

Case Law Update

Edwin Lovett, Appellant, v. Howard C. Forman, as Clerk of Court, Broward County, Florida, and Ken Jenne, as Sheriff of Broward County, Florida, Appellees. 4th District. Case No. 4D03-2048. Opinion filed August 25, 2004.

Appellant plaintiff, after being charged with a crime by information, did not appear in court at a status conference, because neither he nor his attorney received notice of the conference. As a result of his failure to appear, a capias was issued for his arrest. Plaintiff's counsel then moved to set aside the capias, and the court granted the motion, but the Clerk of the Circuit Court neglected to provide this information to the sheriff's office. As a consequence, plaintiff was wrongfully arrested and incarcerated for over two months. The court ruled that sovereign immunity bars the plaintiff's claims against the clerk and the sheriff, because they did not owe him a special duty which was different from the duty owed the public in general to keep proper records.

School Board of Broward County, Florida, Appellants, v. Nova Southeastern University Inc., Appellee. 4th District. Case Nos. 4D03-382, 4D03-467 & 4D03-657. Opinion filed July 21, 2004.

In this case, Nova filed a Motion for Summary Judgment alleging that it was entitled to sovereign immunity under section 768.28, Florida Statutes (2002), as an "agent" of the School Board of Broward County. The trial court granted the motion and entered Summary Final Judgment in favor of Nova. The School Board (as an intervenor) argued that the trial court erred in entering summary judgment in favor of Nova because Nova did not establish conclusively that it was an agent of the School Board entitled to protection under the sovereign immunity provisions of section 768.28. The 4th DCA agreed with the School Board and reversed. This case outlines the analysis to be used in determining agency beginning with Stoll v. Noel.

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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 hurricane-related claims received by Risk Management as of January 14, 2005:



Claims received: 2,912
Claim reserves: \$34,672,591
Claim payments to date:
\$4,211,628
Outstanding reserves;
\$30,460,963

Adjusting Activities

Notification of Losses: The time limitation 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.

We will continue to receive Notice of Loss information, and will consider the above requirements in adjusting such losses. Please send these notifications to Kay Brantley at (850) 413-4768, or Kay.Brantley@fldfs.com.

Damage Inspections

We are continuing to utilize contract adjusters to inspect damaged facilities. For those sites that must be inspected, contact will be made by the contract adjusters prior to the inspection taking place. If you have questions regarding the scheduling of these inspections, please contact John Nelson at (850) 413-4712 or John.Nelson@fldfs.com.

Interaction of Risk Management and FEMA Claims

Per agreement with FEMA, Risk Management claims will fall into two categories—claims that are deducted from the agency's FEMA Project Worksheets (PWs) and claims that are not deducted from the agency's PWs and must be subsequently reimbursed to Risk Management. Risk Management will monitor claim payments issued to agencies, and will notify the agencies which payments must be deducted from their PWs by issuing an addendum to the Proof of Loss Certificate that instructs the agency whether or not to deduct the Risk Management payment from its PW. Payments that must be reimbursed to Risk Management will be identified by a different addendum to the Proof of Loss Certificate.

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Accounting and Budgeting Considerations

Claim payments that must be deducted from PWs can be recorded in your agency's accounting records as usual. Claim payments that must be reimbursed to Risk Management should be recorded in your agency's accounting records as due to/due from transactions. Your agency should make whatever budgetary arrangements are necessary for spending and transfer authority to utilize the funds received from the claim payments.

