



Risk Management Solutions



Summer 2014

A Quarterly Newsletter of the AMIC/MWCF Loss Control Division

Municipal Employees Should Not be Left with the Least Amount of Protection!

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We all make mistakes. (Show this article to Ms. Moat, my high school English teacher, and she'll tell you I still do!) However, as officers and employees of municipalities of the State of Alabama, should the mistakes made while acting at the direction of your employer and in the course of your employment leave you personally liable? The answer is obvious: **No**. You should *not* be personally liable when acting in the course of your employment.

For decades, municipal employees have freely conducted the business of the municipality without concern for personal liability. Three clear Alabama statutes (11-47-190, 11-93-2 and 11-47-24) worked in tandem to ensure that a mistake by a municipal employee was the responsibility of the municipality and limited the amount of collection the municipality had to pay. Services to the citizens of Alabama flourished because municipalities and the employees were protected in a similar fashion provided to State employees.

Over the past several years, however, the Alabama Supreme Court has issued two opinions (*Roy v. Suttles* and *Morrow v. Caldwell*) that expose municipal employees to personal liability. The Court has allowed claimants to sue municipal employees either in their "official capacity" or in their "individual capacity." The distinction, according to the Court, is whether the claimant is seeking the assets of the municipality (official capacity) or the employee (individual capacity). The Court seems to agree that the employee can be sued in his "individual capacity" solely for acts in the line and scope of his employment.

These opinions should be a clarion call for action. Alabama's municipal employees should *not* be personally exposed for mistakes made in the course of their employment. **Most other public employees of this State are free from personal liability.** This past legislative session, the Alabama Legislature passed Act #2014-124, which provided that:

"An officer, employee, or agent of the state, including, but not limited to, an educational employee, is immune from civil liability in his or her personal capacity ..." Our neighboring states also protect their municipal employees. For example, in Mississippi, "... no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties." Miss. Code Ann. 11-46-7(2).

Those representing claimants against municipal employees merely counter that the municipality should just provide insurance for the employees. However, section 94 of the Alabama Constitution and Alabama statute 11-47-24 likely *prevent* municipalities from purchasing insurance to cover an employee's personal liability. Even if such insurance could be purchased, the cost would be excessive.

What should you do?

All municipal employees should contact their state legislators to ensure they cannot be held personally liable for acts or omissions occurring within the course and scope of their duties – particularly since nearly every public employee of this State has that protection. It's imperative that municipal officials and employees bring this critical issue to the forefront by reminding their judges and legislators that the reason municipalities have built-in protections is to, ultimately, protect the taxpayer. Even more importantly, Alabama's lawmakers need to understand that in order for cities and towns to recruit and keep *qualified* employees, municipalities must have ways to protect their employees against backdoor assaults that are now coming in the form of individual lawsuits.

Municipal employees, who provide the most services to the most people, should *not* be left with the least amount of protection!

Defining Moment

Gross Negligence

You might be familiar with negligence – which is the failure to exercise the care toward others which a reasonable or prudent person would do in the same circumstances, or taking action which such a reasonable person would not – but what is *gross negligence*?

Gross Negligence is commonly defined as “the failure to exercise even the slightest amount of care.” It often involves the deliberate disregard of another person’s safety. A person found guilty of gross negligence usually knows, or should have known, of the danger involved in the conduct they performed. Gross negligence usually involves unintentional acts, but they can border on intentional conduct due to the reckless nature of the activity. Keep in mind that negligence is a failure to exercise reasonable care thus causing injury or property damage. With **gross negligence**, however, a person *knows* an act is reckless and could cause harm yet proceeds to act anyway.

Mark your Calendars! Loss Control Seminars Aug. and Sept.

The Loss Control Division is offering its annual training seminars August and September. These seminars have always been well attended and we look forward to continuing that success with this year’s events. As always, when choosing our topics we try to consider the broad spectrum of different people, job titles and interests we have at these events.

For more information and to download the registration form, visit losscontrol.org and click on the link for the seminars. Please remember to register for your preferred location as soon as possible as some locations have limited space. Lunch will be provided.

