

FIRE GUARD



Volume #20

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Letter from the President



As summer approaches, all of our schedules become more binding with less time for the important things in life. In lieu of this, our attempt at modifying the bylaws was unsuccessful due to the lack of a quorum. As you already know, we were attempting to change the bylaws to accommodate less meeting dates and the total number of persons required on the board. Included in this newsletter is a proxy vote. I ask that each District complete and return this

proxy as soon as possible so that we may continue in our efforts on your behalf.

We will be working on the NIAFPD Budget over the next few months with hopes of improving areas such as the PAC fund, legislative

and educational areas. Your input would be much appreciated to help us plan for the future.

Also included in this issue is a Summary report from Chuck Vaughn for our legislative efforts during 2001-2002 season. Chuck and myself will be meeting to discuss your concerns and suggestions. Please do not hesitate to forward any additional information that you would like covered.

Our next meeting will be to amend the bylaws and pass the budget. Bartlett Fire Protection District will be our host for the August 10, 2002 meeting. I am looking forward to seeing you at the meeting. As always, thanks for doing what you do, and stay safe!

Respectfully,

Jack L. Mancione



IRS Suspends 5500 Filing Requirements for Cafeteria Plans

by Doug Shaeffer, Area Assistant Vice President, Gallagher Benefit Services

When will the IRS make our lives simpler? You say, "...when pigs fly"?!?

Well, watch out below because the IRS released Notice 2002-24 on April 4, 2002 indefinitely suspending the requirement to file Form 5500 with a Schedule F, "Fringe Benefit Plan Annual Information Return". Not only is the suspension effective immediately, but also applies to all plan years for which information returns have not yet been filed.

If an employer sponsored a Cafeteria Plan, also known as a Section 125 Plan or an FSA, and/or educational or adoption assistance programs, the employer was required under IRS Section 6039D to file the fringe benefit form. This also applied to "small plans" with under 100 participants and to governmental and church plans, which are normally exempt from filing a welfare benefit plan Form 5500 under ERISA.

Since governmental plans are not required to file a General Information Form 5500 with any number of employees, the suspension of the requirement of filing Schedule F totally relieves governmental plan sponsors of any IRS filing requirements for cafeteria, educational assistance and adoption assistance plans. As a matter of fact, the IRS specifically said that plan sponsors

who did not file in prior years should not request relief for failure to file from the Department of Labor or the IRS.

It has now been made easier to sponsor tax-favored cafeteria, educational assistance and adoption assistance plans for your employees that will provide additional employee benefits with the potential to increase their take-home pay.



How You Can Stay Current

We would like to do a better job at keeping our membership informed on current issues effecting the fire protection district.

If you would like to be included on group e-mail you can send your e-mail address to Executive Director - Kathy Haage at khaagedbfd@syn.net

Courts Conflict over Definition of “Catastrophic Injury” under the Public Safety Employee Benefits Act

by Carolyn Welch Clifford (cclifford@otbkc.com), Ottosen Trevarthen Britz Kelly & Cooper, Ltd.

Since its adoption in November of 1997, the Public Safety Employee Benefits Act (820 ILCS 320/1 *et seq.*) has been a source of confusion for firefighters, police officers, and local governments. The source of this confusion is a provision in Section 10 of the Act which requires that an employer shall pay the entire health insurance plan premium for any officer or firefighter, and his or her spouse and dependent children, in cases where the employee suffers a “catastrophic injury” in the line of duty. Injured firefighters and police officers had argued that “catastrophic injury” contemplated a case where the officer or firefighter cannot perform his or her duties and was forced to leave the service of the department. Local governments had argued that “catastrophic” denoted something more substantial and refused to provide coverage to officers and firefighters who were disabled from service but who were able to find another occupation.

The Illinois Attorney General’s office attempted to shed light on this issue in its informal opinion issued in response to a state senator’s request for a definition of the phrase “catastrophic injury.” Citing text from the committee hearings in the House of Representatives on the bill, the opinion made reference to a similar Florida bill. The text of the Florida statute stated that “catastrophic injury” meant permanent injuries incurred by the public employee in the line of duty, the magnitude of which prevents the employee from continuing service in his or her previous capacity. The opinion concluded that the Illinois General Assembly must have meant the same definition in its Act. (*Ill. A.G. Opn. 1-01-001 (2001)*)

The issue finally reached the Illinois appellate court in a case brought by a former police officer with a knee injury who had been denied health insurance coverage at the village’s expense. In *Villarreal v. Village of Schaumburg*, 325 Ill.App.3d 1157, 759 N.E.2d 76, 259 Ill.Dec. 596 (1st Dist. 2001), the former police officer had suffered two line-of-duty knee injuries, the second of which caused him to seek and receive a duty-related disability pension. At the time of the lawsuit, the former officer was self-employed and owned a small contracting business. The former officer had requested free health insurance coverage for himself and his family which the village denied based upon its conclusion that he was not eligible for the benefits because his injury was not a “catastrophic injury” which is required under the Act.

Acknowledging that the issue was one of first impression in Illinois, the court first turned to the language of the statute and noted that the Act does not define “catastrophic injury.” The court explained that “a term that is undefined in a statute must be given its ordinary and properly understood meaning.” Thus, using dictionary definitions, the court found that the term “catastrophic” is ordinarily understood to mean, in terms of an illness, “financially ruinous.” Applying this definition to the former officer’s knee injury, the court concluded that the definition did not encompass his knee injury. The court stated that:


It is undisputed that plaintiff’s injury has not rendered him incapable of engaging in *any* gainful employment. Although plaintiff has experienced a loss of stability and flexibility in his knee, it is undisputed that the injury would not prevent plaintiff from engaging in a wide variety of occupations, ranging from a building code inspector to a security guard . . . In the context of the Act, the mere fact that plaintiff currently cannot perform the duties of a police officer does not qualify his injury as “catastrophic.”

