

WRONGFUL DEATH AND SURVIVOR CLAIMS

Wrongful Death and Survivor claims are occasionally confusing, even to legal counsel who are asserting damage claims on behalf of the deceased and/or survivors of the deceased, such as spouses and children.

North Dakota law states that any person who causes another's death shall be liable for damages. A Wrongful Death claim must be brought by the following persons, in the order named:

1. The surviving husband or wife, if any.
2. The surviving children, if any.
3. The surviving mother or father.
4. A surviving grandparent.
5. The personal representative.
6. A person who has had primary physical custody of the decedent before the wrongful act.

There are two elements typically associated with Wrongful Death claims. The first is the claim of the deceased's estate. This would include the deceased's pain and suffering before death, medical bills, ambulance bills and other direct costs. The second element is the survivor's claim, e.g., the surviving spouse, children, etc. The survivor's claim is actually the Wrongful Death claim. This claim would include claims for loss of financial support, emotional distress and loss of society, comfort and companionship as a result of the decedent's death.

As an example of how this law is sometimes misinterpreted, consider the following fact pattern: A woman receives fatal injuries while a passenger in a car driven by her adult daughter, in a traffic accident where the other vehicle involved was at fault. The adult daughter is also injured in the accident. The children of the deceased woman, including the injured adult daughter, bring a Wrongful Death claim against the other party. This claim is settled and a Release is signed by all of the children as well as the Personal Representative of the deceased's estate. Later, the injured adult daughter brings a claim for her physical injuries resulting from the accident and also claims, as a part of her case, emotional damages related to the death of her mother.

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There was no surviving spouse in this example so, as previously stated, North Dakota law allows the children to

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prosecute a Wrongful Death claim against the party who allegedly caused the accident. Settlement of the deceased's claim, however, extinguishes any other claims the children might make related to the mother's death. Therefore, the NDIRF would contend that the portion of the adult daughter's claim for damages suffered in the accident, related to emotional issues concerning the death of her mother, may no longer be pursued. In other words, the daughter can make a claim for her own physical injuries, but can no longer pursue a claim for the emotional damages related to the death of her mother, because that claim has been settled previously.

Misunderstanding of the relationship between Wrongful Death claims and other actionable injuries resulting from the same event sometimes delays resolution of claims made against NDIRF members. If no agreement can be reached, litigation of the issue may be necessary to bring the matter to conclusion. ■

RISK SERVICES

LOOKS CAN BE DECEIVING!

CAN YOU FIND THE HAZARD IN EACH OF THESE PHOTOS?

(Answers found on Page 4)

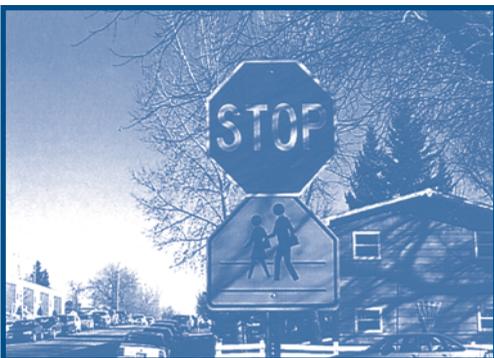
1)



2)



3)



4)



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5)



6)



7)



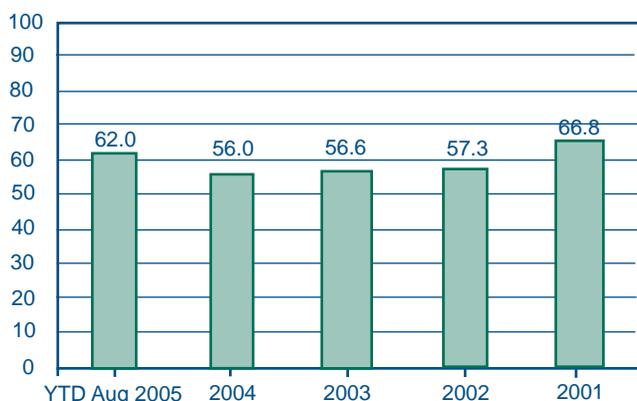
8)



Answers found on page 4

FINANCIAL INSIGHTS

OPERATING RATIO



The operating ratio shown above is the sum of NDIRF's loss and expense ratio less the investment income ratio. The operating ratio is a measure of NDIRF's profitability and is the principal determinant of the Fund's financial solvency and stability. A ratio less than 100% means that a company is profitable. As the graph shows, NDIRF's operations have been financially very successful which has allowed the Fund to make a substantial conferment of benefits to its members each year. ■

FROM THE CEO

"A picture is worth one thousand words". There is confusion regarding the origin of this simple phrase (best evidence is that it was the brainchild of a 1920's New York adman who called it a Chinese proverb to add credibility) but there is no denying the intuitive truth it suggests. For example, one has only to consider the infamous recent photo of New Orleans' bus fleet, standing row upon row in floodwater and unused for evacuation, to come up with a few paragraphs of opinion on the apparent waste of money earmarked for disaster planning that image evokes.

The assignment of federal funds to states like North Dakota for anti-terrorism (in essence, disaster) planning since September 11, 2001 has been debated because there is less perceived threat here. I would, however, happily wager my personal safety in a disaster situation that, regardless of the wisdom of the allocation plan, our local officials and those who advise them on these matters would prove to have put the funding to good use. ■

WHAT TO DO WHEN YOU HIT THE WALL OF RESISTANCE

Procrastination is one of those maddening problems. We don't want to procrastinate--we want to get our work done and live decently with ourselves. But many people fall prey to the vicissitudes of procrastination at one time or another in their lives.

Steven Pressfield, the author of many historical novels and the nonfiction book *The War of Art: Winning the Inner Creative Battle*, defines resistance to doing one's work this way: "Resistance cannot be seen, touched, heard, or smelled. But it can be felt. We experience it as an energy field radiating from a work-in-potential. It's a repelling force. It's negative. Its aim is to shove us away, distract us, prevent us from doing our work."

So how does a person go about beating such a force--which can so negatively damage us in our work lives? To overcome procrastination, Pressfield recommends that we invoke the virtues of patience, persistence and courage--patience to overcome the desire to avoid the pain the work you need to do will inevitably cause; persistence to hang with what you're doing through all its imperfect and repulsive stages; and the courage to admit that you are terrified by what you are about to try to do. ■

Mark Your CALENDAR

October

27-29: ND School Board Association
Annual Convention
Ramkota, Bismarck

December

8: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

Answers to Hazardous photos:

1) The drain directs water across the sidewalk creating slippery conditions and, in winter, ice buildup. 2) The curve sign directs drivers in the wrong direction. 3) The STOP sign should be the only signage (other than an "all way" sign) on this post. See Section 2A.16 of the Manual of Uniform Traffic Control Devices (MUTCD). 4) There is dirt and dust buildup on the rear of the bus, creating a visibility hazard. Road conditions may warrant cleaning numerous times daily. 5) Surfacing material depth and the clear space (use zone) area are inadequate. See the Consumer Product Safety Commission (CPSC) Handbook for Public Playground Safety at www.cpsc.gov for further information. 6) Public building stairways are required to have appropriate handrails. See section 101-5-2.2.4 of the National Fire Protection Association Life Safety Code. 7) The railing creates a ladder effect which is dangerous. 8) This road is not closed. The sign should read, "ROAD CLOSED AHEAD" and a "ROAD CLOSED" sign with a Type 3 barricade should be placed where the road is actually closed.

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