Topics:

- Selection/Hiring Process for Law Enforcement Officers
Terry Sanders, Police Safety Consultant
- Employment Practice Scenarios, Test Your Knowledge
Todd McCarley, Loss Control Rep
- Driver Management Systems
Richard Buttenshaw, Loss Control Rep
- Parks, Pools and the Public, Limiting Your Liability
Will Strength, Loss Control Rep

Dates and Locations:

Tuesday, Aug. 5

Northport City Hall
3500 McFarland Blvd.
Northport, AL 35476

Wednesday, Aug. 6

Priceville City Hall
242 Marco Drive
Decatur, AL 35603

Tuesday, Sept. 23

Thomasville Civic Center
559 West Front Street North
Thomasville, AL 36784

Wednesday, Sept. 24

Alabama League of
Municipalities
535 Adams Avenue
Montgomery, AL 36104

www.losscontrol.org

Silver Anniversary AMIC Members 1989-2014

The following is a list of members that have been insured with AMIC since its inception in 1989. We thank them for their continued support!

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| Town of Locust Fork | Town of West Jefferson |
| Town of Maplesville | Town of Wilsonville |
| City of Moody | City of Winfield |



Non-employees Riding in Municipal Vehicles

Acceptable vs. Unacceptable Exposure

Richard Buttenshaw, ARM-P, CIC, CSP • Loss Control Representative • AMIC/MWCF Loss Control Division

The AMIC/MWCF Loss Control Division recommends that you adopt a written policy prohibiting non-employees from riding in municipal vehicles unless it is *directly* related to municipal business or an emergency. **Why? Because passengers have no coverage unless additional endorsements are purchased.**

This best practice recommendation is based on the idea of separating “acceptable exposures” from “unacceptable exposures” for both the municipality and your auto insurance carrier. A passenger in municipal vehicles has no coverage under a standard auto policy unless an additional endorsement is purchased for passenger medical payment coverage. Even then, such an endorsement is often limited to only \$5,000 per passenger. What this means is that – should your municipal vehicle have an at-fault accident – the passenger has *zero coverage* under your unendorsed policy. The only recourse to recover money for passenger injuries is to sue the municipality, which can lead to understandably awkward situations if, for example, an employee has to sue his employer to cover the medical bills for his child because she was riding in his municipal vehicle.

Due to the lack of direct coverage under the auto policy, the municipal auto carrier can do nothing until the lawsuit is filed. At that point, the good news for the municipality is that your carrier would then step in and defend the municipality in the lawsuit. However, as with all lawsuits, the time and extra expenses involved in handling and settling a lawsuit could mean the final cost of that claim may well be substantially larger than the original medical bills incurred. So, while the good news is that the municipality had coverage for the lawsuit, the bad news is that the claim is now on the city’s loss run and will adversely affect renewal premiums, leaving the municipality to ask: “Should our premiums be going up because an employee decided to use his city vehicle for personal use?” And, while that’s a great question, the better question to ask would be: “Why did we as the city allow ourselves to be put in this situation?”

Acceptable vs. Unacceptable Exposure

This principle applies to ALL passengers in ALL municipal vehicles and, of course, there are times where having non-employees in municipal vehicles is unavoidable. Therefore, we must try to separate the “acceptable exposure” from the “unacceptable exposure.” For example, a senior center might use a 15-passenger van for senior trips. What happens if that van wrecks? The same process as described above: since none of those seniors has direct coverage, they will have to sue the municipality for their injuries. Again, at that point the auto carrier steps in and defends the municipality in the lawsuits and may well end up paying those medical bills. However, the major difference in this example is, from a risk management standpoint, it’s an *acceptable* exposure. Because this is a service the municipality is providing its citizens, it is, therefore, an acceptable risk for the municipality to take given that is what it is there to do: provide services for citizens.

Another example would be a police officer finding a lost child roaming the streets and picking him up to bring back to City Hall until the parents can be located. Does that child have coverage while riding in the police car? No. Is this an *acceptable* risk for the police officer to take? Protecting citizens is part of the scope of a police officer’s duties so, of course, the answer is yes. Clearly, there are many times when non-employees riding in municipal vehicles is due to a business need or part of a service being provided. These are all acceptable risks from a risk management standpoint.

