

# 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 State Treasurer's Office and the general 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's 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) by "State Personnel" 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's 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), builders' 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 solvency of the State's 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 example, each agency would have a \$1,000 deductible. However, the excess property policy would apply one \$2,500,000 deductible to the entire loss.

The excess property policy also covers certain types of property with *separate and lower* deductibles:

- **Electronic Data Processing (EDP)** – includes State-owned hardware, software, and media. A \$100,000 commercial deductible applies. A \$1,000 agency deductible applies. Theft is excluded.
- **Boiler & Machinery** – includes State-owned boilers, pressure vessels, refrigerating and air conditioning vessels; can also cover electrical damage from artificially generated electrical current, mechanical breakdown from sudden breakage, or rupture of machinery or equipment. A \$100,000 commercial deductible applies. A \$1,000 agency deductible applies.

**Vessel liability coverage** – The commercial policy provides coverage for almost all maritime exposures related to the operation of a vessel other than Worker's Compensation or hull damage. A \$50,000 commercial deductible applies. The commercial insurance policy provides a limit of liability of \$1,000,000 per vessel, and \$2,000,000 per occurrence. A \$1,000 agency deductible applies.

**Travel Accident coverage** - The State's commercial policy provides coverage for all State personnel as defined by the Maryland Tort Claims Act. The policy covers business trips within the scope of the employee's job duties. The insurance provided is subject to a tort cap. The 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. The aggregate limit of \$2,500,000 per accident has the following exclusions:

- suicide or attempted suicide,
- declared or undeclared war,
- injuries incurred in the commission of or attempt to commit a felony,
- Full-time duty in the armed forces, National Guard or organized reserve corps of any country.

**Worker's Compensation coverage is not provided by the State Treasurer's Office. Worker's Compensation is self-insured and the plan is administered by [Chesapeake Employers' Insurance Company, formerly IWIF.](#)**

**For more information regarding Coverage, Claims, or Loss history, please contact the following:**

Insurance Department	<b>Tim A. Holbrook, Deputy Director</b>	410-260-7172
Insurance Coverage	<b>Barbara Boumboulis, Underwriting Manager</b>	410-260-7229
Loss Prevention	<b>Mia Liley, Loss Control Manager</b>	410-260-7239
Litigation	<b>Vivian Miller, Litigation Manager</b>	410-260-7192

**All other inquiries may be directed to:**

<b>Joyce A. Miller, Director</b>	<b>410-260-7929</b>
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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' compensation coverage and the additional protection of their PIP and UM coverage. PIP and UM coverage would most likely be the exclusive coverage for employees injured while commuting to work in their personal vehicles.
- The State maintains collision insurance coverage for its vehicles, but not for an employee's personal vehicle damaged in an accident. Accordingly, a State employee whose vehicle is damaged must rely on his personal insurance for damage to his personal vehicle and would be responsible for any deductible. 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.

### **SELF INSURANCE PROTECTION UNDER THE MARYLAND TORT CLAIMS ACT**

The Maryland Tort Claims Act (MTCA), Md. State Gov't Code Ann. §12-101, *et seq.*, is the sole method for suing the State and its personnel for their negligent acts and omissions, including negligent driving, committed within the scope of their public duties. One of the conditions that the State has placed on its consent to suit is that the employees may not be sued or be held personally liable unless their actions are outside the scope of their public duties, or are committed with gross negligence or malice. Md. State Gov't Code Ann. §12-105; Md. Cts. & Jud. Proc. Code Ann. §5-522(b).

The State's liability under the MTCA is further limited to \$200,000 to each claimant for injuries arising from a single incident or occurrence. Md. State Gov't Code Ann. §12-104(a)(1) and (2). However, both of these limitations, the grant of personal immunity and cap on liability, only apply in this State's courts unless another state chooses to honor the limitations on the basis of comity. Thus, a state employee may be sued in another state for negligence committed in that state even if the act or omission occurred within the scope of his public duties (i.e., for legitimate out-of-State travel.) In

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 State employees are sued along with or instead of the State. In such cases, the employee may request the Office of the Attorney General (OAG) to represent him. If representation is requested, the OAG will represent the employee unless it believes that the employee's actions were outside the scope of his public duties or were characterized by gross negligence or malice.

If represented by the OAG, the employee will be required to enter into a representation agreement that sets forth his rights and obligations as provided by law. These representation agreements generally provide that if the employee is judicially determined to have acted outside the scope of his employment or with malice or gross negligence, the Board of Public Works may be requested, but is not required, to pay any judgment rendered individually against the employee. The agreement further provides that an employee may be required to reimburse the OAG for attorney's fees, court costs, and other expenses if the information provided by the employee was false, misleading or incomplete. Finally, the agreement sets forth the conditions and obligations of both the OAG and employee in the event of settlement.

The same representation process, rights, and liabilities apply regardless of whether a State or personal vehicle was involved in the accident and regardless of whether suit was brought in Maryland or in another state.

#### **B. Scope of Public Duties-Commuting to and from work.**

State employees frequently drive State-owned and/or personal vehicles within the scope of their public duties. For example, a State employee may drive a vehicle from his office to a meeting at another location and then return to his place of work. If such a driver is involved in an accident in the State, he would be immune from suit and liability unless he was grossly negligent or acted with malice.

Generally, a State employee who is commuting to and from work in his personal vehicle is not considered to be acting within the scope of his public duties. Accordingly, if he is involved in an accident, he will not be immune from suit and the State is not responsible for his negligence. However, any authorized use of a State-owned vehicle, including commuting to and from work, is considered to be acting within the scope of public duties for purposes of immunity from suit and liability. Md. Cts. & Jud. Proc. Code Ann.

§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 DRIVERS OF PERSONAL VEHICLES**

In addition to the protections previously discussed, an employee involved in an accident while driving his own vehicle would have additional or alternative liability coverage under his contract of insurance on his personal vehicle. Coverage, limits of coverage, and limitations based on an employment-related use of the vehicle may vary, but such policies typically require the insurer to defend the State employee if sued and pay any judgment up to the limits of liability coverage. This is true regardless of whether the accident occurs in Maryland or outside of the State, but would be especially important and beneficial for an accident occurring outside of the State where the employee is not immune from suit and a judgment could be rendered against him personally.

## **Automobile Insurance Coverage for State Drivers**

These coverage descriptions pertain to State personnel driving within the scope of their public duties:

### **State vehicle involved in an in-State accident.**

- State employee retains personal immunity if in scope of public duties and acting without malice or gross negligence.
- \$200,000 cap on liability per claimant.
- Workers' compensation coverage for bodily injury.
- OAG provides defense.
- No theft coverage.
- Collision (property damage) coverage.

### **State vehicle involved in an out-of-state accident and suit is brought in that state court.**

- No employee immunity unless granted by that State under doctrine of comity.
- No cap on liability.
- The Board of Public Works may pay a settlement/judgment.
- OAG provides defense.
- No theft coverage.
- Collision coverage.

### **Personal vehicle involved in an in-State accident.**

- Same coverage as that for a State vehicle involved in an in-State accident except,
- No collision coverage.

### **Personal vehicle involved in an out-of-state accident and suit is brought in that state court.**

- Same coverage as that for a State vehicle in an out-of-state accident.
- Private automobile insurance may be required for additional or alternative coverage.
- No collision coverage.