergency personnel while responding to an emergency is increased to \$10,000 from \$500. **This coverage is only afforded to rostered volunteers, employees, or officials of a member's organization acting as emergency personnel.**

This is a synopsis of the coverage changes. Please review the actual coverage provided by referring to your coverage form. A majority of the NDIRF coverage forms are available on our web site at www.ndirf.com. If you have questions on these changes or how they apply to your current coverage, contact Ross Warner or Elaine Markwart on Liability Memorandum changes; or Brenda Flesness on Auto and Public Assets Memorandum changes. ■

FINANCIAL INSIGHTS

COMBINED RATIO



The operating ratio shown above is the sum of NDIRF's loss and expense ratio less the investment income ratio. The operating ratio is a measure of NDIRF's profitability and is the principal determinant of the Fund's financial solvency and stability. A ratio less than 100% means that the company is profitable and the lower the ratio the more profitable the company. As the graph shows, NDIRF's operations have been financially very successful which has allowed the Fund to make a substantial conferment of benefits to its members each year. ■

FROM THE CEO

Having recently returned from a much-appreciated and enjoyable vacation, I can affirm truth in the old maxim that "travel broadens the mind" (and the posterior if you spend enough air time in coach). This is especially so if you consider mind-broadening to include the recollection of truths previously learned.

In my case, this time, reflections center on savoring the warmth of returning to a good home – meaning a good home in the broader sense of not only house and family but also job, colleagues, friends, community and state. I enjoy a little challenge with my recreation but a couple of weeks of making one's way in a different environment and language (not to mention driving etiquette) has re-tuned my appreciation for the elbow room and rhythm of life we have in North Dakota.

At NDIRF, we frequently observe the difficulties faced by many of North Dakota's political subdivisions in dealing with problems created by distance and a lack of population. After spending time among folks vexed by problems of proximity and overcrowding, I think we've all chosen wisely to live here and I'm grateful to those of you in public service who expend the effort to make our state work so well. ■

MISUSE OF ELECTRONIC MEDIA GROWING

Last year, 31.8 percent of publicly traded companies in the United States investigated a suspected violation of privacy or data protection because of employee misuse of electronic media, according to Mathew Scott (“Worker e-mail and blog misuse seen as growing risk for companies,” on the *Workforce Management* Web site www.workforce.com). In

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a report by Forrester Consulting and Proofpoint, 26 percent of companies surveyed say they saw their businesses affected because sensitive or embarrassing information had been leaked this way. Problems ran the gamut from losing trade secrets to slander and defamation lawsuits, Scott says. Companies estimated that 19 percent of outgoing e-mail contained content that posed legal, financial or regulatory risks. Almost 28 percent of

companies said they had terminated an employee for misusing e-mail. Blogs and message boards were also indicated as being problematic. ■

Mark Your CALENDAR

October

26-27: ND School Board Association Annual Convention, Ramkota Inn, Bismarck

December

6: NDIRF Board of Directors Meeting



North Dakota Insurance Reserve Fund Board of Directors

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