



# Risk E-Notes

## State of Hawaii Risk Management Office

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### Message From Risk Management Office



**DID YOU INSPECT YOUR  
RENT-A-CAR?**

Before you drive off the car rental lot, inspect the vehicle for any prior damage. This only takes one minute but it saves the State a lot of time and money. If any damages are found, they should be reported to the rental agent or documented on the check out sheet that some rental agencies provide. Often times, the rental company presents a claim against the State for damages that allegedly occurred while we had possession of the vehicle. Suspiciously, the claims are normally for minor damages such as nicks and scrapes. These are the kinds of damages that might be easily missed unless a conscientious visual inspection of the vehicle is done prior to driving off the rental lot.

**Bottom Line: One way for us to prevail in defending a claim is to have strong supporting documents. So please, take one minute – that's all it takes!**

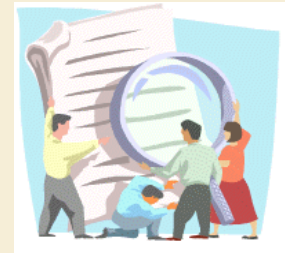
This is YOUR newsletter and it's success and value will depend on your participation, suggestions, and input!

Email your ideas to:  
Julie Ugalde at the Risk Management Office at:  
[julie.a.ugalde@hawaii.gov](mailto:julie.a.ugalde@hawaii.gov)

Submit your requests for consideration.



### 2006 Risk Management Priorities



- Property Inspections will be scheduled to include the following locations:
  - Washington Place
  - Governor's New Residence
  - Neighbor Island Facilities
  - Faculty Housing – Manoa
  - Hilo Community College
  - New school construction and older school campuses
  - All Molokai school facilities*Send in your requests now!*
- Refine Statement of Values for State facilities – all departments will receive a CD with their locations for review and update
- Develop Casualty Risk Survey for all departments to identify potential loss exposures.

## Lawsuits Against State Employees

Probably every State department at one time or another has been named as a defendant in a civil lawsuit. Often, not only is the department named as a defendant, but also the department's employees.<sup>1</sup> Particularly for the employees, it is critical that the Complaint (which is the initial document filed with the court) make its way to the Department of the Attorney General as soon as possible after it has been served, if the employee wishes to request representation from the Attorney General's office.<sup>2</sup>

Section 662-16, Hawaii Revised Statutes, gives the Attorney General discretion to defend State employees in civil actions. The relevant language reads as follows:

*§662-16 Defense of state employees. The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury, including death, resulting from the act or omission of any state employee while acting within the scope of the employee's employment. The employee against whom such civil action or proceeding is brought shall deliver within the time after the date of service or knowledge of service as determined by the attorney general, all process or complaint served upon the employee or an attested true copy thereof to the employee's immediate superior or to whomever was designated by the head of the employee's department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the department of the attorney general.*

The court rules provide for a deadline (typically 20 days after service) within which a defendant must respond by either filing an answer to the Complaint or a motion to dismiss. If this deadline is not met, the defendant risks having default entered against him/her. It is therefore very important that each department inform its employees of the procedure to follow should they be served with a lawsuit. Employees should be advised that they must promptly give the papers to a designated person -- either their immediate supervisor or another person designated by the department director. The department should then have a process for evaluating whether the employee was acting within the scope of his/her employment when the act or omission described in the Complaint occurred.

Several factors should be considered in evaluating whether an employee's conduct was within the scope of his/her employment. An important inquiry is whether the employee was engaging in conduct consistent with his/her work requirements. Also important is whether the conduct occurred during work hours and at the work site. Finally, consideration should also be given to whether the employee's conduct was intended to benefit the employer.

<sup>1</sup> Employees can be named as defendants in their official capacity, individual capacity, or both. Generally speaking, a suit against an employee in his/her official capacity is in fact a suit against the employee's office or position. In contrast, a suit against an employee in his/her individual capacity is a suit against the employee personally, which could expose the employee to personal liability for the plaintiff's alleged damages.

<sup>2</sup> Employees always have the right to retain their own counsel (at their own expense), rather than request representation from the Attorney General.

