

Case Law Update

Department of Environmental Protection v. Henry and Mary Hardy, 5th District Court of Appeal, Case No. 5D04 - 860, July 2005, Broussard, Cullen, DeGailler & Eagan, Orlando, for DEP.

This case arose when the Department of Environmental Protection (DEP) investigated complaints that the Hardys were filling their wetlands and despoiling Lake Griffin. The Hardys sued DEP for negligence, negligent supervision, and trespass. In reversing an award of \$1,538,000 to the Hardys, the court ruled that the manner in which DEP determined wetland jurisdiction was a discretionary governmental decision for which sovereign immunity was not waived. Thus, DEP owed no duty of care to the Hardys and could not be held liable. The court also noted that Trianon Park specifically included environmental inspectors within the category of regulatory officials given discretionary power to enforce compliance with the law and deemed their discretionary functions immune from tort liability. The court also ruled the Hardys failed to prove the elements of negligent supervision and trespass.

CLAIMS COMMUNICATOR
Florida Department of Financial Services
Division of Risk Management
200 E. Gaines St.
Tallahassee, FL 32399-0336

CLAIMS Communicator

Summer 2005
VOL 23

Tom Gallagher - Chief Financial Officer, State of Florida
Published by the Florida Department of Financial Services, Division of Risk Management,
as an informational newsletter for state agencies participating in the state risk management program.

Hurricane Claims Update

The property staff at Risk Management has been actively involved in the damage assessments, inspections and adjusting of state property claims as a result of the four major hurricanes that struck Florida last year. Here is an update on the 2004 hurricane-related claims received by Risk Management as of Aug. 9, 2005:



Claims Data

Claims received: 3,101
Claims closed: 1,661
Claims with Proof of Loss Certificate issued to agencies not yet returned: 157
Percentage of claims closed or with proofs issued: 58.63%
Claim reserves: \$29,649,570
Claim payments to date: \$8,728,572
Outstanding reserves: \$20,920,998

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Hurricane Claims Update

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Adjusting Activities

Notification of Losses: The time period for submitting Notice of Loss forms has passed for all four hurricanes. Per our coverage requirements, any losses not already reported in writing will not be paid unless:

- A. our ability to assess the loss has not been impaired by the delay; and
- B. the dollar amount of the loss has not increased due to the delay.

Submission of Claim Documents: Please submit all documents associated with claims from last year's hurricanes as soon as possible. The 2005 hurricane season has begun, and at the time this article was written, we had already received Notice of Loss forms for property damaged from Hurricane Dennis. Please ensure that all documents submitted, including pictures, have the certificate number, building number and date of loss included on the document. If you have any questions concerning the status of your claim, please contact the adjuster assigned to it.

Returning Proof of Loss Certificates: Please sign and return any Proof of Loss Certificates you may have as soon as possible, so that we can pay you for the loss and close the claim. As of August 9, 2005 more than 5 percent of the claims submitted were in pending status waiting on the Proof of

Loss Certificates to be signed and returned. If you disagree with the loss payment amount or have other issues with the Proof of Loss certificate, please contact your adjuster to negotiate the details of the claim so that we can close the claim in a satisfactory manner.

Thank you all for your cooperation and patience during this difficult time. If you have any questions, please do not hesitate to call Shannon Segers at (850) 413-4750 or Trilly Lester at (850) 413-4700.



Bureau of State Employees Workers' Compensation Claims Web Page

The Bureau's Web page is at <http://www.fldfs.com/Risk/WCC/index.htm>. It contains information for both employers and employees of state agencies. From this link you can select any of the following topics:

Facts for Florida Employees: This booklet is mailed to the employee when a workers' compensation claim is reported. It provides information on benefits due to the employee, including medical care, lost time wages and medical mileage reimbursement. It also provides contact information for medical managed care, Risk Management staff and the Employee Assistance Office.

Frequently Asked Questions: Provides answers to a list of frequently asked questions from both employers and injured employees.

WC Claim Assignments: Provides detailed information about Risk Management staff claim assignments. Breaks down claim assignments by county of accident and employee's last name, and provides Risk Management staff contact information that includes telephone numbers and e-mail addresses.

Managed Care Assignments: Contains information on the medical managed care arrangement, including reporting claims, employees' rights under managed care, grievance policy and procedure, information poster for the workplace and managed care handbook.

WC Forms: Contains common workers' compensation forms used by employers and employees. Forms included are Attendant Care, Wage Statement, Mileage Reimbursement and Employee Earnings Report.

Employer Handbook: This handbook contains information on most all workers' compensation topics, and we recommend agency workers' compensation coordinators maintain a printed copy for reference. Some of the topics are: Introduction to Workers' Compensation, What Injuries are Covered, What to Do When an Employee is Injured, Reporting Requirements, Determination of Disability Benefits, Death Claims, Return to Work Programs, Safety in the Work Place and Workers' Compensation Fraud.

We welcome any suggestions to improve the information provided on our Web page. If you have any comments, please e-mail Brittany.O'Neil@fldfs.com.



Comments, Questions...

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