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To: MTSU Community
From: Office of the University Counsel
Date: August 2, 2013
Re: Liability for Employee Auto Accidents

1. Liability Coverage for Employees Driving State-Owned Cars

Although the State of Tennessee does not have an insurance *policy*, it does have motor vehicle [liability coverage](#). State employees are covered for property damage (including loss or damage to cars) that is caused by the employee while working in the course of their employment provided that the employee was authorized to use the motor vehicle at the time of the incident giving rise to the claim.

In addition, this coverage protects State employees from claims for personal injury related to negligent operation of a motor vehicle and for injury incurred by passengers, including students.¹

¹ With respect to personal injury of passengers, TENN. CODE ANN. § 9-8-307 provides compensation under the following circumstances:

- (Q) (i) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment. The claimant has the burden of proving the following:
 - (a) The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;
 - (b) The proximate cause of the accident was the negligent operation of the motor vehicle operated by the non-state employee;
 - (c) The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;
 - (d) The claimant has been unable to recover sufficient amounts under the Workers' Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and
 - (e) The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program...

Again, to be protected, the employee must be acting within the scope of employment at the time of the accident. Additionally, if the accident was caused by the negligence of the State employee, the driver and any passengers of other cars involved in the accident could also [file claims](#) for personal injury and damages to their vehicles through the Board of Claims.²

Third parties who are injured or suffer damage to personal property will be compensated by the State for that personal injury and property damage up to a maximum of \$300,000 per claimant and \$1,000,000 per occurrence (meaning if more than one person is involved).

Injury to the State employee is covered under worker's compensation law.

The employee is *not* covered and may face personal liability if he or she was acting unlawfully (e.g., did not have a valid driver's license), was grossly negligent (e.g., was under the influence of narcotics or alcohol), or was acting outside the scope of his or her employment.

The travel must be required as a part of an official institutional program or activity that is necessary for the proper execution of official business; in justifiable pursuit of the institution's educational and research objectives; or travel that is required for meetings and conferences of a professional nature that will increase the attending employee's usefulness to the System (see [TBR Policy 4:03:03:00](#)).

2. Liability Coverage for Employees Driving Rental Cars Used on State Business

The coverage set forth above also applies to cars rented or leased by MTSU and used on State business as long as (1) the employee was authorized to rent the vehicle, and (2) the rental fee was paid for by the State, and (3) the car was being used in the course of employment at the time of the accident.³ Because damage to properly rented and used rental cars is covered by statute, the employee generally should not purchase additional insurance from the car rental agency.

² With respect to personal injury of third parties, TENN. CODE ANN. § 9-8-307 provides compensation under the following circumstance:

- A) The negligent operation or maintenance of any motor vehicle or any other land, air or sea conveyance. In addition, the state may be held liable pursuant to this subdivision for negligent operation of state-owned motor vehicles or other conveyance by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

³ The text of TENN. CODE ANN. § 9-8-111(a)(2)(B), addressing rental cars, provides in pertinent part:

- (a)(1) The state shall compensate state employees for the loss, damage or destruction of personal property which is not otherwise compensable which occurs in the course of employment and which is required by the state to be used in the course of employment.
- (2) For purposes of this section, a motor vehicle shall be considered required by the state to be used in the course of employment only if:

- (B) The employee was authorized to use a rental motor vehicle paid for by the state at the time of the incident giving rise to the claim.

If the car is damaged under circumstances that would be covered by the State (i.e., the employee was authorized to rent the vehicle, was using the vehicle in the course of employment, etc.), the car rental agency should submit a [claim form](#) to the Tennessee Division of Claims Administration.

3. Liability Coverage for Employees Driving Personal Vehicles Used on State Business

The coverage provided to State-Owned vehicles discussed in Section 1 above also applies to personal vehicles used on State business as long as (1) the employee is reimbursed for mileage by the State for use of such motor vehicle at the time of the incident giving rise to the claim, and (2) the car was being used in the course of employment at the time of the accident.⁴

As stated previously, the travel must be required as a part of an official institutional program or activity that is necessary for the proper execution of official business; in justifiable pursuit of an institution's educational and research objectives; or travel that is required for meetings and conferences of a professional nature that will increase the attending employee's usefulness to the System (see [TBR Policy 4:03:03:00](#)).

If an accident occurs while an employee is operating a personal vehicle on State business, the State provides liability coverage for injury to third parties as long as the employee's conduct was not (1) outside the scope of the employee's employment; (2) willful, malicious, criminal or involved personal gain; or (3) grossly negligent. Use of the personal vehicle must be authorized under [TBR Policy 4:03:03:00](#), and the employee must be eligible for and claim mileage reimbursement.

