



RE: Insurance Coverage

To Whom It May Concern:

The Commonwealth of Pennsylvania does not have a commercial insurance policy to generate the standardized certificate of liability insurance form. As a self-insured governmental unit, the Commonwealth is submitting this letter to fulfill the requirements of your agreement. Because our liability coverage is governed by the Act, we do not have the option to list entities as an additional insured. However, it is the intent of the Commonwealth to respond to the fullest extent of the Act to any claims arising.

The Commonwealth's exposure to liability (other than Workers' Compensation Liability) is governed by the dictates of Act 152, as amended by Act 142 of 1980, commonly known as the Sovereign Immunity Tort Claims Act. Under this Act, sovereign immunity was reaffirmed but waived in nine (9) specific areas of liability. Section 8522 (b) 2 specifically relates to medical professional liability claims [malpractice coverage]. In accordance with Section 8528 of the statute (see attached) eligible claims or suits against the Commonwealth, its officials or employees within the waived areas may be settled up to \$250,000.00 per person; \$1 million each occurrence. These limits have been affirmed by the Pennsylvania Supreme Court.

The Commonwealth has established a Tort Claims Self-Insurance Program to handle these claims or suits, which is administered by the Bureau of Risk and Insurance Management, Department of General Services in close relationship with the Office of Attorney General. There is no policy number assigned to the "Tort Claims General Self Insurance Program".

All municipalities and private concerns have accepted the Commonwealth's Self-Insurance Program as a viable alternative to commercial insurance. The Self-Insurance Program has responded to over 269,489 claims and processed settlements in excess of \$670 million.

This coverage applies to all Commonwealth departments, officials and employees while performing Commonwealth activities. The coverage is in effect whenever and wherever the Commonwealth is conducting business. . The coverage is an occurrence policy which will respond to any claims brought against the medical professional for work done while employed by the Commonwealth, regardless of when the claim is presented.

Commonwealth owned properties, including Commonwealth owned building contents and

Commonwealth owned building contents at leased locations are self-insured for fire or other casualty under the State Insurance Fund created by Act 227 (1915 P.L. 524, approved May 14, 1915, as amended). The Fund is administered by the Department of General Services. The State Insurance Fund provides coverage for fire, casualty, perils of flood and flood related hazards or any other natural disasters for approximately 14,000 Commonwealth owned properties with a value of \$18 Billion. The limit of coverage is \$3,000,000 any one loss.

There also is \$1,000,000,000 in excess private insurance over \$1,000,000 retention for the Main Capitol Complex of buildings and all other owned properties, including Terrorism Coverage with \$1 Billion limits. The Excess Property insurance policy was extended to cover the perils of Flood and Earthquake with a sub-limit of \$100,000,000 any one loss over \$1,000,000 retention. The Commonwealth is certified as a Self-Insurer under the Federal Flood Disaster Act of 1973, which affords Federal funds as partial reimbursement (for loss amounts not covered by the Fund or excess insurance) to the Commonwealth for such losses.

Additionally, the Commonwealth of Pennsylvania is certified as a qualified self-insurer under the Pennsylvania Motor Vehicle Financial Responsibility Act and the Workers' Compensation Act providing the appropriate benefits required as a self-insurer.

If you have any questions regarding the Commonwealth's Self-Insurance Program, please feel free to contact me at the phone number or address indicated below

Very truly yours,

*Ken*

Kenneth M. Love  
Commonwealth Risk and Insurance Manager

# SOVEREIGN IMMUNITY

ACT 152 [ AS AMENDED BY ACT 142 OF 1980 ]

PENNSYLVANIA CONSOLIDATED STATUTES

THE JUDICIAL CODE (TITLE 42)

CHAPTER 85 MATTERS AFFECTING GOVERNMENT UNITS

## § 8501. DEFINITIONS

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Act."

Includes a failure to act.

"Commonwealth party."

A Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment.

