



**CONNECTICUT
INTERLOCAL
RISK
MANAGEMENT
AGENCY**

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MEMORANDUM

To: Police Transparency and Accountability Task Force: Logistics Subcommittee.
From: David Demchak, President and CEO
Date: October 27, 2020
Subject: CIRMA's Response to the Task Force Questions

The purpose of this memo is to provide a brief summary and high level context to the law enforcement liability insurance environment and its relationship to the public sector and law enforcement personnel.

About the Connecticut Interlocal Risk Management Agency (CIRMA)

CIRMA was established in 1980 as a service program of the Connecticut Conference of Municipalities. CIRMA's governance is provided by its Board of Directors (Chief Elected Municipal Officials) elected from the membership. CIRMA operates two risk-sharing pools, Workers' Compensation and Liability and Property pools. Currently, CIRMA's membership includes 366 (approximately 85% of the municipal market) cities, towns, school districts and local public entities in Connecticut. CIRMA is member owned and member governed.

The insurance coverages provided by CIRMA include workers' compensation, general liability, automobile liability, property, public official liability, school leader liability, law enforcement liability, auto physical damage and several other municipal specific tailored coverages.

Indemnification Statutes for Municipal Officials including Police Officers

The following sections of the Connecticut General Statutes require municipalities to indemnify and defend municipal officials including police officers for claims arising from acts occurring within the course and scope of employment.

- **CGS Sec. 7-101 (a)** Provides in pertinent part that...Each municipality shall protect and save harmless any municipal officer, whether elected or appointed...or any municipal employee...arising out of any claim, demand, suit or judgement by reason of alleged negligence, or for alleged infringement of any persons civil rights on the part of such officer or employee while acting in the discharge of his duties.
- **CGS Sec. 7-465** Requires a municipality to pay on the behalf of any employee of such municipality, all sums which such employee becomes obligated to pay by reason of the liability imposed on such employee by law for damages awarded for infringement of any persons civil rights or physical damage to a person's property...while the employee was acting in the performance of his duties and was within the scope of employment.

Law Enforcement Liability Insurance

Law Enforcement Liability (LEL) insurance coverage was developed by the insurance industry to provide a specific coverage for the unique operations and exposures presented by law enforcement.

LEL insurance has been and continues to be available to the public sector through both commercial insurance companies and more widely provided by governmental risk and insurance pooling programs operating throughout the United States. For example, CIRMA provides LEL coverage to 119 municipalities and 3,055 police officers across the state of Connecticut. LEL coverage is available to the public sector on a first dollar basis or with applicable deductibles and self-insured retentions. LEL is typically not underwritten on a stand-alone basis, because other lines of insurance are required to cover all exposure to loss presented by police operations. The industry standard is to provide LEL coverage as part of a package with additional lines of business such as general liability, automobile liability and property coverages.

- **Who is Covered in LEL Insurance-** LEL insurance provides both indemnification and the duty to defend to both the municipality and its law enforcement personnel. Under many LEL insurance policies the coverage is extended to volunteers and part time employees providing law enforcement services.
- **What is Covered and the Duty to Defend**-LEL insurance is triggered when a third party alleges that as a result of a wrongful act, committed by an insured in the course and scope of their employment which results in bodily injury, property damage or personal injury.

The LEL coverage also provides a duty to defend any suit or claim seeking covered damages, even if the allegations of the suit are groundless or unsubstantiated. Legal defense includes associated costs such as expert fees and court filing costs. Again, the coverage is afforded to the municipality and the police officers who are insureds within the LEL coverage.

It should be noted that coverage may also be provided under other lines of insurance depending on the circumstances of the claim. For example, automobile liability or general liability or excess/umbrella coverages may also be triggered.

- **What is Not Covered in Law Enforcement Liability Policies**-Each insurer has crafted their LEL policies with very specific exclusions. However, pertinent to this discussion commonly found exclusions include claims or demands for non-monetary damages, fraud, bad faith, criminal acts, and malicious intent or intentional acts. Notwithstanding the foregoing, a legal defense under the duty to defend policy language would be afforded to the municipality and the individual employee for these allegations through the point of a court judgement.

The Law Enforcement Insurance Environment

As mentioned earlier, certain commercial insurance carriers and largely Governmental Risk and Insurance pools across the country continue to underwrite LEL insurance. However, over the past five years, we have begun to see a trend in broader underwriting restrictions and increased rates for LEL insurance. This has been especially pronounced in the excess and reinsurance markets.

Overall, these trends continue to support the following observation:

- Increases in rates for LEL insurance on a primary and excess and reinsurance basis.
- Increases in the deductibles or self-insured retentions for public sector LEL.
- Reductions in insurer capacity to support this exposure, thereby reducing the limits of liability being made available to municipalities for LEL insurance.
- Insurers withdrawing from the LEL market completely or reducing their book of business significantly.

With regards to LEL insurance for individual police officers, we are not currently aware of any viable insurance markets or organizations offering this type of product. Furthermore, we inquired with Marsh & McLennan Companies (MMC), a global insurance broker, public entity experts on the availability of professional law enforcement liability for individual police officers. In a search of both domestic and London markets, they did not find any underwriters offering this type of insurance product or underwriters interested in offering this type of product.