## **Lawsuits Against State Employees (continued)**

After the department has completed its analysis of whether the employee was acting within the scope of his/her employment, the department director should then send a memo to the Attorney General conveying the employee's request for legal representation and the department's recommendation. A sample of such a memo is attached. This is merely a sample, and each department is free to style its own memo to the Attorney General. The memo must, however, include the date that the employee was served; the method of service; as well as a recommendation by the department director as to whether representation should be provided.

The process described above must occur quickly, because as mentioned earlier there is generally speaking a 20-day deadline after service to file a response on behalf of the employee. Once the matter is received by the Attorney General's office, an Ethics and Conflicts Committee appointed by the Attorney General (currently comprised of four deputy attorneys general) makes an independent assessment of the whether the employee was acting with the scope of his/her employment, as well as an assessment of any actual or potential conflict of interest under the Rules of Professional Conduct. This conflict assessment is done principally to determine whether our department can offer vigorous representation to the employee without compromising the Attorney General's responsibility to represent and protect the interests of the State of Hawaii, and any other persons who we are already representing in the matter or any other matter.

After its analysis is concluded, the Ethics and Conflicts Committee then forwards a recommendation to the Attorney General. The decision whether to offer representation to the employee is made by the Attorney General. If the decision is to offer representation, the employee will be sent a letter outlining the terms of the Attorney General's offer of representation, and the employee will be asked to consent in writing to those terms. While this process is on-going, the Attorney General's office will protect the employee's interests by requesting extensions of time to respond to the complaint, if necessary.

Please be aware that legal representation by the Attorney General's office is discretionary, and the Attorney General can decline to provide representation even when a department director recommends that an employee be represented. In such a scenario, the affected department should then make a determination whether the applicable collective bargaining agreement makes it necessary for the department to retain private counsel to represent the employee.

*Written by: Cindy Inouye, Supervising Deputy Attorney General for Tort Litigation Division and Civil Rights Litigation Division*

## ATTACHMENT

(DATE)

TO: The Honorable (name of Attorney General)  
Attorney General, State of Hawaii

FROM: (Name)  
Director, (department name)

SUBJECT: (Claimant/Plaintiff name) vs. \_\_\_\_\_ and State of Hawaii, et al.  
Civil No: \_\_\_\_\_

This is a request for your assistance in responding to the above referenced complaint that was served on me via \_\_\_\_\_ (method of service) on \_\_\_\_\_ (date) at \_\_\_\_\_ (location). I also request that you provide legal representation for \_\_\_\_\_ (employee's name), who was served via \_\_\_\_\_ (method of service) on \_\_\_\_\_ (date) at \_\_\_\_\_ (location). The Complaint and Summons are attached for your reference.

(Employee Name) is an employee of the department and was acting within the scope of his employment at the time of the incident. (Information should be provided on the scope of employment issue, such as what happened, when it happened, where it happened, and whether there is an investigation or incident report.)

If you need further information on this matter, please call me at \_\_\_\_\_, or have your staff call \_\_\_\_\_ at (phone number).

Attachment



## Calendar of Events

### February 2006

- February 9<sup>th</sup> – Risk Management Coordinators Meeting  
*Topic: Review of Insurance Program & Discussion of 2006 Insurance Data Collection*
- February 20<sup>th</sup> – President's Day

### March 2006

- Week of March 13<sup>th</sup> – Safety Training (General Liability Exposures)  
*Agenda will be provided by 3/1*
- March 27<sup>th</sup> – Prince Kuhio Day Observed

### April 2005

- April 14<sup>th</sup> – Good Friday

### May 2005

- May 29<sup>th</sup> – Memorial Day

STATE OF HAWAII  
STATEWIDE INSURANCE PROGRAM SUMMARY REFERENCE  
GUIDE

December 1, 2005 to December 1, 2006

PROPERTY INSURANCE POLICY

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Coverage & Limits:

Real and Personal Property and Business Interruption and Extra Expense  
Statewide Blanket Policy

“All Risk” of Direct Physical Loss, including

Windstorm	\$ 100 million Occurrence
Flood	\$ 50 million Aggregate
Earthquake (EQ)	\$ 50 million Aggregate
Terrorism:	\$ 50 million Occurrence
Boiler & Machinery	\$ 50 million Occurrence

The following are included:

Business Interruption; Extra Expense; Valuable Papers; EDP Equipment & Media; Demolition & Increased Cost of Construction; Newly Acquired Property; Fine Arts; Debris Removal; Off Premises Utility Interruption; Transit; Professional Fees, Builders Risk Soft Costs, Pollution Cleanup and Removal.