The court noted that other jurisdiction with similar statutes have defined “catastrophic injury” in a similar fashion. Specifically, the federal Public Safety Employee Officers’ Death Benefits Act (42 U.S.C. Section 3796 *et seq.*) provides certain benefits to an officer who is disabled “as the direct result of a catastrophic injury sustained in the line of duty.” This statute further provides that “catastrophic injury means consequences of an injury that permanently prevent an individual from performing any gainful work.” The court also noted that workers’ compensation laws in Georgia and North Dakota provided similar definitions of “catastrophic injury.” In short, the court concluded its definition of “catastrophic injury” was consistent with these other jurisdictions and clearly did not include the knee injury that the former officer had suffered in this case.

Then in May 2002, the Fourth District Appellate Court issued a conflicting opinion regarding the definition of “catastrophic injury” under the Act in *Krohe v. City of Bloomington*, 2002 WL 997876 (4th District (May 13, 2002)). In *Krohe*, a firefighter who had been awarded a line-of-duty disability pension requested the City of Bloomington to continue to pay the health insurance premiums for him and his family pursuant to Section 10 of the Act. When the city declined, the firefighter filed this action, alleging that the purpose of Section 10 of the Act was “to protect all firefighters who are receiving a duty-related disability without limitation on the nature of the injury.”

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**DESIGNING EACH FACILITY TO MEET
YOUR NEEDS AND BUDGET -
FPO
WRONG AD**

 FGM ARCHITECTS+ENGINEERS	BELLEVILLE, IL 618.233.3254 OAK BROOK, IL 630.574.8300	CHICAGO, IL 312.641.3769 M T. VERNON, IL 618.242.5620	LAKE IN THE HILLS, IL 847.458.0890 PEORIA, IL 309.669.0012
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NEWS RELEASE

Senator Kirk Dillard Provides Assistance for Computer Enhancements

The Darien-Woodridge Fire District was provided a Member Initiative State of Illinois Grant to enhance the District's computer systems. Senator Kirk Dillard had initiated this grant funding well over one year ago, but the actual grant funds were recently forwarded to the District.

The District's computer system has components that are nearing 10 years of age. This type of technology can become outdated in 10 months, let alone 10 years. These grant funds will assist the District to update and enhance these critical systems to develop a website for public access.

The District is extremely grateful to senator Dillard for his assistance to obtain these much needed funds.



Senator Kirk Dillard (center) presenting a 35,000 check to Darien-Woodridge Fire District Board President Jack Mancione (left) and Chief Administrator Robert Tinucci (right)



Courts Conflict. . .

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The firefighter pointed to comments made by Senator Laura Kent Donahue in the November 1997 legislative debate to override Governor Edgar's veto of House Bill 1347 (which became the Act at issue). As chief sponsor of the bill, Senator Donahue stated in part:

I'd like to say for the sake of the record what we mean by catastrophically injured. What it means is that it is our intent to define "catastrophically injured" as a police officer or firefighter who, due to injuries, has been forced to take a line-of-duty disability. (90th Ill.Gen. Assem., Senate Proceedings, November 14, 1997, at 136)

The court first acknowledged that the words of a statute are to be given their plain and commonly understood meanings, and that when the language of a statute is clear and unambiguous, it will be given effect without resorting to the other tools of statutory construction. However, the court agreed with the firefighter that because the term "catastrophic" is not defined in the statute, and is uncertain and ambiguous, the statements by legislators concerning the proposed law are relevant in determining legislative intent. Therefore, the court concluded that "catastrophic injury" means any injury resulting in a line-of-duty disability and that the firefighter was entitled to health insurance premium payments by the city under the Act.

The court acknowledged that its decision was contrary to the *Villarreal* decision by the First District Appellate Court. The court concluded that deference should be given to the chief sponsor of the legislation that became the Act at issue and that this should not be "ignored in favor of whatever definition the judiciary assigned to the term."

A strongly worded dissent by Justice Steigmann agreed with the *Villarreal* decision's analysis, stating that the majority opinion in *Krohe* gave "inappropriate weight to the remarks of a single legislator" and failed to "properly analyze the term 'catastrophic injury.'" Quoting Justice Scalia of the U.S. Supreme Court, Justice Steigmann pointed out that "the greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators."

Justice Steigmann explained:

The majority's approach seriously misconstrues the purpose of legislative debate. That purpose ought not to be to provide language either intentionally or inadvertently left out of the bill being considered. Instead, that purpose should be to persuade legislators who might have doubts about a bill to vote for it. And even then, legislative debates should always be conducted with the understanding that courts will have the last word, determining what the bill means, based upon the *written language contained within the bill*. (emphasis in original)

Municipalities in the First District may continue to rely on the *Villarreal* decision, while municipalities in the Fourth District should follow the *Krohe* decision. However, the conflicting decisions leave interpretation of the Act up in the air for municipalities in the Second, Third, and Fifth Districts. A solution to this conflict will undoubtedly either come from the Illinois Supreme Court reviewing one or both of these decisions, or from the Illinois General Assembly, who may seek to clarify the Act.



Fire Guard is a quarterly publication of:

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Mark Your Calendar!

Board of Directors Meeting
Saturday, August 10, 2002, 9:00 a.m.
Bartlett Fire Department, 234 North Oak Ave.

NIAFPD Membership Meeting
Saturday, August 10, 2002 • 10:00 a.m.
Bartlett Fire Department

For further information contact
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YOUR FIRE GUARD NEWSLETTER!

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