

State of Maryland

Insurance Coverage at a Glance

The State of Maryland operates a number of high risk enterprises including schools and universities, airports, prisons, hospitals, a port, bridges and tunnels, etc. State agencies charged with the operation of these high risk enterprises may have questions about the types of insurance coverage that the State provides for its property and personnel. The following is a broad overview of the types of coverage made available to State agencies through the various provisions and exclusions that may apply. This information does not represent all coverage, conditions, or exclusions. It is intended as a brief overview only, and is subject to change.

Self-insurance

The State self-insurance covers four basic types of losses: Torts (Negligence), Officers and Employees (O&E) losses, State-owned property losses, and Crime coverage for certain acts of employee dishonesty.

Tort coverage provides coverage for acts of negligence (including acts involving the operation of State-owned autos) as defined by the Maryland Tort Claims Act. Coverage does not apply to acts of malice, gross negligence, or to acts outside the scope of the employee's duties. The State limit of liability (also called a tort cap) is the maximum amount the State can be held liable for damages. Any claim with a date of loss on or before September 30, 2015, the tort cap amount is \$200,000, per claimant. Any claim that occurs on or after October 1, 2015, the tort cap amount is \$400,000, per claimant, but acts of negligence outside Maryland may not apply.

Officers and Employees (O&E) coverage provides coverage for constitutional torts committed by State personnel including acts of discrimination, sexual abuse, etc. There is no tort cap on these non-tort actions. Settlement of these claims must be approved by the Board of Public Works.

State-owned Property coverages

Auto coverage provides liability and physical damage coverage for State-owned autos.

Liability provides coverage for State personnel for acts of negligence involving the operation of autos.

Physical damage provides coverage for damage to State-owned autos arising from sudden and accidental losses, except for theft.

Property damage coverage provides replacement coverage for sudden and accidental losses to State-owned property including buildings and contents up to \$2,500,000. A \$1,000 agency deductible per occurrence applies. Property does not include autos, land, currency, and crops.

Vacant State-owned buildings valued at over \$20,000,000 are not insured unless fire protection, security and alarm services are maintained. It is also strongly suggested that heat be maintained in vacant buildings to at least 55 degrees in the winter months to prevent pipes from bursting.

Fine art coverage - Includes repair or replacement of State-owned fine art on a reimbursement basis unless the item is deemed irreplaceable by the State Treasurer.

Vessel (hull) coverage includes repair/replacement of hull damage to State-owned boats & watercraft.

Property Exclusions - The types of property damage perils covered by insurance are broad. However, the certain exclusions apply to the property damage coverages listed above. These include but are not limited to theft per regulation (COMAR 25.02.06.02 A and B), wildcat risk, and normal wear and tear.

Crime coverage (Fidelity Bond) provides coverage for Employee Dishonesty and Faithful Performance of duties. Employee Dishonesty covers theft of State money, securities, and inventory by a State employee acting alone or in collusion with other employees or outsiders. A \$1,000 agency deductible per occurrence applies.

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Commercial insurance

The State Treasurer is the primary procurement authority for commercial insurance. There are several commercial policies procured by the State Treasurer's Office for coverage of specialized losses. Of primary interest are three types of commercial coverage: excess coverage for State-owned property, liability coverage for State-owned vessels, and coverage for State personnel travelling on State business.

Excess Property coverage - The commercial policy for State-owned property provides coverage for State-owned buildings and contents. The policy helps to preserve the self-insurance reserve, known as the State Insurance Trust Fund (SITF), in the event of a catastrophic loss. A deductible of \$2,500,000 per occurrence applies. The commercial deductible is paid out of the SITF. If one or more State agencies sustain a loss arising from a single catastrophic occurrence, the deductible of \$2,500,000 is only applied once. For example, a single hurricane can damage the property of several State agencies. In this exa

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MEMORANDUM

To: Treasurer Kopp
Thomas Kelley

From: Laura C. McWeeney

Date: October 9, 2002

Subject: Risks and Liabilities of Automobile Use within the Scope of Public Duties

INTRODUCTION

The purpose of this memo is to discuss the State's self-insurance coverage and the risks and liabilities of automobile use within the scope of an employee's public duties. The most important consideration for a determination of coverage and liability is whether the accident occurred within or outside of State borders. The second most important consideration is whether the automobile involved in the accident was a State-owned vehicle or the employee's private vehicle. A chart setting forth the parameters of basic coverage under each scenario (i.e.; in-State accident in an employee's personal vehicle) is attached to this memo for short-hand reference. This memo augments the chart and considers broader topics such as representation by the Attorney General's Office, compensation for employee injury, and the factors determining whether a commute from home to office falls within the scope of public duties.

