

Case Law Update

[TORTS; WORKERS' COMPENSATION IMMUNITY] McClanahan v. State of Florida, Department of Juvenile Justice, 29 Fla. L. Weekly D2078a (September 5, 2003): Appellants, former and current employees of the Department of Juvenile Justice, alleged that the Department of Juvenile Justice ("DJJ") and the Department of Management Services ("DMS"), Defendants, were negligent in overseeing the design and construction of their work place building and negligently allowed the building to become contaminated with excess moisture, mildew and mold. The circuit court entered summary judgment in favor of Defendants pursuant to workers' compensation immunity. The District Court of Appeals held that even though Appellants worked for DJJ and not DMS, both entities were shielded by workers' compensation immunity because, for the purposes of workers' compensation law, the state is deemed to be the employer. Appellants also argued the intentional tort exception should apply. The court held that the evidence only supported a conclusion that the agencies were negligent, but not that the agencies' acts or omissions were substantially certain to result in injury or death.

[PUBLIC RECORDS – E-MAILS TRANSMITTED BY GOVERNMENT AGENCY EMPLOYEES] State of Florida v. City of Clearwater, 28 Fla. L. Weekly S682a (September 11, 2003). The issue before the court was "whether all e-mails transmitted or received by public employees of a state agency are public records pursuant to Section 119.011(1), Florida Statutes (2000), and Article I, Section 24(a), Florida Constitution, by virtue of their placement on a government-owned computer system." The Florida Supreme Court answered this question in the negative. Both Article 1, Section 24 and Chapter 119 specify that public records are those records that are in some way connected to "official business." The court held that the legislative definition of public records simply did not include private or personal e-mails. Thus, mere placement on the city's computer system is insufficient to establish their status as public record; the determining factor is the nature of the record, not its physical location.

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NEW ASSISTANT DIRECTOR AT RISK MANAGEMENT

The Division of Risk Management has a new Assistant Director. Pamela Martin joined Risk Management on May 19, 2003. She comes to us from Danville, Calif., but is originally from Central Florida. Pam has a bachelor's degree in nursing from The University of Florida; a master's degree in nursing from Louisiana State University; is certified as a critical care nurse, (CCRN); associate in risk management (ARM); and is a certified healthcare risk manager with the State of Florida.



Pamela Martin

Pam was in clinical nursing for more than 10 years and was nationally certified as a critical care nurse. Most of her clinical experience was in surgical intensive care. She was a nurse educator for more than three years and an assistant professor of medical/surgical nursing at Miami-Dade Community College.

Pam has been a healthcare risk manager for seven years and was responsible for the healthcare risk management program for a private healthcare system. During this time, she provided loss prevention services for clinical areas and educated the clinical staff on state statutory and organizational risk manager requirements.

Pam was director of claims management for Mercy Healthcare System for three years. While there, she was responsible for the self-insured workers' compensation program with commercial excess insurance; the property and auto commercial insurance program; on-shore management of off-shore captive for professional and general liability insurance programs; and litigation management of legal claims.

Pam was also a senior risk management analyst for the Santa Clara Valley Water District for three years. She assisted with the management of self-insured and commercial insurance for general liability, professional liability, property, auto, director and officers, and employment practices liability programs; loss prevention services; and litigation management of legal claims.

We are pleased to have Pam's expertise and welcome her to the Department of Financial Services and the Risk Management team.

Inside This Issue:

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- New Assistant Director at Risk Management cover
- Claims Administrative System page 2
- Maximum Workers' Compensation Rate for 2004 page 3
- CSK Net Translation page 3
- Update..... back cover

- Division of Risk Management**
Trilly Lester, Division Director
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CLAIMS ADMINISTRATION SYSTEM

Since 1977, the Division of Risk Management has used a privately vended claims administration system (CAS) called Professional Risk Information Systems Manager, or PRISM. This product, developed and supported by the company Corporate Systems, out of Amarillo, Texas, has served our claims processing needs for more than 25 years. It has evolved over this time to take advantage of the latest technology. The Division worked with the service vendor as an “integrated” client; meaning that, while the Division maintained its own in-house system, based on an IBM AS400 mini-mainframe platform, daily activity records were transmitted to Corporate Systems. In this manner, while our Division could execute practically all of the routine processes associated with claims’ adjustment, from adding new claims to producing reports, the service vendor provided certain specialty services like premium forecasting IRS reporting and production of bulk reports.

