



NEW YORK SCHOOLS INSURANCE RECIPROCAL

NYSIR News

NOVEMBER 2021



NYSIR.ORG

CLAIMS INFLATION

Damage Control



Major damage awards in claims involving K-12 schools and colleges in the U.S. have skyrocketed over the past two decades – particularly in the last five years – forcing insurance companies to deal with what in the industry has become known as social inflation.

Briefly Speaking:
A Roundup of
Recent NYSIR News

It Could Happen
to You

According to a recent publication from insurance and risk management firm United Educators titled Large Loss Report 2021, the number of publicly reported awards

of \$250,000 or greater jumped from 19 in 2016 to 46 so far in 2021 – 31 of

which fall into the \$1 million-and-greater category. That's far more major damage awards and settlements than in prior years, according to the report.

As significant as the extraordinary dollar amounts of the settlements is the fact that they were found in cases spanning an increasingly broad variety of complaint categories, including

accidents or crimes

resulting in death, discrimination,

The number of publicly reported awards of \$250,000 or greater jumped from 19 in 2016 to 46 so far in 2021.



DAMAGE CONTROL... CONTINUED

retirement plans, false claims, grant-related issues, and sexual abuse and molestation. The last category accounted for more than a third of reported cases.

a class-action sexual assault suit. Another example is a school district in Oregon that paid out almost \$3.5 million in both a jury award and settlement to two women who brought molestation and abuse cases.

\$4.8 million

NEGLIGENCE AND WRONGFUL DEATH
RESULTING FROM 2017 SCHOOL BUS FIRE

Average losses and settlements for claims across the spectrum ranged from \$1.49 million to \$73 million.

A CLOSER LOOK

What kinds of claims are provoking juries into handing out such eye-opening damages? Riverside Community School District in Carson, Iowa, for instance, will

NYSIR Executive Director Bob Lulley. "And New York state's Child Victims Act, which extended the timeframe to file claims of sexual abuse, will undoubtedly increase the number of cases and awards further still, making business more costly for

insurers and their clients. That's one reason we created our Sexual Abuse and Molestation manual. It's an

"The jump in award amounts is certainly of concern. And New York state's Child Victims Act, which extended the timeframe to file claims of sexual abuse, will undoubtedly increase the number of cases and awards."

ROBERT W. LULLEY, JR.
NYSIR EXECUTIVE DIRECTOR

\$73 million

SETTLEMENT IN A CLASS-ACTION
SEXUAL ASSAULT SUIT

pay a \$4.8 million settlement to the family of a 16-year-old girl who died in a 2017 school bus fire. The driver also died in the fire. The girl's family sued for negligence and wrongful death, contending the district knew the driver had been in poor health but still let him drive.

important resource that can help our subscribers keep children safe and reduce vulnerability to a lawsuit."

WHERE IS THIS ALL COMING FROM?

Why has there been such a big rise in award amounts? Some cite social inflation as a possible cause. According to a presentation by law firm Baxter Smith & Shapiro, P.C., social inflation includes phenomena

such as anti-corporate sentiment, broader contract interpretations, changing demographics and the increasing

\$3.5 million

JURY AWARD AND SETTLEMENT IN TWO
MOLESTATION AND ABUSE CASES

In another case, the University of California system found itself on the hook for \$73 million when it settled

DAMAGE CONTROL... CONTINUED

The frequency of verdicts topping \$20 million increased by more than 300% between 2001 and 2010.

influence of social media, which involves a quicker and more emotional reaction to news headlines. The firm also cites numbers by VerdictSearch showing that the frequency of verdicts topping \$20 million increased by more than 300% between 2001 and 2010.

Another influence on inflated awards could be "Reptile Theory," in which attorneys portray defendants' actions

as not only injurious to the plaintiff, but to the community at large and therefore the jurors themselves. Such a strategy can motivate juries to see the awarding of larger verdicts as an ethical act they should perform to protect others.

Additionally, the pandemic has played a role in major damage awards. Through an executive order, for example, New York state has held off implementation of any statute of limitations for filing legal actions related to COVID-19, leaving a window open for more and larger awards.

