

PARTICIPATOR

August 2015

CHANGE IN LIABILITY EXPOSURE

The 2015 North Dakota legislative assembly raised the per-occurrence limitation on damages, or tort cap, for political subdivisions from \$500,000 – where it had been set in 1977 – to \$1,000,000. This legislation takes effect on August 1, 2015. The NDIRF General Liability and Auto Liability Memorandums of Coverage have been amended to accommodate the new law – all liability coverage renewed on or after August 1, 2015 will automatically include this change. Notices were sent earlier this year to local agents who work with NDIRF members and to members whose liability coverage per-occurrence limits had been set at the previous (\$500,000) level. If you have any questions regarding this matter, please contact the NDIRF's Risk Services Manager, Brennan Quintus, at 1-800-421-1988 or Brennan.Quintus@ndirf.com. ■

MISCLASSIFIED EMPLOYEES GET TWO BITES AT THE FLSA APPLE

The 8th Circuit recently ruled that employees who settled claims with their employer for unpaid overtime could still pursue claims seeking more back wages even though they signed releases and cashed their settlement checks.

When a Settlement Doesn't Settle Things

ActionLink designated some of its employees known as “brand advocates” as exempt “outside salesmen” under the Fair Labor Standards Act (FLSA). As a result, the company didn't pay those employees overtime even though some of them worked up to 75 hours a week. After investigating a complaint, the U.S. Department of Labor (DOL) persuaded ActionLink to reclassify the brand advocates as nonexempt and therefore eligible for overtime.

The company also agreed to pay back overtime wages to each brand advocate who had been misclassified. The reimbursement check given to the affected employees contained the following disclaimer: “By cashing this check, the employee to whom [this payment] is made is agreeing that he or she has received full payment [for] wages earned, including minimum wage and overtime, up to the date of the check.”

A number of the brand advocates cashed the settlement checks. However, a group of them, including some who had cashed their checks and some who hadn't, brought FLSA claims for unpaid overtime against ActionLink in federal court. ActionLink settled with the plaintiffs who had not cashed their checks, while arguing those who had cashed the checks had waived their FLSA claims.

On appeal, the 8th Circuit found that the waivers on the settlement checks weren't valid because the employees didn't have

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From the CEO
NDIRF Member Training**

NDIRF

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adequate notice of the rights they were actually waiving. The waiver “made no mention of the FLSA, waiving legal claims, or any additional damages to which the employees may be entitled,” all of which are mandatory components of a valid settlement release under the FLSA.

The case was sent back to the trial court to allow the employees who had cashed their settlement checks the chance to pursue their claims. *Beauford v. ActionLink, LLC*, 781 F.3d 396 (8th Cir., 2015).

Bottom Line

Many federal and state employment laws have very precise requirements for a valid release of claims. If you use a release like the one in this case, you probably won't find it to be a helpful shortcut through the regulations; more likely, it will lead you to a dead end. It's better to call an experienced lawyer to steer you in the right direction.

Reprinted courtesy of the North Dakota Employment Law Letter. For subscription information, please call 800-274-6774 or click to www.HRhero.com. ■

RISK SERVICES

New NDIRF Member Training Center

The North Dakota Insurance Reserve Fund is excited to announce a new online learning opportunity for both our members and our agents! In partnership with FirstNet Learning, the NDIRF has established an online training platform located on our website and at www.firstnetcampus.com/ndirfu.

**...“Video of the Month,”
free of charge to all
NDIRF members and
agents...**

Beginning May 1, 2015, our members and agents have had access to a new member site which features our “Video of the Month,” free of charge to all NDIRF members and agents. The “Video of the Month” includes valuable training information about timely subject matter.

After each month of viewing is complete, a new video will be available. We would encourage all of our members and agents to sign up for our member website access. At the end of each month, those who have signed up for our member site will receive email notification of a new video being available along with information about the new video. Therefore, even if our first video is not of interest to you, please sign up for the member site as new videos with various topics will be available for viewing by our members and agents. **Please make sure to add infoNDIRF@firstnetcampus.com to your email contact list to ensure our email notifications are ending up in your inbox.**

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RISK SERVICES

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Under the resources tab on the member training site, you will also have access to many more videos offered by FirstNet Learning. FirstNet Learning is willing to offer a 10% discount on their remaining video library for all NDIRF members and agents.