SUMMARY

- \$ A State employee involved in an accident within the scope of his public duties is immune from suit and judgment if the accident occurs in Maryland. The employee may have such immunity if the accident occurs in another state. If the accident involves the employee's personal vehicle, he may have additional or alternative liability coverage under the terms of his personal policy of insurance.
- \$ A State employee authorized to drive a State-owned car to commute to and from work is by law, considered to be acting within the scope of his public duties. A

State employee who is driving his personal vehicle to commute to and from work is generally not considered to be acting within the scope of his public duties. Therefore, a State employee commuting to work in a State vehicle has the immunities and protections of a State employee acting within the scope of his public duties, but a State employee driving his personal vehicle does not.

\$ Workers= compensation is the exclusive source of coverage for injured drivers of State-owned vehicles because the State is not required to and does not maintain personal injury protection (PIP) which covers medical, hospital, disability expenses and lost wages, or uninsured motorist (UM) protection. State employees driving their private vehicles within the scope of their public duties have both workers=

that event, the Board of Public Works will be requested, but is not required, to pay a judgment rendered against an employee.

A. Representation by Attorney General.

The Attorney General represents the State when it is sued. Sometimes Tw(TnSW9.5(plosE1 1 1 scn69.7

' 5-522(c)(1). Whether an employee is driving a State-owned or his personal vehicle while commuting to or from work will determine: whether the employee is immune from suit and the State is responsible for the accident, or whether the employee must rely on his personal policy of insurance for protection. That is not, however, to say that a employee could never be acting within the scope of his public duties while commuting to and from work. Factual situations such as where the employee drives out of his normal commute route to attend a meeting or visit a job site might occur. In that event, the employee is acting within the scope of his duties even though he is commuting to work.

INJURIES TO THE STATE DRIVER

Whether an employee is traveling in a State-owned or a personal vehicle while commuting to or from work may affect his ability to recover workers= compensation for his injuries. Ordinarily, an employee is not considered to be acting within the course of employment and thus, able to recover workers= compensation, for an injury incurred when traveling to and from work. *Alitalia Linee Aeree Italiane v. Tornillo*, 329 Md. 40 (1993). However, a State employee authorized to drive a State-owned car to commute to and from work is by law, considered to be acting within the scope of his public duties.

An employee is also acting within the course of employment and able to file a compensation claim when traveling on a special mission or errand in furtherance of the employer=s business, even if the journey is one that is to or from the workplace. *Huffman v. Koppers Co.*, 94 Md. App. 180 (1982). Therefore, a State employee who is injured while driving to a job site or to make a home visitation on his way to work in his personal vehicle would be entitled to workers= compensation.

In sum, the following drivers are eligible to recover workers= compensation:

1. drivers of State-owned vehicles on a special mission or errand in furtherance of State business;
2. drivers of State-owned vehicles commuting to or from work; and;
3. drivers of personal vehicles on a special mission or errand in furtherance of State business.

Since the driver of a personal vehicle commuting to or from work and not on a special mission or errand in furtherance of the State=s business would not be able to recover workers= compensation, those drivers must avail themselves of coverage under their own

policy of insurance including: personal injury protection (PIP) to cover medical, hospital, disability expenses, and lost earnings, and/or uninsured motorist protection (UM).

PIP and UM coverage is not available to drivers of State-owned vehicles because the State, unlike private owners, is not required to and does not maintain PIP and UM coverage. *Nationwide Mutual Ins. Co. v. USF&G*, 314 Md. 131 (1988) and *Harden v. Mass Transit Administration*, 277 Md. 399 (1976). Drivers of their personal vehicles on a special mission or errand in furtherance of the State's business have both workers= compensation coverage and PIP and UM coverage under their own policies of insurance.

COLLISION COVERAGE

The State is required, through commercial or self-insurance, to maintain insurance on its vehicles to cover bodily injury claims and damage to the property of others. Md. Trans. Code Ann. 17-103; Md. Cts. & Jud. Proc. Code Ann. ' 5-524. Therefore, the State maintains collision coverage for its vehicles, but not for the personal vehicles of State employees driving within the scope of their public duties. The driver of a State-owned vehicle would rely on the collision coverage maintained by the State and would not have any out of pocket expenses.

A State employee whose vehicle is damaged would most likely rely on his personal insurance for damage to his vehicle and would be responsible for any deductible. In some instances, the driver of a State-owned vehicle can be held responsible for damage to the vehicle operated by them. For instance, it is State policy that if damage results through misuse or gross negligence, a driver will be required to make restitution to the State. *Department of Management and Budget Fleet Policy Manual* at 6.

ADDITIONAL OR ALTERNATIVE COVERAGE FOR

