

## WE'RE SUED -- NOW WHAT?

When your entity, employees or elected officials are sued, the process begins with the serving of a Summons and Complaint. The Summons requires you to respond to a Complaint within a specific period of time, usually 20 days. The Complaint alleges the various causes of action, e.g., constitutional violation, police misconduct, hostile work environment or simply a general negligence claim.

If you are served with a lawsuit, **please provide a copy of the Summons and Complaint to your NDIRF agent immediately.** The agent will file a loss report with the NDIRF. If time for answering the Complaint is short, the Complaint should be immediately faxed to the NDIRF so our Claims Department can retain counsel to defend the claim. The attorney we appoint is your attorney and he or she will make sure to file a timely Answer to the Complaint, in order to avoid a default judgment.

What's next? It depends on whether you are sued in state or federal court. This article will focus on state court litigation, as about 80% of lawsuits against NDIRF members are filed in state court.

In North Dakota state court, after answering the Complaint, attorneys for both sides begin the discovery process by exchanging interrogatories. These are formal questions the parties are legally obligated to answer under the Rules of Civil Procedure. They are designed to help each party understand and define the facts and evidence. Interrogatory answers will identify experts that may testify at trial. Examples of experts may include an accident reconstructionist or a physician such as an orthopedic surgeon or neurologist. Documents such as contracts, medical records, wage information, photos, witness statements and other similar evidence are also produced and provided to opposing counsel.

Assuming a smooth exchange of interrogatory questions and production of documents, the parties often take

depositions of various parties or witnesses. Depositions are sworn testimony in the presence of a court reporter. The NDIRF attorney retained for you will depose the person suing (plaintiff) and the plaintiff's attorney will likely depose at least one representative of the NDIRF member, e.g., a county commissioner, a school principal, a city maintenance person or others who may have knowledge of certain facts.

After the discovery of this evidence, your attorney will decide whether to make a Summary Judgment motion to the court, attempting to **dismiss the lawsuit as a matter of law.** Examples of successful Summary Judgment motions that have in the past been made on

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behalf of Fund members include raising immunity defenses that are available to political subdivisions, such as discretionary immunity (installing or not installing a yield sign may be discretionary) or recreational immunity (under certain circumstances, park districts cannot be held liable for injuries on their property even if partially or entirely caused by the park district's negligence). The court **will not dismiss claims when the facts are in dispute** and reasonable minds could come to different conclusions.

If no motions are possible or if they are denied by the court, you will proceed to trial. Typically a jury of nine will listen to the evidence and render a decision. Depending on the type of lawsuit, the trial can last a day or up to several weeks.

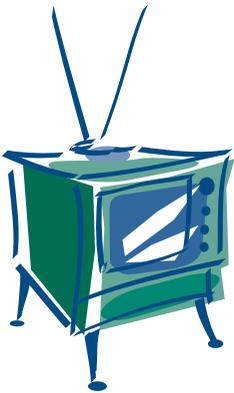
After trial, the losing party has a right to appeal to the North Dakota Supreme Court. If the right

of appeal is exercised, it is usually based on a legal theory, such as improper or incomplete jury instructions or whether certain evidence should or should not have been admitted at trial. The Supreme Court issues its opinion affirming the jury verdict or reversing partially or entirely based upon the law. If a reversal occurs, you may end up trying the same case a second time.

This process is time consuming and expensive, sometimes very expensive. Litigation also involves substantial time commitments by employees and officials of NDIRF members that have been sued. While some litigation cannot be avoided, our best advice is to conduct your business affairs in a manner that renders lawsuits unlikely or puts you in a position where they can be successfully defended. ■

## RISK SERVICES

### NDIRF Video Library



We try to keep our video library pertinent to our members' liability exposures. Toward that end, new videos are added from time to time. The video library can be accessed on the web at <http://www.ndirf.com/tools/video.asp>.

A number of new videos have been purchased recently. Following is a synopsis of these videos:



- ☐ Kitchen Care - Kitchen Care has two segments - Food Handling and Safe Work Practice - essential information that kitchen and dining room workers need to know.
- ☐ Safety Awareness for Seasonal Employees - Discusses a variety of safety hazards and safe practices applicable to seasonal as well as volunteer workers.
- ☐ Managing Sanitary Sewer Overflows - Provides in-depth information regarding prevention, inspection and maintenance to help reduce the frequency and severity of these overflows.
- ☐ Recreation Activity Liability - Video is designed to assist supervisors and managers of recreational facilities in identifying physical and personnel exposures as well as controls to help prevent accidents.
- ☐ Employment Practice Liability - Shows how public officials are often sued for employment practice claims and teaches them how to avoid being sued.