"Employee."

Any person who is acting or who has acted on behalf of a government unit whether on a permanent or temporary basis, whether compensated or not and whether within or without the territorial boundaries of the government unit, including any volunteer fireman and any elected or appointed officer, member of a governing body or other person designated to act for the government unit. Independent contractors under contract to the government unit and their employees and agents and persons performing tasks over which the government unit has no legal right of control are not employees of the government unit.

"Injury."

Includes death.

"Judicial determination."

Any determination by a court of competent jurisdiction including any settlement approved by such court.

"Local agency."

A government unit other than the Commonwealth government. The term includes an intermediate unit.

## *SUBCHAPTER B -- ACTIONS AGAINST COMMONWEALTH PARTIES*

### SOVEREIGN IMMUNITY

§ 8521. Sovereign immunity generally.

§ 8522. Exceptions to sovereign immunity.

§ 8523. Venue and process.

§ 8524. Defenses.

§ 8525. Legal assistance.

§ 8526. Counterclaim by the Commonwealth.

§ 8527. Indemnity relating to inmate health care.

§ 8528. Limitations on damages.

§ 8521. SOVEREIGN IMMUNITY GENERALLY.

(a) General rule.--Except as otherwise provided in this subchapter, no provision of this title shall constitute a waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) or otherwise.

(b) Federal courts.--Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

§ 8522. EXCEPTIONS TO SOVEREIGN IMMUNITY.

(a) Liability imposed.--The General Assembly, pursuant to [section 11 of Article I of the Constitution of Pennsylvania](#), does hereby waive, in the instances set forth in subsection (b) only and only to the extent set forth in this subchapter and within the limits set forth in [section 8528 \(relating to limitations on damages\)](#), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity.

(b) Acts which may impose liability.--The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

1. Vehicle liability.--The operation of any motor vehicle in the possession or control of a Commonwealth party. As used in this paragraph, "motor vehicle" means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.
2. Medical-professional liability.--Acts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel.
3. Care, custody or control of personal property.--The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radioactive equipment, devices and materials.
4. Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including
5. Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a

6. Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).
7. Potholes and other dangerous conditions.--A dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other similar conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition. Property damages shall not be recoverable under this paragraph.
8. Care, custody or control of animals.--The care, custody or control of animals in the possession or control of a Commonwealth party, including but not limited to police dogs and horses and animals incarcerated in Commonwealth agency laboratories. Damages shall not be recoverable under this paragraph on account of any injury caused by wild animals, including but not limited to bears and deer, except as otherwise provided by statute.
9. Liquor store sales.--The sale of liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board created by and operating under the act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," if such sale is made to any minor, or to any person visibly intoxicated, or to any insane person, or to any person known as an habitual drunkard, or of known intemperate habit.
10. National Guard activities.--Acts of a member of the Pennsylvania military forces.
11. Toxoids and vaccines.--The administration, manufacture and use of a toxoid or vaccine not manufactured in this Commonwealth under the following conditions:
  - (i) The toxoid or vaccine is manufactured in, and available only from, an agency of another state.
  - (ii) The agency of the other state will not make the toxoid or vaccine available to private persons or corporations, but will only permit its sale to another state or state agency.
  - (iii) The agency of the other state will make the toxoid or vaccine available to the Commonwealth only if the Commonwealth agrees to indemnify, defend and save harmless that agency from any and all claims and losses which may arise against it from the administration, manufacture or use of the toxoid or vaccine.
  - (iv) A determination has been made by the appropriate Commonwealth agency, approved by the Governor and published in the Pennsylvania Bulletin, that the toxoid or vaccine is necessary to safeguard and protect the health of the citizens or animals of this Commonwealth.

(v) The toxoid or vaccine is distributed by a Commonwealth agency to qualified persons for ultimate use.