SOME ADVICE

While the trend of increasing verdict amounts most likely will continue, there are ways school districts and BOCES can help mitigate the problem, according to Baxter Smith & Shapiro, P.C. In the courtroom, for instance, defense counsel can refocus juror attention to the facts and law, and make efforts to personalize their client.

With the increase in large awards, insurance carriers have decisions to make, says NYSIR Underwriting Manager Frederick Black. "In order to continue to be able to offer coverage for certain

exposures, they can modify their policies (use exclusions), reduce the limits of insurance they offer and/or raise their rates to pay for projected future claims. Some carriers will decide that certain risks and exposures are uninsurable, and not write a particular class of business altogether." Interestingly, similar conditions led to the formation of NYSIR over 30 years ago.

Regulation also impacts the insurance coverage that can be offered. For example, the New York Department of Financial Services – the regulatory authority for insurance companies in New York – mandates that any insurance policy form that provides coverage for sexual misconduct must exclude coverage not only for the perpetrator, but also for "any person who remained passive upon gaining knowledge of any alleged act." That, says Black, is one of the reasons it is critical to remind all employees of the importance of reporting all incidents that could lead to a claim in a timely manner, but even more so for one involving sexual misconduct.

Education, training and other operational best practices, he emphasizes, are "key components of mitigating the increased potential for financial loss and reputational damage caused by inflated awards."

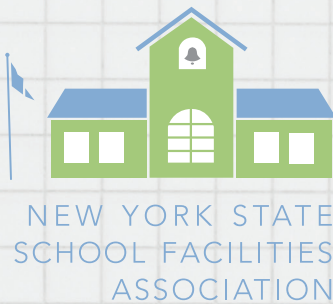
Education, training and other operational best practices are key components of mitigating the increased potential for financial loss and reputational damage caused by inflated awards.

FREDERICK BLACK
NYSIR UNDERWRITING
MANAGER

A Roundup of Recent News Stories from NYSIR

Briefly Speaking

Facilitating facilities



NYSIR recently awarded scholarships to five members of the New York State School Facilities Association (NYSSFA)

to attend the group's annual professional development conference.

Held in Saratoga Springs, the October conference brought together school facilities professionals to share experience,

update their knowledge base through training sessions, and develop and improve leadership skills.

This year, \$1,000 scholarships were awarded to first-time conference attendees Charles Milne II, director of facilities at Maryvale Union Free School District (UFSD) in Cheektowaga;

Gregory Phillips, director of facilities at Niagara Wheatfield Central School District (CSD) in Sanborn; Gregory Meixner, assistant director of facilities at Lynncourt UFSD in Syracuse; Michael Reifsteck, facilities director 1 at Clifton Springs CSD; and Gregory Haberlau, assistant director of facilities at Onondaga-Cortland-Madison BOCES in Syracuse.

All award recipients were nominated by NYSSFA chapter presidents or the New York State association director.

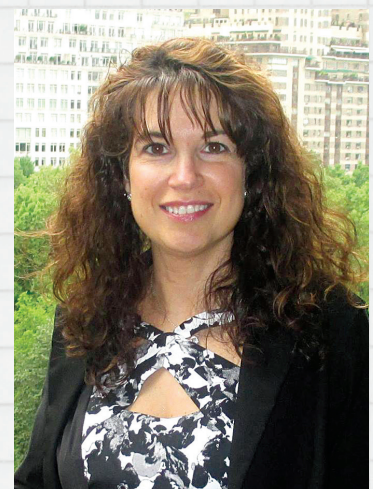
The October conference brought together school facilities professionals to share experience, update their knowledge base through training sessions, and develop and improve leadership skills.

Adding a new title

Susan M. Calabrese, senior underwriter with Wright Insurance Group's NYSIR program, recently attained her industry designation as a Certified School Risk Manager (CSRM).

Calabrese, a Long Island resident, is a graduate of Hofstra University, where she earned a bachelor's degree in business administration. She has more than 25 years' experience in insurance, 12 of which relate directly

to public entity insurance and risk management. She holds a New York property and casualty insurance broker's license and has earned additional industry designations as a Certified Professional



Insurance Agent and Certified Insurance Service Representative Elite. Designation as a CSRM requires

applicants to pass rigorous written exams focusing on all major fields of school risk management.

