



Missouri Highways and Transportation Commission Policies

Category: ENTERPRISE RISK MANAGEMENT
Subcategory: Liability Insurance
Sub-Subcategory: Self-Insurance Plan

SELF-INSURANCE PLAN GENERAL LIABILITY AND VEHICLE FLEET LIABILITY

The scope and coverage of the Commission’s plan for general liability and vehicle fleet liability cases is in keeping with its approved Self-Insurance Plan document titled, *Missouri Highways and Transportation Commission, Self-Insurance Plan for Injuries and Damages Caused by the Condition of Property and the Operation of Motor Vehicles.*

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION SELF-INSURANCE PLAN FOR INJURIES AND DAMAGES CAUSED BY THE CONDITION OF PROPERTY AND THE OPERATION OF MOTOR VEHICLES

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(1) **DEFINITIONS**

- (A) Self-Insurance Plan (**SIP**) shall mean the Missouri Highways and Transportation Commission (**Commission**) Self Insurance Plan for Injuries and Damages Caused by the Condition of Property and the Operation of Motor Vehicles.
- (B) Self-Insurance Fund shall mean the moneys set aside in trust and dedicated to the SIP to pay all accrued and anticipated claims and certain costs of administering the SIP which amount of contribution to the plan is determined annually and included in the budget request for contribution to the Commission's self-insurance plan.
- (C) Employer shall mean the Commission and the Department.
- (D) Commission shall mean the Missouri Highways and Transportation Commission.
- (E) Department shall mean the Missouri Department of Transportation (MoDOT), a constitutionally independent agency of the Executive Branch of the State of Missouri, including all its divisions, districts, offices, departments and parts.
- (F) Injury shall mean physical damage to or destruction of tangible property, bodily or mental injury, sickness or disease, including death, to which the SIP applies and resulted from an "occurrence" while the SIP was in effect. The term "injury" shall not be deemed to mean intentional torts.
- (G) Damages shall mean any monetary consideration due a claimant or the amount of a final judgment entered in favor of plaintiff(s) and against an Insured by a court of competent jurisdiction.
- (H) Insured shall mean any person or organization designated in the Covered Persons provision (Section (3)(A)) of the SIP.
- (I) Occurrence is any Injury, as this term is defined herein, that is the result of negligent acts or omissions under the instances described at sections 537.600.1(1) and (2) RSMo.
- (J) Director shall mean the Director of Risk and Benefits Management, or the successor position thereto by whatever name it is titled.
- (K) Employee shall mean a person employed by the Commission or Department as defined by Missouri law.
- (L) Gender -- Persons described or referred to in the masculine gender include females and persons described or referred to in the feminine gender include males.

(M) State Legal Expense Fund (**SLEF**) shall mean the moneys appropriated by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716 RSMo for the payment of any claim or amount required by any final judgment rendered by a court of competent jurisdiction against the state of Missouri, or any agency of the state, pursuant to sections 536.050, 536.087 or 537.600, RSMo.

(N) Trustee shall mean the Employer or a bank or other financial institution selected by the Chief Financial Officer for the Department, as authorized by the Commission.

(2) **EFFECTIVE DATE:** Effective September 11, 2013, the Missouri Highways and Transportation Commission pursuant to Section 226.060, RSMo 1986, and the approved minutes of the Missouri Highways and Transportation Commission Meetings held on December 5, 1986, hereby adopts the Self-Insurance Plan for Injuries and Damages Caused by the Condition of Property and the Operation of Vehicles for all existing and future claims.

(3) **COVERED PERSONS AND LIMITS OF LIABILITY:**

(A) **Covered Persons:** Each of the following is an Insured under the SIP to the extent set forth below:

1. The Employer and any of Employer's officers and administrative personnel;
2. Individual members of the Commission; and
3. All employees of the Commission and Department as defined by Missouri law while they are acting in the course and scope of their official duties.

(B) **Limit of Liability:** The Limit of Liability for any Occurrence is the amount provided for by section 537.610 RSMo. This amount is the maximum coverage available under the SIP without regard to the number of Insureds who are alleged to be liable or found liable for an Injury.

(4) **COVERAGE AGREEMENT:**

(A) **Limited Coverage:** Coverage is provided to an Insured for an Occurrence that results in Injury as this term is defined by the SIP in an amount up to the Limit of Liability (see (3)(B) above).

(B) **Duty to Defend:** The Employer shall have the right and duty to defend any suit seeking such damages against the Insured, even if any or all of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and such settlement of any claim or suit as it deems expedient, but the Employer shall

not be obligated to pay any claims or judgment nor to defend any suit after the applicable Limit of Liability (see 3(B) above) has been exhausted by payment of judgments or settlements. In the event that a claim or suit is being defended at the time the applicable Limit of Liability (see 3(B) above) becomes exhausted, such defense may continue at the sole discretion of the Employer. Any continuation of defense shall not constitute a waiver, expansion, nor undertaking of liability in excess of the statutory limits of liability provided for by section 537.610 RSMo.

