



Municipal Excess Liability Joint Insurance Fund

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Legislative Priorities

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Attorney Fee Shifting in Liability Cases:

In most liability cases, the claimant's attorney is paid from the award and the fee is capped at between 25% and 33%, depending on the size of the judgment. However, in employment liability cases, the defendant must pay the prevailing plaintiff's fees as determined by the court, and there is no cap. In other states and in Federal Court, the fee runs between \$300 and \$350 per hour. New Jersey goes a step further and awards an "enhancement", ordinarily up to an additional 50% to compensate the claimant's attorney for the risk that the case is unsuccessful. Further, while in the other 49 states and in Federal Court, judges take into consideration the relationship between the requested fee and the award to the plaintiff, not in New Jersey. In one New Jersey lawsuit, a retired police officer rejected a settlement offer of \$75,000 and was subsequently awarded only \$20,000 by the jury. However, the judge awarded the plaintiff's attorney a fee of \$450,000!

This system encourages attorneys to waste time in endless depositions and to make unreasonable demands to stretch out the proceedings and build up legal fees, especially if the case has any merit. This is taxpayer's money.

The MEL proposes legislation to cap fee applications as follows:

- For awards (damages and punitive awards) of \$50,000 or less, the maximum award shall be \$50,000 subject to considerations of reasonableness (i.e. Rendinev. Pantzer)
- For awards over \$50,000, the fee cap shall equal the award, again subject to considerations of reasonableness.

Offers against Judgement

The MEL also proposes that New Jersey's rule on Offers of Judgment be conformed to Federal Practice. Under the U.S. Supreme Court's ruling in Marek v. Chesney, when a defendant in a fee shifting case offers a sum certain plus fees and costs to date and the award to the plaintiff is ultimately lower than the amount offered, the plaintiff's counsel's fees are frozen as of the date of the offer. New Jersey adopted a convoluted rule that is more difficult to use.

Direct Right of Appeal

The MEL supports adding provisions that would grant public entities a “direct right of appeal” on all lower court rulings involving immunities and notice provisions. Currently, a public entity may only apply to the appellate court through an interlocutory appeal which is seldom granted. As a result, public entities are forced to either try the case or settle without the benefit of an appellate ruling with respect to immunities and other protections under Title 59.

Catastrophic Claims:

Every year, New Jersey governmental entities spend tens of millions for excess liability and workers’ compensation insurance coverage, but most governmental units, including the state itself still lack sufficient limits to address truly catastrophic claims. One approach is to follow the practice in half of the states by enacting provisions in their public entity tort liability statutes that cap jury awards. (See Exhibit A for a comparison of liability caps) These caps range from \$100,000 per occurrence in Illinois and Rhode Island to Georgia's \$3 million per occurrence. While a number this low would not be acceptable in New Jersey, some reasonable cap should be enacted with a provision that the legislature can increase the award if the facts warrant.

Sick Leave Injury Reform (SLI):

The MEL urges the legislature to reform sick leave injury programs so that the rules that currently apply to state employees also apply to local unit and school employees. Currently under NJSA 18A:30-2.1 and NJSA 11A:6-8, local units and BOEs are permitted to extend for a period up to one year full pay for workers injured in the course of their employment. In 2010, the similar provision for state workers was repealed.

The New Jersey legislature determined that Sick Leave Injury programs are unnecessary because state workers are also covered by workers’ compensation and the retirement disability programs. Municipal, county and BOE employees are covered by these same programs. The problem with SLI programs is that the employer must continue to pay the employer portion of payroll taxes etc. while the employer is not responsible for these extra costs if the employee is paid through workers’ compensation. SLI also acts as a disincentive to return to work because even though the employee is being paid full salary, the employee pays taxes on only a small part of the income. This disincentive increases the total amount of the claim.

The State currently saves \$10s of millions each year because it eliminated its SLI program. The MEL contends that state, county, municipal and BOE employees should be treated the same with respect to these benefits. Since SLI was eliminated for state workers, it should be eliminated for workers at the other levels of government as well.

First Responder Heart Attacks:

Heart attack is the most common cause of on-duty firefighter fatalities. Yet, existing regulations do not require firefighters to pass periodic medical examinations. This is especially a problem with volunteer firefighters who often tend to be older than their counterparts in career departments. The MEL recommends that the state adopt regulations that require annual reexaminations consistent with NFPA Standard 1582, Chapter 7.4-7.7.

The current New Jersey workers' compensation law has also proven to be troublesome when applied to passive or "life" volunteers. In its 2003 decision in Capano v. Bound Brook, the New Jersey Supreme Court ruled that the law even extends to a 93 year-old member who slipped while putting a log into a wood burning stove in the fire house. The court held that under the current law, Capano was in the "line of duty", but asked the legislature to reexamine this question. The MEL agrees with the New Jersey Supreme Court that the legislature should take up this issue and limit workers' compensation to work related injuries as opposed to injuries incurred in social situations.

We again reiterate our willingness to find a fair balance between the concerns of first responders and the budgetary issues of local government.

Exhibit A

Public Entity Tort Liability Cap by State:

Delaware: \$300,000 per occurrence
Florida: \$100,000 per claimant, \$200,000 per occurrence
Georgia: \$1 million per claimant, \$3 million per occurrence
Illinois: \$100,000 per occurrence
Kansas: \$500,000 per occurrence
Kentucky: \$100,000 per claimant, \$250,000 per occurrence
Louisiana: \$500,000 per claimant
Maine: \$400,000 per occurrence
Maryland: \$200,000 per claimant
Massachusetts: \$100,000 per claimant
Minnesota: \$300,000 per claimant, \$1 million per occurrence
Montana: \$750,000 per claimant, \$1.5 million per occurrence
New Hampshire: \$250,000 per claimant, \$2 million per occurrence
New Mexico: \$400,000 per claimant, \$750,000 per occurrence
North Carolina: \$500,000 per occurrence
Oklahoma: \$125,000 per claimant
Oregon: \$100,000 per claimant, \$500,000 per occurrence
Pennsylvania: \$250,000 per claimant, \$1 million per occurrence
Rhode Island \$100,000 per tort action
South Carolina: \$300,000 per claimant, \$600,000 per occurrence
Texas: \$250,000 per claimant, \$500,000 per occurrence
Utah: \$500,000 per claimant, \$1 million per occurrence
Vermont: \$250,000 per claimant, \$500,000 per occurrence
Virginia \$100,000 per occurrence
Wyoming: \$250,000 per claimant, \$500,000 per occurrence