The Commonwealth shall make the toxoid or vaccine available to a qualified person only if the person agrees to indemnify, defend and save harmless the Commonwealth from any and all claims and losses which may arise against the Commonwealth from the manufacture, distribution, administration or use of the toxoid or vaccine.

#### § 8523. VENUE AND PROCESS.

(a) Venue.--Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose. If venue is obtained in the Twelfth Judicial District (Dauphin County) solely because the principal office of the Commonwealth party is located within it, any judge of the Court of Common Pleas of Dauphin County shall have the power to transfer the action to any appropriate county where venue would otherwise lie.

(b) Process.--Service of process in the case of an action against the Commonwealth shall be made at the principal or local office of the Commonwealth agency that is being sued and at the office of the Attorney General.

#### § 8524. DEFENSES.

The following common law defenses are available:

1. An official of a Commonwealth agency, or a member of the General Assembly or the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, defenses which have heretofore been available to such officials.
2. An employee of a Commonwealth agency, or a member of the General Assembly or of the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, the defense that the employee was acting pursuant to a duty required by a statute or statutorily authorized regulation.
3. An employee of a Commonwealth agency, or a member of the General Assembly or of the judiciary may assert on his own behalf, or the Commonwealth may assert on his behalf, the defense that the act was within the discretion granted to the employee by statute or statutorily authorized regulation.

#### § 8525. LEGAL ASSISTANCE.

When an action is brought under this subchapter against an employee of the Commonwealth government, and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee, the Commonwealth through the Attorney General shall defend the action, unless the Attorney General determines that the act did not occur within the scope of the office or duties of the employee. In the latter case, if it is subsequently determined that the act occurred within the scope of the office or duties of the employee, the Commonwealth shall reimburse the employee for the expense of his legal defense in such amounts as shall be determined to be reasonable by the court. If an action is brought against a Commonwealth government employee for damages on account

of injury to a person or property and it is not alleged that the act of the employee which gave rise to the claim was within the scope of his office or duties, and he successfully defends the action on the basis that the act was within the scope of his office or duties, and he has given prior notice to the Attorney General and the Attorney General has refused to defend the action, he shall likewise be entitled to the reasonable expenses of the defense.

§ 8526. COUNTERCLAIM BY THE COMMONWEALTH.

In any action initiated under this subchapter, the Commonwealth may set forth any cause of action or set-off which it has against the plaintiff. A counterclaim need not diminish or defeat the relief demanded by the plaintiff. It may demand relief exceeding in amount or different in kind from that demanded by the plaintiff.

§ 8527. INDEMNITY RELATING TO INMATE HEALTH CARE.

The Commonwealth shall indemnify against liability a municipal corporation for a claim against the municipal corporation arising from an act or omission of the municipal corporation, its officials, its employees or agents when participating in a program for the provision of medical treatment in a health care facility to inmates from a Commonwealth correctional facility pursuant to a program authorized by the Department of Corrections. This indemnification shall not extend to claims of medical malpractice against any person nor to claims against the health care facility, its employees or agents nor to claims against the municipal corporation that are the result of gross negligence, wanton and reckless acts or intentional misconduct by the municipal corporation, its officials, employees or agents.

LIMITATIONS ON DAMAGES

§ 8528. LIMITATIONS ON DAMAGES.

(a) General rule.--Actions for which damages are limited by reference to this subchapter shall be limited as set forth in this section.

(b) Amount recoverable.--Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.

(c) Types of damages recoverable.--Damages shall recoverable only for:

1. Past and future loss of earnings and earning capacity.
2. Pain and suffering.
3. Medical and dental expenses including the reasonable value of reasonable and necessary medical and dental services, prosthetic devices and necessary ambulance, hospital, professional nursing, and physical therapy expenses accrued and anticipated in the diagnosis, care and recovery of the claimant.
4. Loss of consortium.
5. Property losses, except that property losses shall not be recoverable in claims brought pursuant to section 8522(b)(5) (relating to potholes and other dangerous conditions).