

RISK MANAGEMENT BULLETIN

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Emergency Vehicle Liability--What Is The Extent of Your Coverage?

Concerning the liability arising from the authorized operation of emergency vehicles¹, most, if not all, members, have insurance coverage up to \$1,000,000 per vehicle, per occurrence. In light of the much lower liability limits set forth in State law, the question that needs to be asked is: can LGIT's coverage be deemed necessary? The answer is a categorical "yes."

Pursuant to § 19-103(c) of the Transportation Article and § 5-639(c) of the Courts and Judicial Proceedings Article, the liability of self-insured jurisdictions that own or lease emergency vehicles "is limited to the amount of the minimum benefits that a vehicle liability insurance must provide under § 17-103 of the Transportation Article" (for bodily injury or death, \$20,000 for any one person and up to \$40,000 for any two or more persons, in addition to interest and costs, and, for claims for property of others damaged or destroyed in the accident, up to \$15,000, in addition to interest and costs), "except that an owner or lessee may be liable in the amount up to the maximum limit of any basic vehicle liability insurance policy it has in effect exclusive of excess liability coverage." As a result of this statutory limitation of the liability of self-insured jurisdictions, LGIT's Coverage Declaration Forms for Primary Scope of Coverage and the Scope of Coverage at Section II – Coverage C (p. 4-10) reflect the minimum benefits required of self-insured jurisdictions. In addition, LGIT certifies to the Maryland Motor Vehicle Administration that Trust members are self-insured to the statutory limits of 20,000/40,000/15,000. However, the \$1,000,000 coverage remains available if, pursuant to § 5-639(d), it is judicially determined that the statutory limit is inapplicable (an example would be where the occurrence occurs out of State and it is determined that Maryland law is inapplicable), or where it is otherwise determined that the owner/lessee is liable "in an amount up to the maximum limit of any basic vehicle liability insurance policy it has in effect exclusive of excess liability coverage."

Guided by this information, a blueprint for handling emergency vehicle liability claims has been adopted. Most claims arise from automobile accidents involving emergency vehicles operated in emergency service². Standard claims include allegations that the emergency vehicle operator's negligence, as opposed to a malicious act or omission or gross negligence, caused the accident. Thus, the statutory limits of the emergency vehicle owner or lessee's liability are called into play. In response to such claims, LGIT's analyst or adjuster will assert the self-insured limits as defining the extent of the member's liability, and, dependent upon numerous factors, including the operator's fault, will attempt to negotiate settlement within the statutory limits. If this fails, and the claim ripens into litigation, Trust-assigned counsel also will raise the statutory limits through motion or answer to the complaint. If, during the course of the litigation, it is judicially determined that the limits are inapplicable, the coverage in excess of the limits remains available for settlement and/or to satisfy an adverse judgment.

Sponsoring Organizations



Exposure beyond the statutory limits, although possible, will be dependent upon extremely unusual circumstances. For example, the Trust defended one member in an out of state lawsuit arising from a motor vehicle accident involving one of its deputy sheriffs. In that case, the highest appellate court in the other state held Maryland's local government liability limit, set forth in the Local Government Tort Claims Act ("LGTCA"), inapplicable³. Exposure beyond the statutory limits could also exist if it were determined that the authorized emergency vehicle operator acted maliciously or with gross negligence, but still within the scope of his or her employment with the local government. In such a circumstance, it could be argued that the local government and the employee share responsibility for the judgment entered against the operator/employee, and that, pursuant to § 5-302(b)(2)(ii) of the LGTCA, the local government could seek indemnification for any sums it is required to pay under § 5-303(b)(1). Obviously, the Trust, on behalf of its member, would oppose any such statutory construction. However, as with all such worst-case scenario examples, the coverage in excess of the statutory limits remains available.

In sum, LGIT's members are well protected against liability arising from emergency vehicle operation. Coverage extends from the minimum required by state law, to the amount set forth in the member's Declaration Form. Rest assured, that as with all claims, emergency vehicle claims will be thoroughly analyzed, and, where liability is in question, aggressively defended.

1"Emergency vehicle' means any of the following vehicles that are designated by the Administration as entitled to the exemptions and privileges set forth in the Maryland Vehicle Law for emergency vehicles:

- (1) Vehicles of federal, State, or local law enforcement agencies;
- (2) Vehicles of volunteer fire companies, rescue squads, fire departments, the Maryland Institute for Emergency Medical Service Systems, and the Maryland Fire and Rescue Institute;
- (3) State vehicles used in response to oil or hazardous materials spills;
- (4) State vehicles designated for emergency use by the Commissioner of Correction;
- (5) Ambulances; and
- (6) Special vehicles funded or provided by federal, State, or local government and used for emergency or rescue purposes in this State."

MD. CODE ANN., TRANS. II § 11-118 (2002 Repl. vol.).

2"Emergency service' means:

- (i) Responding to an emergency call;
- (ii) Pursuing a violator or a suspected violator of the law; or
- (iii) Responding to, but not while returning from, a fire alarm."

MD. CODE ANN., TRANS. II § 19-103(a)(3) (2002 Repl. vol.).

3Concerning the liability limits in the LGTCA, the Trust has consistently maintained that accidents involving emergency vehicles are subject to the specific statutes referred to above, and not the more general LGTCA. This conclusion is supported by the grant of immunity in § 19-103(b) and § 5-639(b) to an authorized operator of an emergency vehicle for damages resulting from a negligent act or omission while operating the emergency vehicle in the performance of an emergency service.

If you have questions concerning this issue, please contact John Breads, Jr., Senior Attorney at 1-800-673-8231.

This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.