Distinguished Service

Dr. William H. Johnson, former superintendent of Rockville Center UFSD, is the 2021 winner of the New York

State Council of School Superintendents Distinguished Service Award.



LEFT TO RIGHT: NYSCOSS EXECUTIVE DIRECTOR CHARLES DEDRICK; PRESIDENT PHYLLIS HARRINGTON; DR. WILLIAM H. JOHNSON; NYSIR EXECUTIVE DIRECTOR ROBERT W. LULLEY, JR.; AND DISTINGUISHED SERVICE MEMBER LORNA LEWIS.

The award, presented during The Council's recent Fall Leadership Summit and sponsored by NYSIR, recognizes a retired member of the organization who has demonstrated exemplary commitment to public education. The winner of the award – the professional organization's highest honor – is selected by The Council's Distinguished Service Committee.

Johnson is known nationally as an innovative education expert focused on closing the achievement gap for poor and minority students.

MEET THE NEW PRESIDENT... CONTINUED

Continued from page 8.

Whipple also pointed out another positive for district and BOCES subscribers alike – an ownership stake in NYSIR.

"As an owner, you have a vested interest in ensuring the process, systems and results are what you want them to be," he says. "Similar to our districts, NYSIR's roots weren't built primarily on profitability,

but on accountability to subscribers, their communities and their children. Over 30 years later, the result is something that should give us all a lot of pride."

When he's not busy being proud of NYSIR or spending time with his family, Whipple can be found on the local links playing golf. No mention of how proud he is of his handicap.

Education.

It's a complicated enterprise. Faculty. Staff. Students. Supplies. Transportation. Buildings and grounds. With seemingly a thousand things demanding attention all at once, risk management is bound to slip to the bottom of the list every once in a while, right? Here's why it shouldn't, and why it's important to remember...

It Could Happen to You.

A high school student who hears a ringing sound usually can chalk it up to one of two events: Class is ending, or the next one is beginning.

A high school student who hears a ringing sound usually can chalk it up to one of two events: Class is ending, or the next one is beginning. But what if it's just one student who hears a ringing, and it's brought on not by changing classes, but allegedly a school administrator speaking through an auditorium PA system? For one NYSIR district, just such a scenario led to a lawsuit that had the potential to result in a hearing loss of a different kind.

The plaintiff was one of over 100 high school students taking an aptitude test in the school's auditorium. As the finished exams

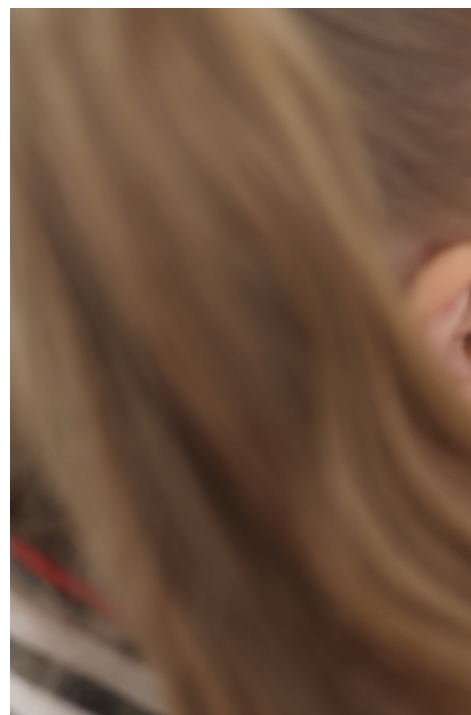
were being collected, some students began to chat amongst themselves, and the ensuing noise prompted a guidance counselor serving as a proctor to say "be quiet" on the auditorium's PA system. The student in question, who was sitting 75 to 100 feet away from the speakers, said she immediately felt muffling in her right ear, and then began to experience a ringing in the same ear.

