

Liability Programs and the Governmental Tort Claims Act

Presented By
The Risk Management Division
1 November 2011

Risk Management—(RM)
74 O.S. § 85.58A.

Risk Management Administrative Rules
OAC 580:25

Oklahoma Governmental Tort Claims Act—(GTCA)
51 O.S. § 151, et seq.

Risk Management Program

74 O.S. § 85.58A

The Department of Central Services shall establish for all state agencies, whether or not subject to The Central Purchasing Act, and other entities as provide by law a comprehensive professional risk management program. . .

GTCA–Sovereign Immunity

51 O.S. § 152.1

- A. The State of Oklahoma does hereby adopt the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts.

GTCA–Sovereign Immunity continued

51 O.S. § 152.1

B. The state, only to the extent and in the manner provided in this act, waives its immunity and that of its political subdivisions. In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution.

GTCA–Definitions

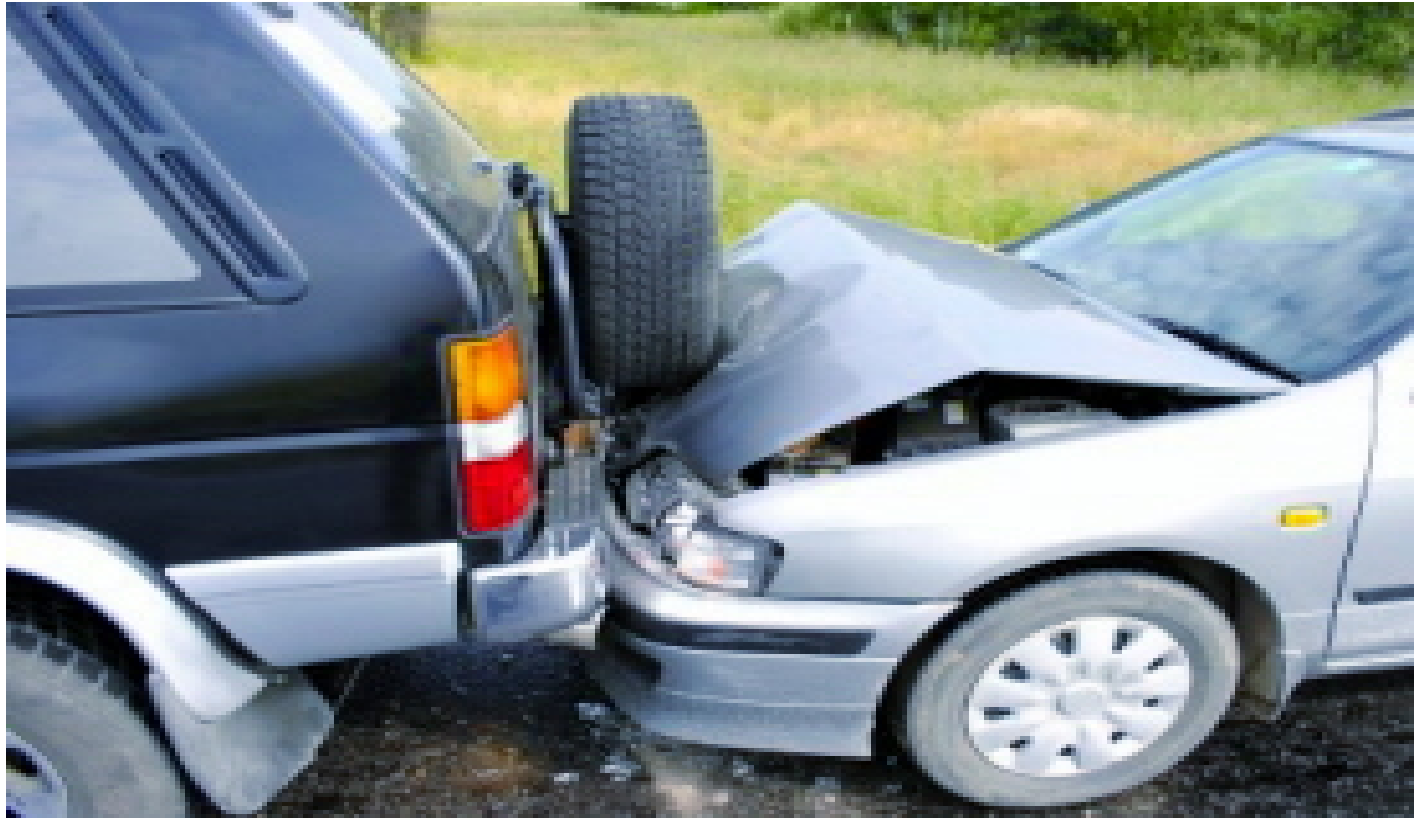
51 O.S. § 152

7. “Employee” means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis.
 - a. Employee also includes:
 - (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or employee of an independent contractor. . .

GTCA-Definitions

51 O.S. § 152

12. "Scope of employment" means performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned...



GTCA–Liability–Scope–Exemption

51 O.S. § 153

- A. The state...shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state....

GTCA–Liability–Scope–Exemption

51 O.S. § 153

- B. The liability of the state...under this act shall be exclusive and in place of all other liability of the state,...or employee at common law or otherwise.