Deductibles:

Named Hurricane:

3% of values per unit of insurance, subject to a “per occurrence” minimum of \$250,000

EQ, Flood Damage, Tsunami & Volcanic Action:

3% of values per unit of insurance, subject to a “per occurrence” minimum of \$250,000

Boiler & Machinery – Direct Coverage/Spoilage:

\$250,000

Boiler & Machinery – Indirect Coverage:

24 hours waiting period

Other Losses:

\$250,000/Occurrence

Insurers:

Lexington Insurance Co.  
Liberty Mutual Fire Insurance Co.  
Underwriters at Lloyds  
Allied World Assurance Co. (U.S.), Inc.  
Great American E&S Insurance Co.  
Princeton Excess & Surplus Lines Insurance Co.  
United States Fire Insurance Co.  
Westchester Surplus Lines Insurance Co.  
James River Insurance Co.  
Arch Specialty Insurance Co.  
Essex Insurance Co.  
Continental Casualty Co.  
Hartford Steam Boiler Insurance & Inspection Co.

Premium & Taxes: \$7,987,950

The property insurance coverage is written on a broad form “all risk” policy that affords coverage to State properties unless the specific peril causing the loss is excluded by the policy’s terms and conditions.

The traditional perils covered are fire loss, windstorm, earthquake and flood. The resultant time element losses consisting of loss of rents, additional operating expenses and expediting expenses such as renting temporary facilities to resume normal operations would be covered within the property program.

The limit of liability to pay each occurrence or loss is \$100,000,000. This limit resets after each loss however, certain perils such as earthquake, flood and terrorism have annual aggregate limits that do not reset and are only available during the policy year up to the appropriate limit.

The participants in the State program need to be cognizant that newly acquired buildings or significant equipment purchases should be reported to the State Risk Management Office as soon as possible. The risk management office has a specific form that can be completed to report the information required to submit for insurance coverage.

All claims that could result in a claim for damages should be reported to the State’s Risk Management Office as soon as practicable.



## LIABILITY INSURANCE POLICY

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### Coverage & Limits:

\$10 million Any one occurrence or Wrongful Act or series of continuous repeated or related occurrences

\$10 million Products/Completed Operations Hazard Aggregate

\$10 million Errors & Omissions Liability Aggregate (other than Personal Injury)

\$10 million Employees Benefits Liability Aggregate

- Bodily Injury and Property Damage
- Personal and Advertising Injury
- Errors and Omissions Liability
- Employment Practices Liability
- Automobile Liability
- Watercraft Liability (except research vessels)
- Terrorism Coverage

### Major Exclusions:

Pollution, Asbestos, Airport & Aircraft, Medical Malpractice, Nuclear Energy, Dams (can be purchased back), Subsidence, Inverse Condemnation, Workers' Compensation/Employer's Liability, Educators Legal Liability, ERISA, Insurance, Failure to Supply Utilities, Intentional Injury, Uninsured Motorists/Underinsured Motorists

### Self-Insured Retention:

\$4 million/Occurrence or Wrongful Act

### Insurer:

The Insurance Co. of the State of Pennsylvania

Premium: \$1,523,580

The State purchases significant excess liability limits (\$10,000,000) to respond to claims from third parties alleging malfeasance or negligence on the part of the State resulting in property damage or bodily injury.

This coverage is a special public entity form that provides coverage grants for general liability, automobile liability, law enforcement liability, errors & omissions and personal and advertisement liability.

All claims that involve the State as the Defendant except for contractual claims, business disputes, aviation liability and medical malpractice are eligible for coverage. However the fact pattern of each particular claim will ultimately determine if the policy will afford coverages.

The program is structured with significant retentions, which are similar to deductibles. The rationale behind employing this type of program structure is to assume liability for claims that the State can absorb without serious economic repercussions and transfer claims that are catastrophic in nature.