(C) **Own Legal Counsel:** In the event that any Insured elects to employ his own legal counsel (see Section (6) below) and declines legal counsel provided by Employer, there is no obligation under the SIP to pay any sum such Insured may become legally obligated to pay, unless payment of settlement or judgment is approved by the Director of Risk and Benefits Management and the Chief Counsel to the Commission (see Section (7) below).

(D) **No Waiver:** Nothing in the SIP shall be construed as a waiver of any governmental or official immunity of any Insured, or to expand the liability of the Commission or any Insured as provided under sections 537.600 and 537.610 RSMo. Pursuant to the Missouri Supreme Court's holding in *Cotley v. Schmitter*, potentially unlimited liability exists for employees under the State Legal Expense Fund (SLEF), notwithstanding section 105.726 RSMo. The SIP shall provide coverage for claims against MHTC/MoDOT and employees only up to the applicable limits of section 537.610 (see Section 3(B) above). Any settlement or judgment will be paid by specific Commission authorization pursuant to the terms of the SLEF and Missouri statutes. The fact that the Commission may authorize such payments does not constitute an acknowledgement that the *Cotley* decision was correct. Any such payment authorized by the Commission shall not be construed as a waiver of any governmental or official immunity of the Employer, the Commission, the Department, any of their officers or employees, or any Insured under the SIP.

(5) **EXCLUSIONS** - The SIP does not apply to:

(A) **Injury to Employee:** Any Injury to any employee of the Employer arising out of and in the course of his employment by the Employer; or

(B) **Other Coverage:** Any damages or amounts for which the Employer or any carrier as his insurer may be held liable under any workmen's compensation law, unemployment compensation law or disability benefits law, or under any similar law; or

(C) **Punitive Damages:** Any claim for punitive or exemplary damages, or any other statutory damages awarded to punish and deter wrongdoers rather than to compensate a claimant or plaintiff for an Injury.

(6) **LEGAL SERVICES:**

- (A) **Chief Counsel:** The furnishing of all legal services, including legal defense, shall be the responsibility of the Employer through its Chief Counsel. Required legal services may be provided by the Chief Counsel and his staff, or if outside legal counsel and services are needed, such may be engaged by the Chief Counsel.
- (B) **Outside Counsel:** Any covered person may request the employment of outside counsel, including recommending the desired counsel or law firm. Such request must be made in writing to the Chief Counsel for consideration.
- (C) **Employer Rights:** In the event a covered person desires, in addition to the legal services provided above through the Chief Counsel, to employ legal counsel of his choice, such employment of legal counsel shall be at the covered person's expense. In the event that the covered person elects to employ his own legal counsel to assist the Chief Counsel or counsel hired by the Chief Counsel, the right to make all decisions in regard to the defense of the claim or suit shall remain the right and the duty of the Employer and its Chief Counsel.

(7) **CLAIMS ADJUSTMENT:**

- (A) **Defense of Claims:** All claims adjustment activities shall be deemed to be carried out for the sole and only purpose of assisting the Chief Counsel in defending potential legal action, causes of action or litigation against the Employer or any covered person, and shall be closed meetings, records and votes.
- (B) **Procedures:** Procedures for claims adjustment, including claim payments, denials and settlements shall be as determined by the Division of Risk and Benefits Management in consultation with the Chief Counsel.
- (C) **Consent:** Written consent or approval in claim settlement will not be required from an employee. Input from any employee should be made to the Division of Risk and Benefits Management or the Chief Counsel.

(8) **PAYMENT OF CLAIMS AND SUITS:**

- (A) **Authority:** Subject to the provisions of Sections (7) and (9), the payment of the claims and suit judgments from the Self-Insurance Plan Fund will be on certification pursuant to Commission authority.
- (B) **Order of Payment:** Payments from the Self-Insurance Plan Fund will be made in the order that claims or suit final judgments become payable, without regard to claim reserves previously established, date of incident, date of claim demand or date suit was filed.

(9) **SIP FUNDING** - The Commission directs the Department to fund the SIP under the following guidelines:

- (A) **Actuary:** The funding of the SIP shall be determined by the Commission as recommended by the Department based on actuarial projections of an independent actuary employed by the Employer.
- (B) **Funding:** The level of amount of funding shall be sufficient to support or pay for projected costs of claims and SIP expenses and private counsel legal defense as determined through actuarial review and Division of Risk and Benefits Management in consultation with the Division of Financial Services.
- (C) **Time Lag:** The amount of contribution to the fund will consider the lag between the time a claim arises and when payment is to be made.
- (D) **Claim Experience:** To the extent that it can be actuarially projected, the level of funding shall be based on previous claim experience as modified and trended to account for anticipated current year incidents and cost, including shock-losses (infrequently occurring catastrophic losses) as actuarially determined.