The training center is located at www.firstnetcampus.com/ndirfu. There is also a link to the training center on www.ndirf.com under the “Member Info” tab. Registration instructions are located on the training center website and under the “Member Info” tab on www.ndirf.com.

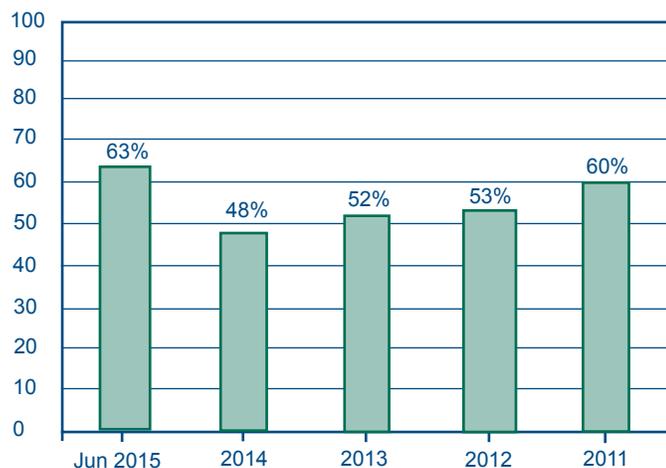
If at any time you experience difficulty with the training center, please call the FirstNet Learning help desk at 888-948-4949 x1.

www.firstnetcampus.com/ndirfu

If you have questions related to the video content or have suggestions for future “Videos of the Month,” please contact Brennan Quintus at 701-224-1988 or at Brennan.Quintus@ndirf.com. ■

FINANCIAL INSIGHTS

LOSS RATIO



The loss ratio is calculated by dividing incurred losses, including loss adjustment expenses, by earned premium. A ratio greater than 100% means incurred losses exceed premium income. The loss ratio for all years is 49% so, as the chart indicates, the first half of 2015 is a higher than average loss year. ■

FROM THE CEO

We all learn, sooner or later, that business (and life) is a lot about relationships and they exist even within and among the pages and articles of this newsletter.

For example, on the following page we welcome the NDIRF’s newest staff member, Troy Nelson. Troy represents an addition to the NDIRF’s claim adjustment team. The “relationship” aspect of this is to the article that appears to the left, on this page. Just a few years ago, the NDIRF’s all-years loss ratio was under 45% but the numbers you see have pushed that to 49% and reflect the highest year-by-year percentages of any 5-year span in the NDIRF’s experience, as well as the increasing number and complexity of claims.

“In a related story,” please note the Risk Services article that concludes on this page, above. Knowledge is power and training leads to it, so we are pleased to expand the loss control resources available to NDIRF members. Other important loss control opportunities for you, as local government officials, are the annual conferences of your respective state associations that are coming up this fall – excellent venues to keep abreast of developments and that will assist in avoiding situations that can lead to litigation. I hope to join you there! ■



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NEW AT NDIRF

The NDIRF is pleased to announce that Mr. Troy Nelson has joined the company as an Outside Claims Adjuster. Troy is a graduate of Minot State University and holds the degree of Bachelor of Science in Business Administration-Finance. He has continued his professional development, earning the insurance professional designations of Senior Claims Law Associate (SCLA) and Associate in Claims (AIC), as well as being I-Car Platinum certified.



Troy previously worked for State Farm Insurance for a number of years, holding several different positions including, most recently, Auto Estimatics Inspector.

Mr. Nelson and his wife Lorraine have two daughters – Emily, who will be a senior at Bismarck’s Century High School and Carly, who will be entering seventh grade at Horizon Middle School. Troy’s interests include hunting, fishing and coaching/watching his daughters play fast-pitch softball. He is looking forward to serving the NDIRF’s members and can be reached by email at Troy.Nelson@ndirf.com or by phone at 701-751-9126. ■

Mark Your CALENDAR

- Sept
22: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck
24-26: ND League of Cities
Annual Conference,
Holiday Inn, Fargo
- Oct
25-27: ND Association of Counties
Annual Conference & Expo
Bismarck Events Center, Bismarck
30: ND School Boards Association
Annual Convention,
Ramkota Inn, Bismarck