Lessons Learned

Here are a few tips that may be useful in the future:

- Ensure that all of your buildings are listed on your certificate of coverage.
- Ensure that building and contents values are updated annually.
- Do not include noncovered losses on the Notice of Loss (NOL) form—check your Certificate of Coverage (Form DI4-852) to ensure that the loss is covered before submitting the NOL.
- Take pictures of the structural damage that caused the building to be compromised and the resulting damage.
- Reference the certificate number and building number on all documents submitted to Risk Management, including pictures.
- Document any protective measures taken—include receipts/contractor quotes.
- Submit any documents that describe the scope of loss from initial inspections—engineer reports or contractor quotes.
- Know the age of your buildings, building components such as roof systems, and contents.
- Maintain an inventory of any contents not included on the Custodian's Inventory List maintained in FLAIR.
- If you have a preference for the order in which facilities in your agency are to be adjusted, please submit a priority listing to John Nelson at (850) 413-4712 or John.Nelson@fldfs.com.
- If you do not agree with the loss payment amount submitted to you by Risk Management, please contact your adjuster right away to negotiate the loss.



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.

Maximum Workers' Compensation Rate for 2005

Effective for work-related injuries and illnesses occurring on or after January 1, 2005, the maximum weekly compensation rate is \$651.00. 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 Auditing, at (850) 413-1763.



Workers' Compensation Rules

The Division of Workers' Compensation has established rules (Chapter 69L-3, FAC Workers' Compensation Claims) that provide guidelines for the handling of Workers' Compensation claims. Two of those rules that outline the workers' compensation reporting responsibilities of employers (agencies) are listed below. We hope this information will be beneficial and provide assistance in complying with these requirements.

69L-3.004 Employer's Responsibility to Record and Report Accidents

The employer shall report all cases, except first aid cases, to the CorVel First Response Unit within 7 days after the employer's knowledge of an industrial accident or disease. Risk Management recommends all such cases be reported immediately to the CorVel First Response Unit.

"First Aid Case" means a work injury or illness, treated at the work place, which does not require medical treatment for which charges are incurred, and does not cause the employee to miss work for more than one day.

"Medical Only Case" means a work-related injury or illness, which requires medical treatment for which charges will be incurred, but which does not cause the employee to be disabled for more than 7 calendar days, or more than 40 hours of work if disability days are nonconsecutive.

"Lost Time Case" means a work-related injury or illness, which has caused the employee to be disabled for more than 7 calendar days or more than 40 hours of work if disability days are nonconsecutive. Lost time cases also include compensable volunteer workers to whom no indemnity benefits will be paid, but who have been disabled for more than 7 calendar days from work; compensable death cases for which there are no known or confirmed dependents; and injuries which result in the disability of more than 7 calendar days for which the employer is continuing to pay full salary in lieu of compensation for any portion thereof.

In addition to these reporting requirements, if an injury or illness results in the employee's death, the employer shall give notice by telephone or by other means within 24 hours to the Division of Workers' Compensation. The telephone numbers for reporting death cases are (800) 219-8953, (850) 413-1611 or by facsimile at (850) 922-0024.

69L-3.0046 Wage Statement: Responsibility to Report Wages

The employer shall provide Risk Management all required wage information within 14 days of the employer's knowledge of a "lost time" or a "medical only to lost time case". Wage information shall be reported on Form DFS-F2-DWC-1a.

The form is available at <http://www.fldfs.com/WC/pdf/DFS-F2-DWC-1a.pdf>.

In addition to meeting the requirements of Chapter 69L-3, we recommend the employing agency also take an active role in the recovery of its employees. It is very important that injured employees know their employer is concerned about their well-being and recovery. Does your agency send get-well cards to injured employees periodically? Do the supervisors call intermittently to voice their concern? It is critical that any contact be perceived by the injured employee as the employer showing concern about the progress of the employee's recuperation.

Finally, Risk Management asks that you notify the responsible Risk Management Workers' Compensation Specialist when:

- § Employee starts to lose time from work after it was originally reported on the First Report of Injury that the employee had returned to work.
- § Employee returns to work after it was originally reported that the employee was not working.
- § Termination of employee along with supporting documentation.

To determine the responsible Risk Management Specialist, please refer to the document at <http://www.fldfs.com/Risk/WCC/RiskMgmtClaimAssignment/index.htm>.

Comments, Questions...

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