Sometime later she alerted her mother to the muffled hearing but

was told by her mom that it probably would go away on its own. But when it was still there 10 days later, the student was taken to an ear, nose and throat doctor who, according to the teenager's mother, noticed eardrum trauma and said it was indeed caused by the auditorium incident. The mother filed suit on behalf of her daughter alleging district negligence was to blame for hearing problems, headaches and sleep disruption. For its part, the district began to hear suggestions of a potential \$300,000 settlement.

HAVEN'T HEARD THE HALF OF IT

The facts of the case sounded a bit different to district and NYSIR attorneys. Depositions of school employees, the plaintiff and her mother brought to light several important facts, prompting the



defense to file a motion for summary judgment. The school employee who set up the PA system testified, for instance, that he had made sure the volume level was appropriate, and an independent sound expert who tested the system stated the volume level that day wouldn't cause hearing loss. The guidance counselor who said "be quiet" also attested to using a stern but not unusually loud voice – a characterization confirmed by another test proctor.

independent medical exam of the student by a second doctor backed up the claim that her experience in the auditorium would have been unlikely to produce tinnitus or headaches.

Despite all that, the court denied the summary judgment motion and eventually found for the plaintiff, awarding damages

of over
\$130,000.

A MORE SOUND JUDGMENT

An appellate court saw it differently, however. It reversed the trial court's denial of a motion for a directed verdict, stating the proof at trial established that "plaintiff's daughter was 75 to 100 feet away from the speakers at the time, that many other students

A subsequent independent medical exam of the student by a second doctor backed up the claim that her experience in the auditorium would have been unlikely to produce tinnitus or headaches.



Significantly, the mother's deposed statement about the ENT physician's diagnosis turned out to completely contradict the doctor's own records, which showed he had concluded there was no evidence of hearing loss or ringing due to the auditorium incident. In fact, his report stated that the student's issues were more likely caused by temporomandibular joint dysfunction, a series of painful symptoms affecting the jaw joints. A subsequent

were closer to the speakers than she was, and that no one else in a room of over 100 persons suffered injury." The complaint was dismissed in its entirety.

THE LESSON?

On appeal, a case offering scant evidence can get thrown out on its ear.

It could happen to you.

Meet the New President



TIMOTHY WHIPPLE
PRESIDENT, NEW YORK SCHOOLS
INSURANCE RECIPROCAL

"I always say, it's hard to fully understand the value of NYSIR until you see it up close for yourself," says NYSIR President Timothy Whipple. "But once that recognition takes place, whether it involves a risk management program, a well-handled claims issue or a wide network of insurance professionals ready to assist, it's hard to imagine a better solution."

In short, it's the interaction and experience with NYSIR that makes an impact on subscribers. Similarly, the new president is poised to leverage his

own extensive professional experience to positively impact the reciprocal.

Whipple is assistant superintendent for business at Harrison Central School District (CSD), where he oversees transportation, buildings and grounds, and food service, among other areas. He served in similar roles for Pleasantville Union Free School District and Malone CSD, beginning his career at Brushton-Moira CSD as business manager/treasurer.

Additionally, he's president of the Southern Westchester Schools Workers Compensation Consortium and has held leadership roles with the Association of School Business Officials New York. He's served on the NYSIR Board of Governors for the last decade, acting as chairperson, secretary, second vice president and first vice president.

RECOGNIZING THE RIGHT SERVICES

Working at a variety of districts from the lower Hudson Valley to the North Country has taught him a simple but important lesson, says Whipple: Districts that differ in size, geography and other characteristics have different needs, and it's up to NYSIR to recognize them and deliver the right services.

"Each district operates in a distinct manner based on what works for them," he says. "One size doesn't fit all. That's why NYSIR's philosophy of providing broad coverage and extensive risk management programs is a huge advantage."

Continued on page 5.

"Each district operates in a distinct manner based on what works for them. One size doesn't fit all. That's why NYSIR's philosophy of providing broad coverage and extensive risk management programs is a huge advantage."

I always say, it's hard to fully understand the value of NYSIR until you see it up close for yourself.

TIMOTHY WHIPPLE
PRESIDENT,
NEW YORK SCHOOLS
INSURANCE
RECIPROCAL

