

MUNICIPAL LIABILITY: WHAT EVERY MANAGER SHOULD KNOW

January 22, 2016



Today's Goals

- Review the most common exposures
- Discuss how insurance does or may apply
- Provide some basic loss control concepts
- Raise awareness of issues most likely to occur

As a reminder.....

Our discussion today is intended as an overview to highlight issues or situations which may create liability for municipalities.

Because of time constraints, the discussion cannot be exhaustive or address every possible topic or coverage consideration.

While the discussion will be helpful in raising issues of concern or in need of attention, there remains no substitute for direct review of the insurance coverage documents or consultation with your account executive, account manager or claims contact.

Tort Liability

- A “tort” is a civil wrong which causes someone else to suffer loss or harm and results in legal liability for the person or group that committed the harmful act.
- As a rule, insurance intends to provide coverage for “Torts” and not for Criminal actions or ethical violations, which are not “civil wrongs”

Municipalities Have Wide Exposure

- Major infrastructure provider
- Creator and enforcer of codes, laws and ordinances
- Provider of education and social services
- Significant local employer
- Possibly owner operator of largest vehicle fleet
- Unique first party liability

Auto Related Exposure

- Municipal fleets are expansive and diverse.
- There are muni vehicles on the road 24/7/365.
- Constant presence on the road increases statistical likelihood of accident involvement.
- Greater involvement in poor travel conditions
- Aging fleet and shrinking maintenance budgets
- CDL involvement and requirements

Auto Coverage

- In summary, two types of coverage: first party and third party
- First party pays for the damage to a Town owned vehicle
- Third party pays for damages/injuries to a third party vehicle or third party person

Auto Coverage

- If you want insurance coverage for first party losses, your vehicle **MUST** be listed on the fleet schedule and have selected coverage for physical damage.
- Coverage for liability claims within the MIA program flows to any auto owned by the town or for which the town is legally responsible.

Auto Coverage Basics

- All MIIA Members have liability insurance limits of \$1,000,000/\$3,000,000 aggregate
- MIIA does offer replacement cost coverage for some types of vehicles.
- MIIA does pay deductibles of volunteer firefighters involved in car accidents while responding to a call.

Auto Coverage Basics

- Your coverage is excess above that of anyone using their own auto on town business.
- Personal injury protection coverage is available for anyone not eligible for workers comp or PFA

Auto Loss Control Tips

- Review your fleet schedule – what is there, what is not there and is the coverage requested correct? New vehicles?
- Who is driving your vehicles? CDL vs Standard Operator. Volunteer operators. License records
- Do you have an auto usage policy? Does it address use outside of business hours?

Public Officials Exposure

- Municipalities have exposure for the actions of their public officials.
- In order to object to or oppose changes in laws or procedure, it at times becomes necessary to sue towns and/or public officials
- Some of those actions are torts and are covered by insurance. Others are administrative and fall outside the area of insurance coverage

Public Officials Exposure

The tort issues that most frequently arise:

- Employment liability
- Libel, slander, defamation
- Zoning disparity/cell towers

Public Officials Insurance Basics

- All MIIA Members carry limits of \$1,000,000/\$3,000,000
- Coverage applies for a “wrongful act” which results in compensatory damages. If both elements are not present, coverage does not apply.
- Coverage includes the cost of defense of covered litigation

Public Officials Insurance Basics

- There IS coverage for Employment Practices Liability (EPLI) claims
- Be aware of the sublimit which may exist on the amount of back and future wage loss. Wage/economic loss are the largest component of any EPLI claim.

Professional Liability Loss Control Tips

- Commit to constant refresher training
- Training for new board members and managers
- Do you have in place an anti discrimination policy?
- Are personnel files/records kept? Who reviews?

School Board Exposure

- The volume of school related tort claims are:
- EPLI claims – wrongful termination, discrimination, etc.
- Student civil rights violations (Inc. bullying)
- Inappropriate behavior of staff



School Board Exposure

- Schools also have the requirement that many of their staff are “mandatory reporters” under several statutes.

School Board Insurance Basics

- All MIIA Members carry limits of \$1,000,000/\$3,000,000
- Coverage applies for a “wrongful act” which results in compensatory damages. If both elements are not present, coverage does not apply.
- SPED placement events are not covered until or unless litigation is filed.

School Board Insurance Basics

- There IS coverage for Employment Practices Liability (EPLI) claims
- Be aware of the sublimit which may exist on the amount of back and future wage loss. Wage/economic loss are the largest component of any EPLI claim.
- Coverage includes the cost of defense of covered litigation

School Board Liability Loss Control Tips

- How are your mandatory reporters trained?
- Is there someone coordinating mandatory reporting?
- As with Professional Liability, are your personnel procedures adequate?
- The annual tenure grant issue

Staff Impropriety

- Sadly, there still arise claims for alleged improper touching, harassment, etc. between staff and staff or staff and students.
- An element of the school/town's exposure comes from being the employer of the alleged perpetrator
- A second element derives from the actions the school or town took to hire, supervise and discipline that perpetrator and from what actions the school or town took to address any incidents of which it became aware.

Staff Impropriety

- There is insurance coverage to address this exposure.
- The insurer will pay for the civil defense of the alleged perpetrator up until he/she is adjudicated to be “responsible.” Once that determination is made, all coverage for the perpetrator stops.
- The insurer will provide indemnity and defense coverage to other school officials names as supervisors, managers, etc. within the terms and conditions of the contract.

Loss Control Tips

- Is there a way for someone to report an incident?
- What is your investigation protocol
- Do you follow it?
- Do you have a communication strategy?
- Is there always fire where there is smoke?

Law Enforcement Exposure

- Obviously, very unique to municipal pursuits
- Exposure for use of autos, there is EPLI exposure within the department, there is a need to maintain the facility due to high number of citizen visits
- Alleged wrongful arrests
- Alleged use of excessive or inappropriate force
- Mutual aid agreements

Law Enforcement Insurance Basics

- Each MIIA Member carries coverage of \$1,000,000/\$3,000,000
- Coverage is provided for the town and for named individuals who qualify as “an insured.”
- Civil rights coverage is included

Law Enforcement Loss Control Tips

- How up to date is your department's in force training?
- How current are the departments policies and procedures – are all officers familiar with them?
- Are your personnel records complete?

General Liability Exposure

- What's left?
- Slip and falls at public buildings or land
- Road defect claims
- Snow removal claims
- Water/sewer claims

- These any many other “general” types of claims would fall under the General Liability contract

General Liability Insurance Basics

- As with all others, limits are \$1,000,000/\$3,000,000
- Coverage provided for “bodily injury” and “property damage” as well as “personal injury”
- Defense of litigation is included

Loss Control Tips

- Does the town routinely survey its property for defects or items in need of repair?
- Do you have a maintenance plan and is it current?
- Do you track your efforts to comply with the maintenance plan?
- Is there a process for vendor selection and risk transfer
- Do you apply the same risk assessment criteria to vendors that you do to your own staff?
- Did I mention **Risk Transfer**?

Questions?



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