GTCA–Extent of Liability

51 O.S. § 154

- A. The total liability of the state . . . on claims within the scope of The Governmental Tort Claims Act, arising out of an accident or occurrence. . . shall not exceed:
- 1. . . .(\$25,000) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;
 - 2. . . .to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence. . .(\$175,000);*
 - 3. . . .(\$1,000,000) for any number of claims arising out of a single occurrence or accident.
- *\$200,000 University Hospitals and State Mental Health Hospitals*
 - *State cannot pay for punitive or exemplary damages.*

GTCA–Extent of Liability

51 O.S. § 154

G. The liability of the state. . .under the Governmental Tort Claims Act shall be several from that of any other person or entity, and the state. . .shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence.

GTCA

51 O.S. § 155—Exemptions From Liability





GTCA–Claims, etc.

51 O.S. § 156

- B. Except as provided in subsection H of this section, claims against the state. . .are to be presented within one (1) year of the date the loss occurs. ...

GTCA–Claims, etc., continued

51 O.S. § 156

- C. A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator....

GTCA–Notice of Approval or Denial of Claim

51 O.S. § 157

- A. A person shall not initiate a suit against the state. . .unless the claim has been denied in whole or in part. . .

90 Days

180 Days

Extensions possible, but only if agreed to in writing by the claimant and the State, but not to exceed two (2) years from the date of the loss.

Risk Management Program

OAC 580: 25-5-1

(a) Settlements and payment of claims

(1) General. . .most claims may be paid from the state's respective risk pools and not from commercial insurance.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

GTCA–Settlement or Defense of Claim– Effect of Liability Insurance

51 O.S. § 158

- C. If a policy or contract of liability insurance covering the state. . .or its employees is applicable, the terms of the policy govern the rights and obligations of the state. . .

Risk Management Program

74 O.S. § 85.58A

- F. A state agency, whether or not subject to The Central Purchasing Act, that contemplates purchase of property and casualty insurance, shall provide details of the proposed purchase to the Risk Management Administrator for approval or disapproval prior to the purchase.

Risk Management Program

OAC 580: 25-5-1

(a)(1) Settlements and payment of claims

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A....

Risk Management Program

74 O.S. § 85.58A

- I. The Risk Management Administrator may provide or obtain... insurance for liability for loss...resulting from violations of rights or privileges secured by the Constitution or laws of the United States of America....

Public Officials / ELL / EPL Policies

Endorsement # 4—Clause 4. Exclusions are amended as follows:

(bb) alleging, arising out of, based upon or attributable or subject to the Governmental Tort Claims Act, Title 51 O.S., Sec. 151 et seq. or any federal, state, local or common statute, code, rule, regulation or law. By this exclusion, the Insured does not waive its sovereign immunity;

Public Officials / ELL / EPL Policies

SETTLEMENTS AND JUDGMENTS :

The Insureds shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the Insurer.

The Insurer shall have the right to effectively associate with the Insureds in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

Public Officials / ELL / EPL Policies

SETTLEMENTS AND JUDGMENTS continued :

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, the Insurer's liability for all Loss on account of Claim shall not exceed the amount for which the Insurer could have settled such Claim....

GTCA—...Recovery of Payments...

51 O.S. § 160

The state. . .shall have the right to recover from an employee for any claim or action under this act . . . if it is shown that the conduct of the employee which gave rise to the claim or action was outside the scope of his employment, or if the employee fails to cooperate in good faith in the defense of the claim or action.



GTCA

51 O.S. § 200

Default or Agreed Judgment, Consent Decree or
Other Settlement of Litigation or Claim against the
State

GTCA

51 O.S. § 200

- A. 1. No agency, board or commission, public officer, official or employee of the State of Oklahoma shall, without the approval of the Oklahoma State Legislature when it is in regular session, or by the Contingency Review Board, when the Legislature is not in regular session, enter into any default or agreed judgment, consent decree or other settlement of any litigation or claim against the state which would require a settlement expenditure in excess of Two Hundred Fifty Thousand Dollars (\$250,000). . .

GTCA

51 O.S. § 200

- A. 2. Any agreed judgment, consent decree or other settlement or other settlement or litigation or claim against the state which shall be paid from the Risk Management Fund and any statutory condemnation proceeding shall be exempt from the provisions of this section. . .

Where is the Money?

Fund 205 and Sub-Activity Funds

(GTCA Claims)

Tort including Auto
Sub-Activity Fund

State Property
Ins. Program
Sub-Activity
Fund

PO/ELL/EPL
Sub-Activity
Fund

**Visit the RM website &
look in the “Related Topics” box
to access the GTCA**

http://www.ok.gov/DCS/Risk_Management/index.html

State of Oklahoma Communities of Practice–Wiki Site

Visit the State of Oklahoma Risk Management Connection blog

This website is for best practices throughout the State of Oklahoma.

To gain access, fill out and submit a request at:

<https://wiki.ok.gov/dashboard.action>

Frequently Asked Questions

- ▶ Can a spouse be a passenger in a state vehicle going to an event?
- ▶ Can non-agency professionals ride in an agency vehicle?
- ▶ A vendor was injured at our facility. Do we need to fill out the Standard Liability Incident Report?
- ▶ Are students receiving college credit for research in a foreign country covered under the state foreign liability policy?
- ▶ If there is an incident (i.e. mowing) & no one admits damage to the claimants vehicle, who is liable?

Frequently Asked Questions

- ▶ When should an agency report a constitutional/discrimination/civil rights issue to SRM?
- ▶ When are status updates from defense counsel required?
- ▶ If an employee uses their personal vehicle for state business with proper approval, is the vehicle covered?
- ▶ If an employee has a 24 hr vehicle, are they covered to & from home? Doing personal errands?