4. How to File a Claim

To file a claim, the injured party should submit a completed [claim form](#) to the State of Tennessee Division of Claims Administration. The address is:

State of Tennessee
Division of Claims Administration
Eleventh Floor, Andrew Jackson Building
Nashville, Tennessee 37243-0243
(615) 741-2734

⁴ The text of TENN. CODE ANN. § 9-8-111(a)(2)(A), addressing personal vehicles, provides in pertinent part:

(a)(1) The State shall compensate State employees for the loss, damage or destruction of personal property which is not otherwise compensable which occurs in the course of employment and which is required by the State to be used in the course of employment.

(2) For purposes of this section, a motor vehicle shall be considered required by the State to be used in the course of employment only if:

(A) The employee was reimbursed for mileage by the State for use of such motor vehicle at the time of the incident giving rise to the claim.

Damage estimates, a copy of the police report, and whatever other documents the claimant deems pertinent should accompany the claim form when it is returned to Claims Administration. Injured employees should contact [Human Resource Services](#) to file a workers' compensation claim.

5. Liability Coverage for Employees Involved in Out-of-State Accidents

Because the employee's immunity devolves from state law, an employee may not be immune from liability for acts occurring outside of the state. The answer depends on whether the state at issue recognizes Tennessee's immunity. Even if the State does not, the employee still has coverage if the Board of Claims determines that the employee was "acting in good faith, within the scope of such employee's official duty, and under apparent lawful authority or orders." The employee can be sued in that jurisdiction's courts, but if the employee is found to be legally liable, he or she can request that the State pay the amount of the judgment, as well as the employee's reasonable legal fees if the employee is required to retain counsel. Typically, such suits are handled by an attorney appointed by the Tennessee Attorney General's office to represent the employee.

6. Exclusions

For all accidents, whether in Tennessee or out of state, exclusions from coverage include acts of God; natural disasters; gross negligence (e.g., drunken driving); acts outside the scope of the employee's official duties (e.g., frolics); illegal acts (e.g., driving without a valid license); willful, intentional, or malicious acts; and, acts performed for personal gain. Additionally, employee personal property that is not a motor vehicle will not be covered by the State if the damage results from the employee's negligence. TENN. CODE ANN. § 9-8-111(b)(2).

7. Frequently Asked Questions

A. What dollar value of coverage is provided to State employees when they are operating a vehicle? If the employee is operating the car in a reasonable fashion, in a job related function, will he be fully indemnified for an accident?

If the travel is required as a part of an official institutional program or activity that is necessary for the proper execution of official business in justifiable pursuit of an institution's educational or research objectives; or to meetings and conferences of a professional nature which will increase the attending employee's usefulness to the State, the employee is covered, meaning that there is State-provided liability coverage. Recovery is limited to \$300,000 per claimant and \$1,000,000 per occurrence (meaning if more than one person is injured).

B. If the employee is operating the car in a reasonable fashion and in a job related function, will he be immune from liability?

Yes.

The employee will not be covered by immunity if his conduct is:

- (1) outside the scope of the employee's employment;
- (2) willful, malicious, criminal, or involved personal gain; or
- (3) grossly negligent.

Absent the above-noted exceptions, the employee is immune from liability, meaning that he or she cannot be held personally liable for money damages even if the actual damages exceed the statutory limit.

C. If a state employee is traveling on official business and has a family member in the car, would that family member be covered if an accident occurred?

No.

D. If an accident occurred while an employee was operating a personal vehicle on State business, whose coverage would pay for the accident? Who would be responsible for the deductible?

If the travel is required as a part of an official institutional program or activity, the state provides liability coverage for injury to third parties as long as the employee's conduct was not (1) outside the scope of the employee's employment; (2) willful, malicious, criminal, or involved personal gain; or (3) grossly negligent. Use of a personally-owned automobile must be authorized under [TBR Policy 4:03:03:00](#), and the employee must be eligible for – and claim – mileage.

Under the *Employee Property Damage* ("EPD") statute, TENN. CODE ANN. § 9-8-111, the State will compensate employees for the loss, damage or destruction of personal property that is not otherwise compensable that occurs in the course of employment and which is required by the state to be used in the course of employment. The "not otherwise compensable" language is interpreted to mean that a claim must first be made against the other driver's insurance. If the other driver's insurance does not pay and if the damage is not compensable under the employee's own insurance policy (which it usually is not), then the state would pay under the EPD statute. As stated by the EPD statute, "In cases where the employee has the benefit of insurance coverage for the personal property, the employee shall not be compensated by the State unless the employee has attempted to obtain compensation from such insurer. The State shall compensate the employee only to the extent the employee is not compensated by the insurer."