However, there are times when a non-employee riding in a municipal vehicle is not an acceptable risk. For example, an employee using his city vehicle to pick up or drop off his children at school. Was the vehicle purchased with public money and underwritten for insurance purposes with that use in mind? Should that city be exposed to a potentially large and expensive lawsuit that could ultimately cause its auto premiums to go up because of an injury to a child riding in one of its vehicles? Could and should that exposure have been avoided by the city? Certainly, from the insurance carrier’s standpoint, a claim arising from such a situation should have never been allowed to happen and could have easily been avoided. So, from a risk management perspective, this is an example of an “unacceptable exposure.”

A final but again very common example is when an employee is being sent out of town for a few days to attend a conference. That conference happens to be at the beach and would be a great opportunity to take the family on a short vacation. So the employee loads up his spouse and children in his municipal vehicle and heads to the beach. Who will be sued for the large medical bills of the spouse and children if that vehicle has an at-fault accident? Since this is an approved business trip for the employee, he is probably covered under the city’s workers comp insurance. But what about his family? Was that a risk and claim the city could have avoided? Absolutely. Is that a lawsuit that the insurance carrier feels should not have happened? Yes. However, is it unfair to punish the employee by not allowing him to take his family while he’s out of town? The good news is that this issue can be resolved very easily. If an employee is going alone or with only other employees, then he can take a municipal vehicle. But if he wants to take a non-employee with him, he needs to use his personal vehicle and get reimbursed for the mileage or gasoline. After all, an employee shouldn’t be penalized for going on the trip – and he wouldn’t have paid for the gas if he’d used a city vehicle.

Conclusion

This can be a complex and thorny issue for many municipalities. Some have allowed employees to use city vehicles for personal use for many years as long as it didn’t interfere with business. Little did they know the added risk and exposure this practice creates for the city. From a risk management viewpoint, it is certainly a best practice to review the use of your municipal vehicles and ask yourself: “Is this an acceptable or unacceptable risk?” In doing so, keep in mind that, from your insurance carrier’s perspective, the answer may not be the same as yours. ■

2014 SkidCar Schedule

Through an advanced, computer-controlled driver training vehicle known as the Skidcar System, trainees learn how to react quickly and safely to a range of hazardous driving conditions. Training is conducted throughout the state at a minimal cost.

For more information, contact Donna Wagner at 334-262-2566.

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| July 8-11 | Eufaula |
| July 15-18 | Phenix City |
| August 5-15 | Decatur |
| September 2-12 | Muscle Shoals |
| Sept. 30 - Oct. 10 | Attalla |
| November 4-14 | Orange Beach |
| December 2-11 | Wetumpka |

Date/location subject to change.



Loss Control Division

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- 5.006, 5.007 Cutting It Short, Part 1 & 2 (Cutting Grass)
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- 5.039 Tractor Safety
- 5.053 Landscaping Equipment: Safety and Maintenance
- 7.029 Outdoor Safety: Critters and Plants
- 7.067 Responding to Bites and Stings
- 7.079 Tree Trimming Safety
- 7.080 Chainsaw Safety
- 7.083 Inspecting Playgrounds for Safety
- 7.084 Softball & Baseball Field Maintenance & Safety
- 7.089 Working Safely in Hot Environments
- 7.097 Heat Stress: Staying Healthy, Working Safely
- 7.105 Groundskeeping Safety: Dealing with Bugs & Critters
- 7.106 Groundskeeping Safety: Be A Pro!
- 7.107 Heat Stress for Public Employees: Seeing Red
- 7.108 Protecting Your Feet: Learning Your ABC's
- 7.110 A Practical Approach to Ladder Safety
- 7.123 Boating Safety
- 7.128 Golf Cart and Low Speed Vehicle Safety

**Video/DVD requests to: Rachel Wagner at: 334-262-2566;
rachelw@alalm.org; or FAX at 334-263-0200.**

Need Help Filing Work Comp Claims?

For step-by-step instructions, visit:

www.almwcf.org

Employment Practices Law Hotline

1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30-minute consultation.

www.losscontrol.org