

# PARTICIPATOR

August 2006

## OFFICIAL V. INDIVIDUAL CAPACITY

*Plaintiffs who litigate claims against political subdivisions often name as defendants “employees” such as mayors, commissioners, council members, sheriffs and auditors. Claims made against these individual employees can be asserted in their official capacity, individual capacity or both.*

A claim made against an individual in their official capacity is the same as suing the political subdivision. For instance, if a county and its sheriff in his official capacity are sued, naming the sheriff as a defendant is duplicative.

Many plaintiff attorneys sue everyone in what is termed the “shotgun” approach. Often, through a lack of understanding of the law, the attorney will sue the political subdivision and an employee in their official capacity, even if they are aware the employee was acting in the scope of employment. In those cases, the NDIRF will request the plaintiff attorney to voluntarily dismiss the employee from the lawsuit, leaving the political subdivision as the only defendant. Plaintiff counsel sometimes will agree to do so. However, if counsel will not voluntarily dismiss the employee, the NDIRF will file a motion with the court and ask the court to dismiss the lawsuit against the employee in their official capacity.

**...There are limited circumstances when an employee can be personally liable within the scope of employment...**

There are limited circumstances when an employee can be personally liable within the scope of employment. This can occur when the employee’s acts or omissions while performing official duties constitute reckless or grossly negligent conduct, or willful or wanton misconduct. If individual defendants are accused

of gross negligence, the plaintiff is entitled to name those individuals as defendants in a lawsuit.

There are other circumstances when individual employees can be sued and be personally responsible for damages. This can occur when the employee is acting outside the scope of employment. For instance, in a claim for sexual harassment alleging improper touching or sexual propositioning, it is possible that a court or jury could find that the conduct causing damage was not within the employee’s scope of employment. In this situation and others like it, the employee can be individually sued. However, the plaintiff has the burden of proof and must prove by

**INSIDE ...**

**Financial Insight  
From the CEO  
Mercury Vapor Lamp**

**NDIRF**

*continued* from Page 1

clear and convincing evidence that the employee was acting outside the scope of employment.

The NDIRF recognizes it can be a discomfoting experience to be named as an individual defendant. Apprehension is a normal response, especially as it relates to the legal process and the uncertain result of litigation. However, as long as the employee is acting within the scope of employment and the employee's conduct is not grossly negligent (as discussed previously) the individual employee cannot be personally liable for damages. Under these circumstances, if damages are owed they must be paid by the political entity (or, if a member, by the NDIRF).

Claims against employees individually will be defended by the NDIRF, up and until a judge or jury determines the employee was acting outside the scope of employment or that the conduct was grossly negligent. Further, if you are improperly named as an individual defendant, the NDIRF will make every effort to have you dismissed from the lawsuit as soon as possible.

This is a general statement of the law and how the NDIRF attempts to defend cases when individual employees are named as defendants. Even so, each claim and its facts are different which may trigger additional laws or coverage limitations. ■

## RISK SERVICES

### HIGH-INTENSITY MERCURY VAPOR LAMP HAZARD

The U.S. Food and Drug Administration just put out a **“Notice to Schools and Other Indoor, All-Purpose Facilities Where Light Bulbs are Subject to Damage.”** It can be found here: [www.fda.gov/cdrh/radhlth/urburns.html](http://www.fda.gov/cdrh/radhlth/urburns.html)

The following is a reprint of our 1999 *Check it Out* bulletin on the same subject.

A high-intensity mercury vapor lamp includes any mercury vapor or metal halide lamp. A significant portion of the energy radiated by the arc tube of these type lamps is in the ultraviolet or “UV” range. The harmful portion of this energy is normally absorbed by the outer bulb. However, if the outer bulb is punctured or broken, potentially harmful UV radiation will be discharged.

Two types of mercury vapor lamps are produced. Type “T” is self-extinguishing if the outer bulb is damaged. Type “R” is not self-extinguishing and may continue to operate with the outer bulb damaged or broken.

The packaging for a type “R” lamp must clearly and prominently display the letter “R” and the following warning:

“WARNING: This lamp can cause serious skin burn and eye inflammation from short wave ultraviolet radiation if the outer envelope of the lamp is broken or punctured. Do not use where

*continued* on Page 3

## RISK SERVICES

*continued from Page 2*

people will remain for more than a few minutes unless adequate shielding or other safety precautions are used. Lamps that will automatically extinguish when the outer envelope is broken or punctured are commercially available.”