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## RISK SERVICES

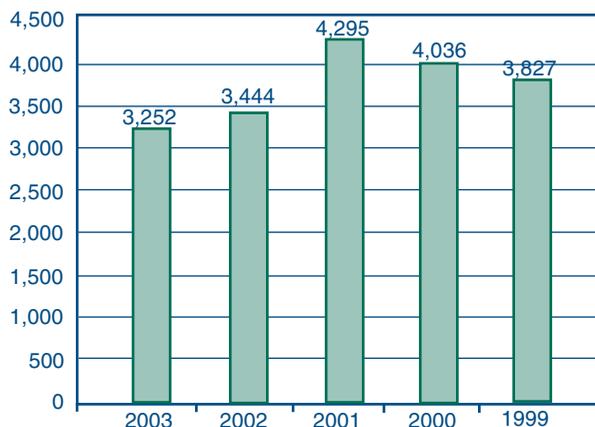
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- ☐ **Zoning and Land Use Issues** - Explains Due Process, Adjudicatory Decisions, Discoverable Testimony and the need to follow an entity's existing land-use regulations. Group home and adult business examples are used to show the consequences to public officials of "targeting" certain projects.
- ☐ **Conducting Public Meetings** - Opening with a meeting that's become a shouting match, this video shows public officials how to avoid lawsuits and maintain control during controversial public meetings.
- ☐ **Employment Practices for School Officials** - Shows how school officials are often sued for employment practice claims and teaches them how to avoid being sued.
- ☐ **Understanding Governmental Liability** - Examines some of the common liability situations that your employees can encounter while providing services and functions.
- ☐ **Volunteers and Liability** - Video will help you to identify, plan and address the various risks of volunteers. It provides useful tips such as appointing a volunteer coordinator, establishing a volunteer management program and evaluating potential safety hazards.
- ☐ **Special Events...Special Liabilities** - Video stresses the importance of pre-event planning. It covers such topics as site safety surveys, crowd control, establishing emergency plans, traffic control, and common liability exposures.

These videos are for your use. They are an essential training tool for your officials and employees. If, after reviewing our web site, you have questions on ordering a video contact Doug Griffin, Mark Verke, or Ross Warner in our office. ■

## 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's loss payments total \$47 million. ■

## FROM THE CEO

I'm sure it comes as little or no surprise to anybody that one of the most popular programs maintained by the NDIRF is our conferment of benefits, which began in 1994 and which we've been able to sustain each year since.

It is, therefore, with great pleasure that we announce the NDIRF Board of Directors has approved a conferment of benefits to Fund members for 2003, to be paid in 2004. The complete NDIRF financial picture for 2003 is not yet in place, pending the annual financial audit and actuarial report, but we know enough at this point to indicate the 2500 - plus conferment checks that'll be sent out in April will total about the same as those received by members last year, or approximately \$3 million.

In these times of uncertain insurance markets, the stability in cost and availability that NDIRF has been able to provide for its membership is especially noticeable. By working together, and staying together, we've been able to achieve something special for local government in North Dakota and the citizens who support it. With your help, we may be able to see even better results in 2004 - let's work toward that goal! ■

## 2004 COMPUTER EQUIPMENT SALE

The NDIRF has used computer equipment for sale on bids.

**Item 1. Gateway Performance M1000 PC;** Pentium III 1.0 GHz Processor; 256 MB RAM; CDRW; 20 GB Hard Drive; Win2000 Operating System; MicroSoft Office XP Professional; internal 250MB zip drive; **DOESN'T INCLUDE:** modem, speakers, monitor

**Item 2. Gateway Performance M1000 PC;** Pentium III 1.0 GHz Processor; 256 MB RAM; CDRW; 20 GB Hard Drive; Win2000 Operating System; MicroSoft Office XP Professional; internal 250MB zip drive; 56K modem; **DOESN'T INCLUDE:** speakers, monitor

**Item 3. Gateway Performance S1300 PC;** Pentium IV 1.3 GHz Processor; 256 MB RAM; CDRW; 20 GB Hard Drive; Win2000 Operating System; MicroSoft Office XP Professional; **DOESN'T INCLUDE:** modem, speakers, monitor

**Item 4. Gateway Performance S1300 PC;** Pentium IV 1.3 GHz Processor; 256 MB RAM; CDRW; 20 GB Hard Drive; Win2000 Operating System; MicroSoft Office XP Professional; **DOESN'T INCLUDE:** modem, speakers, monitor

**Item 5. Gateway Performance 500S PC;** Pentium IV 1.5 GHz Processor; 256 MB RAM; CDRW; 20 GB Hard Drive; WinXP Operating System; MicroSoft Office XP Professional; 56K modem; **DOESN'T INCLUDE:** speakers, monitor

**Item 6. Dell Inspiron 7500 Notebook;** Pentium III 500 Mhz Processor; 128 MB RAM; CDRW; 6.0 GB Hard Drive; Win2000 Operating System; MicroSoft Office 2000 Professional; 56K modem; Docking station

The equipment was in good condition when taken out of service and is sold strictly on an "as-is" basis with no warranty expressed or implied. If you are interested in placing a bid on one or more of the pieces of equipment, please send your offer in a sealed envelope to the following address. The offer should include a return address, contact phone number, the item number, description of desired item and the bid amount.

NDIRF Computer Equipment Bid

Attention: Vance Krebs

PO Box 2258

Bismarck, ND 58502-2258

Bid offers must be **received** before **MARCH 5, 2004**. Successful bidders will be notified by March 8<sup>th</sup> and the equipment must be paid for and picked up from the NDIRF office before **MARCH 19, 2004**. ■

## Mark Your CALENDAR

February 2004

19: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck

April

20: NDLOC NW Regional Meeting,  
Watford City

21: NDLOC SW Regional Meeting, Dodge

22: NDLOC NC Regional Meeting, Riverdale

27: NDLOC SE Regional Meeting, Fargo

28: NDLOC NE Regional Meeting,  
Northwood

29: NDLOC SC Regional Meeting, Carrington

May

6: NDIRF Annual Meeting  
Ramkota Inn, Bismarck

6: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck

## North Dakota Insurance Reserve Fund Board of Directors

Fred Bott, Devils Lake

Hjalmer Carlson, Minot

Robert Frantsovog, Minot

Burdell Johnson, Tuttle

Mark A. Johnson, Bismarck

Rod Landblom, Dickinson

Steve Neu, Bismarck

Connie Sprynczynatyk, Bismarck

Corene Vaughn, Cavalier

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