Last year, Corporate Systems indicated that it would cease to offer its services on an “integrated client” basis. The Division decided to consider alternative CAS solutions. After a thorough review of potential service providers using the “Request for Proposal” process, the Division elected to contract with another company, Marsh, USA Inc., and to use its CAS product, called STARS, for its claims adjustment software.

The STARS database structure provides a variety of application usage that was not available before. For example, adjustment of a workers’ compensation claim is a very different process than adjustment of an automobile liability claim, or a federal civil rights claim. The new CAS will be more “personalized” to accommodate the differences in these processes as dictated by the nature of the claim and the laws governing them. The “look and feel” of the new system is much more compatible with the other information processing applications used by the Department of Financial Services, such as networking, word processing, presentations and spreadsheets. Interfacing of the new CAS with these adjunct applications will be much easier and more efficient, and will assist our staff in providing the best client service.

The Division intends to interface the new CAS with its electronic document management (EDM) system to allow for rapid access to documentation associated with the processing of claims. This will give our adjusters the capability of responding to the needs of our claimants, service providers, legal action personnel and managers in a very timely manner, and ultimately assist us in controlling the costs of these claims. The Division will also effect integration of the CAS with other service providers, such as its banking service provider, to allow more electronic fund transfer, automated payment, and “on-line” auditing.

As the administrators of one of the largest self-insurance programs in the State of Florida, the Division expects its new “tools of the trade” to prepare it to face any challenges and to reach its goal of providing the best service possible.



Maximum Workers’ Compensation Rate for 2004

Effective for work-related injuries and illnesses occurring on or after January 1, 2004, the maximum weekly compensation rate is \$626. This is pursuant to section 440.12(2), Florida Statutes, which states that the maximum weekly compensation rate shall be equal to 100 percent of the statewide average weekly wage, rounded to the nearest dollar.

If you have any questions regarding the maximum compensation rate, please contact Fred Becknell, Insurance Administrator, Division of Workers’ Compensation, Bureau of Monitoring and Audit, at (850) 488-2031, ext. 152.



CSK NET TRANSITION

In April 2004, the access to claims we had through CSK Net will be with a new system called STARS. We are in the process of changing systems and are currently lining everything up to begin testing before we “go-live” in April. We have a group of beta testers from other agencies providing feedback so the transition is smooth and a variety of thoughts have input.

Accessing our claims data through the Internet will not change – we will still log in through the Internet with a username and password. This time, however, we will use an interface with a look and feel of Microsoft Outlook. Although there will be a learning curve and set-up time will be necessary, the system is much more powerful and efficient.

Just to give you a hint of how much more powerful it will be, let’s say you want to run a trend analysis by location in your agency. While looking through the query, you see a specific location with an unusually high severity. You will be able to click on that location and drill in to see if there are several claims causing the majority of the severity or if only one or two are the culprit. Another powerful aspect of this product is the ability to set limits of frequency and severity on a query. For example, let’s say you want to know when location “X” has more than 50 of a single type of injury and/or greater than \$100,000 in severity. Once the query is designed, it will flag all locations with the limits set each time it is run. You can do the same if you want to know when agency “X” exceeds 100 claims or 100 of the same type, i.e., slip, trip and fall claims.



Here are a couple of the comments from other agencies that have seen what the system is capable of doing:

- “Based on the demo provided by MARSH on Dec. 17, 2003, I believe the STARS program offers standard reports (i.e., claim tracking, charts, trend analysis, causation modeling, costs, etc.) that will allow safety coordinators to develop meaningful and powerful loss control management reports. The MARSH staff seem to have put a lot of thought in developing a program that will address our claim tracking and loss control management needs.” – Donald Trussell, Safety Coordinator, Department of Environmental Protection
- “This new system’s graphs will concisely show understandable safety data (especially to management). I believe the new system will significantly assist us in the investigation of work-related injuries by employees.” – Jan Fontaine, Department of Children and Families

Comments, Questions...

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