(10) **SELF-INSURANCE FUND:**

- (A) **Dedicated Fund:** The Self-Insurance Fund and all additions thereto shall be set aside and dedicated and so shall remain as long as any claim or expense payable under the SIP or any changes adopted thereto prior to its termination, may be outstanding and may become payable. Such Self-Insurance Plan Fund shall be used solely for the purpose of payment of such claims and expenses and not be subject to diversion for any other purpose by the Commission or the Department so long as said Self-Insurance Plan Fund shall exist. It is the intent of the Commission that upon termination of the SIP, all funds in the Self-Insurance Plan Fund not needed as specified above shall be returned to the State Road Fund.
- (B) **Trustee:** The Self-Insurance Fund shall be held by the Employer as Trustee or a bank or other financial institution as Trustee. Selection of the Trustee shall be by the Chief Financial Officer for the Department, as authorized by the Commission.

(11) **MISCELLANEOUS PROVISIONS:**

- (A) **Insured's Duties in the Event of Occurrence, Claim or Suit are as follows:**
 - 1. **Notice to Director:** Upon the Insured becoming aware of an incident in which the covered person is involved resulting in any alleged injury to which the SIP applies, written notice containing particulars sufficient to identify the injured person, plaintiff, and/or claimant and the Insured, as well as reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of any known

witnesses, shall be given by or for the Insured to the Director as soon as practical.

2. **Forwarding Demands:** If claim is made or suit is brought against an Insured, the Insured shall forward to the Director every demand, notice, summons or other process received by him or his representative as soon as possible.
3. **Employee Cooperation:** The Insured shall cooperate with the Employer to defend any suit brought against the insured and, upon the Employer's request, assist in enforcing any right of contribution or indemnity against any third party. The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense.
4. **Waiver of Coverage:** Failure of the Insured to cooperate with the Employer shall constitute a waiver of the coverage provisions provided by the plan.

(B) **Action Against the SIP:**

1. **Compliance with SIP:** No action shall be maintained by an Insured against the Employer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the SIP, and not until the amount of the SIP's obligation to pay shall have been finally determined either by final judgment against the covered person or by written agreement of the Employer and the Claimant and/or Plaintiff.
2. **No Waiver:** No person or organization shall have any right under the SIP to join the Employer as a party to any action against the Insured to determining the Insured's liability, nor shall the Employer be impeded by the Insured or his legal representative. Nothing in the SIP shall be interpreted or otherwise construed as a waiver of any governmental or official immunity of the Employer, the Commission, the Department, or any of its officers or employees in the course of their official duties, or any other Insured.

- (C) **Subrogation:** In the event of any payment under the SIP, the Employer shall be subrogated to all the Insured's rights or recovery therefore against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice or otherwise lessen, reduce, or waive such rights of subrogation.

- (D) **Changes in the SIP:** All changes in the SIP subsequent to the first approval of the SIP by Commission shall be prepared by the Director of Risk and Benefits Management and forwarded to the Chief Financial Officer for review and approval. After approval as to legal form by the Chief Counsel, the Director of Risk and Benefits Management will submit the changes to Commission. Changes shall become effective on the date fixed by the Commission.
- (E) **Assignment:** The interest hereunder of any Insured is not assignable. If the Insured shall die or be adjudged incompetent or cease for any other reason to be an Insured under the SIP, this coverage shall thereupon terminate. At the discretion of the Director, the SIP may cover the Insured's legal representative with respect to an Occurrence to which this SIP applies when the Director has been given notice of such Occurrence.
- (F) **Cancellation:** The SIP may be canceled by the Employer effective July 1 of any year, with notice of such cancellation being given to all covered persons at least ninety (90) days prior to the effective date of such cancellation.
- (G) **SIP Interpretation:** The SIP document sets forth the provisions of the Missouri Highways and Transportation Commission Self-Insurance Plan for Injuries Caused by the Condition of Property and Vehicle Liability. The SIP shall be read in its entirety and not severed except as provided below.
- (H) **SIP Constitutionality:** In the event that any part of the SIP is held to be unconstitutional or otherwise declared illegal, the other parts of the SIP will remain in full force and effect.
- (I) **Governing Law:** To the extent not preempted by federal law, the provisions of the SIP shall be construed, enforced and administered according to the laws of the state of Missouri.
- (J) **Captions:** The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the SIP, nor in any way will affect the SIP or the construction of any provision thereof.

Effective Date: September 11, 2013
Supersedes Policy Dated:
Last Reaffirmed: November 7, 2013
Date of Origin: September 11, 2013
Related Commission Minutes: September 11, 2013; November 7, 2013 – Comprehensive Policy Review.