All claims that could result in a claim for damages should be reported to the State's Risk Management Office as soon as practicable.



GOVERNMENT CRIME POLICY

Insuring Agreement	Limit of Insurance	Deductible Amount
Employee Theft	\$10,000,000	\$500,000
Faithful Performance of Duties	\$10,000,000	\$500,000
Forgery/Alteration	\$10,000,000	\$500,000
Theft of Money/Securities (Inside)	\$10,000,000	\$500,000
Robbery or Safe Burglary Other Property (Inside)	\$10,000,000	\$500,000
Outside Premises	\$10,000,000	\$500,000
Computer Fraud	\$10,000,000	\$500,000
Funds Transfer Fraud	\$10,000,000	\$500,000
Money Orders & Counterfeit Currency	\$10,000,000	\$500,000
Credit/Debit or Charge Card Forgery	\$100,000	\$1,000

Insurer:

Westchester Fire Insurance Company

Premium: \$151,141

**Summary of Insuring Agreements**

**Employee Theft** – Loss or damage to money, securities, and other property resulting directly from theft committed by an employee.

**Faithful Performance of Duties** – Loss or damage to money, securities, and other property resulting directly from the failure of employee to faithfully perform duties as prescribed by law.

**Forgery/Alteration** – Loss resulting directly from forgery or alteration of checks, drafts, or promissory notes.

**Theft of Money/Securities (Inside)** – Loss of money and securities inside the premises resulting directing from theft, disappearance, or destruction.

**Robbery/Safe Burglary Other Property (Inside)** – Loss of or damage to other property inside the premises resulting directly from an actual or attempted robbery of a custodian.

**Outside Premises** – Loss of money and securities outside the premises in the care and custody of a messenger or an armored motor vehicle company resulting directly from theft, disappearance, or destruction.

**Computer Fraud** – Loss or damage to money, securities or other property resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the premises to a person or place outside those premises.

**Funds Transfer Fraud** – Loss of funds resulting directly from a fraudulent instruction directing a financial institution to transfer, pay or deliver funds from your transfer account.

**Money Orders/Counterfeit Paper** – Loss resulting directly from your having accepted in good faith, in exchange for merchandise, money or services, counterfeit/money/orders.

**Credit/Debit or Charge Card Forgery** – Loss resulting directly from forgery or alteration of written instruments required in connection with any credit, debit or charge card issued to the State or any employee for business purposes.

### Claim Scenarios

**Employee Theft** – John Employee alters procurement documents in collusion with an outside vendor and receives kick-back payments.

**Faithful Performance** – An employee intentionally invests State funds in an investment that is not permitted by statute. The investment loses millions of dollars resulting in a direct loss.

**Forgery/Alternation** – A State check is stolen from the recipient's mail box, the payee and amount is altered and check is negotiated and cashed.

**Theft Money/Securities (Inside)** - A locked cash box/safe is broken into during closed hours, cash and bearer bonds are taken.

**Robbery/Safe Burglary Other Property** – An armed individual enters the treasury burglarizing vault and walks out with gold ingots.

**Outside Premises** – Daily receipts are being messengered by staff automobile to Treasury and the messenger is held up.

**Computer Fraud** – An individual penetrates firewalls and diverts payments from authorized payees to fictitious individuals and accounts.

**Funds Transfer Fraud** – An individual sends fraudulent instructions upon which the financial institution acts and funds are transferred from the State's accounts to others.

**Money Orders/Counterfeit Currency** – An auction of property is held and the low bidder pays cash. The cash is counterfeit.

**Credit/Debit/Charge Card Forgery** – A credit card is provided to an employee for use during travel. The employee purchases items; the paper receipt is utilized to make additional charges to the State's account.

### **I M P O R T A N T   C O V E R A G E   I N F O R M A T I O N**

**Coverage for an employee ceases upon discovery of loss, e.g. all theft/loss perpetrated after you know an employee has stolen will not be compensated by this policy. In addition to other action, you should be sure that an employee who has committed theft no longer has access to assets.**

**This coverage requires all loss to be reported to the insurer as soon as possible. Report all instances to Risk Management Department (586-0550). To not do so may void coverage.**