A motor vehicle is considered to be required by the State to be used in the course of employment only if the employee was reimbursed for mileage by the State at the time of the incident giving rise to the claim.

The Division of Claims Administration (DCA), a division of the Treasury Department, is responsible for investigating and making determinations on claims for workers' compensation and employee property damage. DCA determines whether damage to a personal vehicle or a

deductible would be covered. With respect to the deductible under the EPD statute, the State would pay the deductible if the employee was not negligent.

E. If an employee operates a vehicle in a negligent fashion, what impact does that have on the coverage?

If the travel is required as a part of an official institutional program or activity, there would be liability coverage **for injuries to third parties** even if the employee was negligent. Under the EPD statute, the State will **not** pay for damage to the employee's own car if the employee is grossly negligent.

F. If an employee traveling out of town drives at night to a restaurant for dinner, is that considered official business? What if he travels to an entertainment venue or a shopping mall? Is he still covered by the State under both these circumstances?

Travel that is necessary for the proper execution of official business, or in justifiable pursuit of an institution's educational or research objectives; or to meetings and conferences of a professional nature which will increase the attending employee's usefulness to MTSU is covered. We are not aware of any law or policy specifically addressing driving to restaurants, malls, etc., so we cannot state with certainty whether this would ever be covered.

Conceivably, a business dinner **could** be classified as necessary for the proper execution of official business, or in justifiable pursuit of an institution's educational or research objectives if it involved an educational affiliate, donor, or business partner.

G. Has an individual ever been personally sued in Tennessee for operating a State car when there was no negligence?

Of course. It happens all the time. The employee must immediately advise the [Office of the University Counsel](#) upon receiving service of the lawsuit. The University Counsel will notify the state Attorney General's office, which will typically file a motion to dismiss the claim for lack of jurisdiction based on the employee's state immunity. Once the suit is dismissed against the individual employee, it is typically refiled against the state/institution in the Claims Commission.

H. If an employee is negligent and is involved in an accident while on official business could the injured party elect to sue the employee instead of the state?

They could sue the employee, but they would not recover any damages. The State employee has immunity, which means that no state or federal court in Tennessee may enter a judgment against the personal assets of a state employee on a civil, state law claim arising out of acts or omissions by the employee unless: (1) the act or omission was outside the scope of the employee's employment; (2) the act or omission was willful, malicious, criminal, or involved personal gain; or (3) they were grossly negligent.

I. Do drivers of 15 passenger vans have sufficient state coverage?

They have coverage of \$300,000 per injury and \$1,000,000 per occurrence (meaning if more than one person is injured).

J. Do Tennessee laws regarding immunity from liability apply if the employee is driving a state automobile in another state?

Not necessarily. The immunity of state employees under Tennessee law has no mandatory effect in courts outside Tennessee. Whether other states recognize Tennessee employees' immunity depends on their willingness to do so as a matter of comity.

If the other state does not recognize Tennessee immunity, Tennessee can reimburse an employee for actual damages, interest, costs and attorney fees paid by the employee when individual liability is imposed by a court and damages are awarded in a civil lawsuit, up to a maximum of \$300,000 per plaintiff and \$1,000,000 per occurrence under TENN. CODE ANN. § 9-8-112(h). This includes all federal law actions (in which the employee's state law immunity has no effect) and any state law action in which the employee's immunity is not sustained. In its discretion, the Board of Claims may reimburse the employee for amounts beyond these limits.

K. The bottom line is that our employees are asking questions and what they want to know is "are they covered by the state when they are driving a state automobile."

Yes, in Tennessee, unless: (1) they are acting outside the scope of their employment; (2) they drive the car in a manner that is willful, malicious, or criminal, (3) they are acting for personal gain; or (4) they are grossly negligent.

Outside of Tennessee, it depends on the other state's law and whether Tennessee's immunity is recognized as a matter of comity.

L. Could you list instances where they would not be covered, if any, and how/who would determine if they are covered should an accident occur.

The following is a non-exhaustive list of things that are not covered:

- *Willful or malicious conduct;
- *Criminal misconduct;
- *Gross negligence;
- *Conduct that involves personal gain;
- *Conduct that is outside or unrelated to the employee's office or assigned duties; and
- *Conduct that occurs while the employee is on a personal frolic.

The ultimate determination about coverage will be made by the Division of Claims Administration and can proceed to litigation before the Claims Commission.