

## Case Law Update

There are several cases pending that involve the issue of whether discrimination claims filed under the Florida Civil Rights Act of 1992, Chapter 760, F.S., are subject to the limitations and restrictions in Florida's limited waiver of sovereign immunity statute, s. 768.28, F.S.

Jeffrey Gallagher v. Manatee County, 11 Fla. L. Weekly Supp. 808, July 7, 2004

Circuit Judge Charles E. Williams ruled that the monetary limits caps in s. 768.28 (5), F.S., do apply to Chapter 760 claims based on the wording in s. 760.11 (5), F.S. The jury awarded the Plaintiff \$250,000 in compensatory damages, attorney fees of \$291,743.75, and \$18,282.50 in costs, for a total award of \$560,026.25. Judge Williams cut this amount to the statutory cap of \$100,000 and ruled that the cap applies to "the total amount of recovery including compensatory damages, equitable remedies, attorneys' fees, and costs." Further, "only \$100,000 may be enforceable – absent an act of the Florida Legislature."

Janet Maggio v. FDLES, Fla. Supreme Court, SC04-755

This case is set for oral argument on November 1, 2004 at 9 a.m. on the question "whether claims filed pursuant to the Florida Civil Rights Act of 1992 are tort claims and thus subject to the pre-suit notice requirements of s. 768.28(6), Florida Statutes."

**CLAIMS COMMUNICATOR**  
Florida Department of Financial Services  
Division of Risk Management  
200 E. Gaines St.  
Tallahassee, FL 32399-0338

# CLAIMS Communicator

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## Hurricane Claims Information for State Agencies



The property staff at Risk Management has been actively involved in the damage assessment, inspections and adjusting of state property claims as a result of the four major hurricanes. Below are some guidelines and information that have been sent to all agency property coordinators that should assist you when handling your agency's claims.

### Notification of Losses:

Please notify Risk Management as early as possible of any building and/or contents losses you are claiming from Hurricanes Charley, Frances, Ivan or Jeanne. This notification is needed in order for us to schedule someone to assess the damages incurred at your facilities. Also, please provide us with a completed Notice of Loss form at your earliest convenience for each facility for which you are claiming damages. Send these notifications and Notice of Loss forms to Kay Brantley (850) 413-4768, or Kay.Brantley@fldfs.com.

### Damage Inspections:

Staff will be deployed from Risk Management to inspect damaged facilities. Also, contract adjusters will be assisting Risk Management personnel. For those sites that must be inspected, contact will be made by Risk Management staff prior to site visits by these personnel. If you have questions regarding the scheduling of these inspections, or have a particular time you wish the inspections to take place, please contact John Nelson at 850-413-4712 or john.nelson@fldfs.com.

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Trilly Lester, Division Director
- State Liability Claims Bureau**  
Ray Williams, Chief
- State Employees' Workers' Compensation Claims Bureau**  
Larry Sharp, Chief
- Property Financial & Risk Services Bureau**  
Shannon Segers, Chief
- Managing Editor**  
Wanda Brazell
- Layout and Design**  
DFS Graphics



## Actions/Documentation

- Take emergency actions to protect the damaged property from further loss (install temporary roofing, dry carpets, etc.)
- Prepare a list of all facilities damaged as a direct result of the disaster, including those where repairs have already been made. (Indicate what work has been completed and what work has not been completed.)
- Mark the location of each damage site on a suitable map.
- Have pictures, sketches, or drawings of each site available for inspectors to keep; be sure to obtain pictures BEFORE repairs begin, if possible, and after repairs have been completed.
- Compile an itemized list of repair costs, segregated by labor costs (including fringe benefits), material costs, and equipment costs for each location where work has been done. Be sure to include the cost of emergency preventive measures, as well as permanent restorative work. Emergency preventive measures should be kept on a separate list from restorative work.
- Provide policy information on any insurance coverage in effect, and any insurance proceeds received or expected.
- List any equipment, materials or inventory lost in the disaster. Provide any substantiating records, such as inventory records of rooms showing the equipment in place, bids, purchase orders or invoices that provide loss values or replacement costs.
- Ensure that a knowledgeable person, such as an engineer or public works superintendent, accompanies the survey team. This person should have knowledge of work already done, work remaining to be done and all damaged facilities needing work.

In the past, we have operated on a reimbursement basis, however, in September we began processing property claims by paying the agency based on our estimated damages, less depreciation and the \$2,500 deductible. For new claims our estimate will be based on either a physical inspection of the damaged facility, or by review of pictures and/or other supporting



documents provided by the agency. Once the estimated damages have been determined, a claim summary will be prepared detailing damages incurred and the total claim payable at actual cash value. The claim summary and Certificate of Proof of Loss will be issued to the agency that shows the amount to be paid by Risk Management. The agency will sign and return the Certificate of Proof of Loss, and upon receipt of the signed proof of loss, Risk Management will issue a payment to the agency for the claim. The agency will then be responsible for affecting the repairs to the damaged facility.

Risk Management will notify you of the claim summaries that must be included on your Project Worksheets submitted to FEMA. FEMA will consider the amount paid by Risk Management in your Project Worksheets. Additional information regarding this process will be forthcoming, and we will be providing training classes for agency property coordinators and fiscal staff in the near future.

Thank you for all your cooperation and patience during this difficult time. If you have any questions, please do not hesitate to call Shannon Segers at 413-4750 or Trilly Lester at 413-4700.



## Scholarship Recipient Named



The initial Helen Neubauer Memorial Scholarship was awarded to Robert Brazell at the 59<sup>th</sup> Annual Workers' Compensation Educational Conference in Orlando on August 23, 2004. Robert is married to Dana Marie O'Neil, and is the son of David and Wanda Brazell. He is pursuing a degree in Management Information Systems at Florida State University while working in the Information Technology Department at Capital City Bank.



Helen Neubauer was a long-time employee of the Division of Risk Management, joining the Department on September 16, 1974. The Florida Workers' Compensation Institute, Inc. sponsors the annual scholarship in Helen's honor. Mr. James McConaughay made the presentation at the conference that memorialized Helen's contribution and dedication to the Florida Workers' Compensation system.

## Workers' Comp. Leader Retires

Lawrence Sharp (Larry) retired on September 30<sup>th</sup> from the Division of Risk Management after 26 years of successful service. Larry graduated from Florida State University with a B.S. Degree in Business before entering military service with the United States Air Force. He attained the rank of Captain while serving as a Missile Launch Officer. His private employment experience included positions as a co-manager of Personalized Claims Management, Inc., and State of Florida Claims Manager of the Workers' Compensation Claims Office for both Continental Insurance Company and Sentry Insurance.

Larry began work with the Division in August 1978, and in 1984 was promoted to Bureau Chief of State Employees' Workers' Compensation Claims. He worked in this capacity until his recent retirement. Under his direction there were many innovative and positive improvements for the bureau. Business processes evolved from maintaining paper claim files with one shared dumb-terminal to electronic data management and a web-based claims administration system. Claim reporting, medical bill processing and managed care are just a few of the other processes that were either automated or outsourced. All these improvements enable the bureau to maintain reasonable workloads without the need for additional staff. We are thankful to Larry for his vision and leadership, and wish him many wonderful years of retirement.



## Comments, Questions...

Claims Communicator  
Florida Department of  
Financial Services  
Division of Risk Management  
200 E. Gaines Street  
Tallahassee, FL 32399-0336

Phone: (850) 413-4700  
Suncom: 293-4700  
Fax: (850) 921-9097