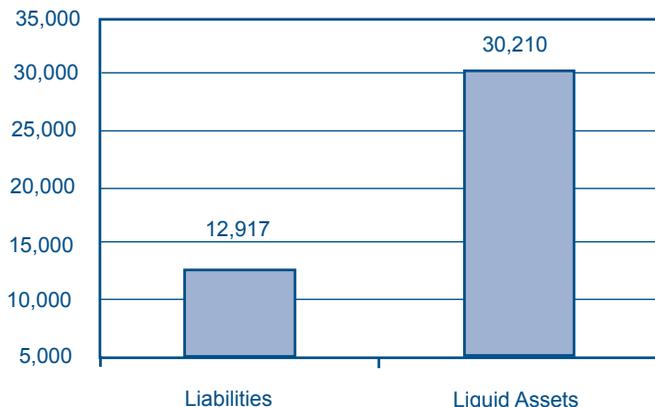
Look closely at the label because the “R” and the warning may be in small print and fairly obscure.

Although the potential radiation hazard has been known for some time, maintenance personnel may not be aware of the differing lamp types. Inform your maintenance personnel of the difference in lamp types and the potential for radiation from type “R” lamps. We recommend that you replace any type “R” lamps with self-extinguishing type “T” lamps. The print on the lamp may be hard to read making it difficult to determine what type lamp is currently in place. These lamps are typically found in auditoriums, gymnasiums, swimming pools, multipurpose rooms, and other high ceiling rooms that require a large amount of light.

If type “R” lamps are retained, it is imperative that lamp shields be in place to reduce the possibility of damage to the lamp’s outer bulb. Additionally, damaged bulbs – even though they continue to provide light – must be replaced immediately. ■

## FINANCIAL INSIGHTS

### Liabilities to Liquid Assets Ratio (000 omitted) As of June 30, 2006 Ratio= 43%



This ratio is a measure of a company’s ability to pay its financial obligations. The ratio is calculated by dividing liabilities (primarily loss reserves) 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

### Hello Goodbye

Those of us, of a certain age, may recall the title as a popular Beatles tune recorded nearly 40 years ago. It’s apropos of nothing, really, except to illustrate the inevitability of opposites – black/white; right/wrong; beginning/end – you get the idea.

I thought of it today in the context of announcing a new NDIRF board member to you. Mr. Shawn Kessel, City Coordinator for the City of Wahpeton and current President of the North Dakota League of Cities, was appointed in July to serve the remainder of a board term recently vacated by the retirement of former Minot Finance Director Robert Frantsvog. Mr. Kessel will represent the membership category of “Cities” on the NDIRF Board of Directors and a more complete introduction of him will appear in the next issue of the Participator.

As we say a hearty hello to Shawn, we must also say a respectful goodbye to Bob. The NDIRF is celebrating its 20<sup>th</sup> anniversary this year and Bob Frantsvog was here for all of that and more. As a founding board member, Bob served the company’s interests faithfully and can be proud of his important role in its success. Best Wishes for a long and happy retirement, Bob! ■

## ARE YOU LIVING A LIFE OF CONSTANT INTERRUPTIONS? THE ANSWER IS LIKELY YES

Do you feel like you're multitasking yourself into chaos? Have you ever wondered if, rather than helping you, your e-mail, voicemail, fax machines and other methods of working in the modern office are really keeping you from getting your work done? Well, a recent study could be corroborating your suspicions. According to Brian Donnelly of *The Herald* (Scotland), a research report from the University of California at Irvine found that average workers today could only work on something for 11 minutes at a time without interruption. And once the person is interrupted it takes an average of almost a half hour to get back on track with the original task they were

## Mark Your CALENDAR

- Sept  
 12-14: ND Recreation and Parks Association Annual Conference, Best Western Doublewood, Bismarck  
 14: NDIRF Board of Directors Meeting NDIRF offices, Bismarck  
 21-23: ND League of Cities Annual Conference, International Inn, Minot
- Oct  
 8-10: ND Association of Counties Annual Conference & Expo Ramkota Inn, Bismarck  
 27-28: ND School Board Association Annual Convention, Ramkota Inn, Bismarck



working on. The study, *The Cost of Not Paying Attention*, written by Gloria Mark and Victor Gonzalez, found that all of the new technology we've come to rely on for help is in fact increasing stress and causing unprecedented disruption in offices.

The researchers found that interruptions use up an average of 2.1 hours of each working day. Workers were interrupted by phone calls, e-mails, managers and colleagues. Once interrupted, it was hard for some workers to return to the original task at all during the day. Each worker in the study was found to be working on an average of 12 projects. The study looked at a random sample of 36 office workers' days. ■

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