

Board Member Liabilities and Exposures

A Coverage Overview

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Am I Covered?*

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YES!

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Thank you!

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Self-Insurance Pools

- Self Insurance Pools
- Liability Coverage In General
- Government Immunities
- Auto Coverage
- Crime Coverage
- Additional Coverage
- Exclusions

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Self-Insurance Pools

- SDIS
- CIS
- PACE



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Self-Insurance Pools

- Pooling Resources for Insurance Coverage
- Reinsurance
- Broad Coverage
- Long Term Price Stability
- Higher Levels of Service

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Who's Covered

Named Participant – (The District) and each of the following **while acting in the course and scope of their duties** as such:

- Directors and officers
- Employees
- Agents (pursuant to ORS 30.285)
- Volunteers
- Boards, commissions, agencies



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Tort Liability

Tort means the breach of a legal duty that is imposed by law, **other than a duty arising from contract or quasi-contract**, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy.

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Negligence Torts

Negligence Torts

- Owed a Legal Duty
 - Trespasser
 - Children
- Breach of Duty Owed
- Results in Injury (Damages)
- Proximate Cause of Loss



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Damages

- Special Damages
- General Damages

The following are not covered:

- Fines
- Penalties
- Injunctive relief
- Punitive damages



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Oregon Tort Claims Act

- Liability Protections for Public Bodies
- **Acting within the scope of their employment or duties**
- Public officials can now be named individually if the alleged damages are over the damage limits of the Oregon Tort Claims Act
 - The public body **must still defend and indemnify**

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OTCA Limits of Liability

- Limits of Liability for Personal Injury or Death (as of July 2022)
 - **\$806,100** for any number of claims arising out of a single accident or occurrence.
 - **\$1,612,000** for all claimants combined arising out of a single accident or occurrence.
 - Adjusted each year thereafter by CPI



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OTCA Limits of Liability

Limits of Liability for Property Damage (as of July 2022)

- **\$132,200** for any number of claims arising out of a single accident or occurrence, adjusted annually by CPI.
- **\$661,000** for all claimants combined arising out of a single accident or occurrence, adjusted annually by CPI.



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Covered or Not Covered?

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Am I Covered?

A road district board decides to remove a tree from a corner lot that is blocking visibility at an intersection. One of the board members volunteers to cut down the tree.

The landowner files suit against the road District for cutting down the tree.



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Am I Covered?

A board member for an irrigation district had an irrigation ditch on his personal property that was leaking. He made some repairs and ended up causing damage to a neighboring property.

The owner of the damaged property filed suit for the damages caused.



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Am I Covered?

A sanitary district was conducting inspections of their collection system. They had a manhole cover removed. A local resident was walking their dog and the dog ended up falling into the manhole.

The dog's owner filed a claim for the vet bills.



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Am I Covered?

An ethics complaint was filed against a board member who allowed his district to dump fill dirt on his personal property from a current construction project.

The OGEC investigated and found the board member had violated ethics rules and subsequently fined the board member



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Am I Covered?

A School District is sued for alleged abuse by a school principal that occurred over 15 years ago. The allegation is that the abuse occurred over a period of two years.

At trial the jury found in favor of the plaintiff and was awarded \$3 million



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Governmental Immunities

- Discretionary Immunity
- Recreational Immunity



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Governmental Immunities

- Discretionary Immunity
- Recreational Immunity



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Immune or Not Immune?

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Would you have Immunity?

A District conducts an inspection of their grounds after someone complains of the conditions of their sidewalks. Upon inspection and resulting RFP they find they have \$30,000 worth of repairs that need to occur.

The board develops a plan to set aside \$5,000 a year to make repairs until all sidewalks are repaired or replaced. They also prioritized this plan to work on the worst areas first



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Would you have Immunity?

A District charges \$10 to park in a parking lot to fish at a local lake. A person trips in a pothole in the parking lot and breaks their leg.



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Would you have Immunity?

A District charges \$10 to park in a parking lot to fish at a local lake. A person trips while fishing down by the lake and breaks their leg.



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Would you have Immunity?

A District charges \$20 to park in a parking lot to fish at a local lake. A person trips while fishing down by the lake and breaks their leg.



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Federal Claims

- American's with Disabilities (ADA)
- Employment Practices
- Civil Rights



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Federal Claims

- Attorney Fees!!
- No Limits of Liability
- Individual public officials can be named



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Covered or Not Covered?

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Am I Covered?

Previous employee files suit for wrongful termination. Her list of accusations is long, and her prayer is over \$1,000,000.

We felt confident in our defense of the accusations and attempted to settle the matter out of court.

So the case went to trial.



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Auto Coverage

- Auto Liability
 - Limits match GL Coverage
- Auto Physical Damage
 - Replacement Cost
 - Non emergency less than 7 years old
 - Emergency not more than 15 years old
 - Functional Replacement Cost



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- Uninsured/Underinsured Motorist
 - \$500,000 sublimit
- Personal injury protection
 - Limits of coverage vary
- Non owned auto coverage
 - Must elect



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Covered or Not Covered?

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Am I Covered?

UI/UIM Coverage: \$500K coverage with \$500 deductible

The claimant, a transportation district bus passenger sustained injuries when a vehicle turned into the bus. The claimant does not have auto insurance coverage but does have health insurance coverage. Per ORS 278.215 (3) uninsured motorist must first exhaust any and all other insurance available to them, before UI/UIM coverage kicks-in. A settlement demand was made to the at-fault vehicles auto carrier, State Farm in the amount of \$88,779.39. State Farm paid out their \$25K policy limits in response to the above demand. A separate settlement demand was then made to the transit district thereafter, in the amount of \$63,779.37.

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Am I Covered?

A board member at the direction of the board attends an association conference. The board member drives their own vehicle to the conference, in accordance with board policy. On the way to the conference the board member runs a red light and gets into an accident with some significant injuries to all parties involved.



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Am I Covered?

A Fire District responding to a call rolls a fire engine when the wheels sink in a soft shoulder on the side of the road.

The fire engine is 16 years old and is scheduled with a value of \$125,000. Estimates to repair the engine are \$72,000.



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Crime Coverage

- Employees, Board Members, Volunteers
- Individuals convicted of theft in the past are not eligible
- Money and Securities



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Covered or Not Covered?

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Am I Covered?

The bookkeeper for a District is found to have embezzled more than \$70,000 over the course of several years.



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Am I Covered?

A District Manager was found to have used his District credit card for personal expenditures for several years.

It is difficult to determine how much was personal expenses, but it appears to be over \$20,000



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Additional Coverage

- OGEC Ethics Complaint Defense - \$2,500 per person / \$5,000 aggregate limit coverage period
- BOLI or EEOC Defense – per occurrence limit of liability



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Additional Coverage

Limited Pollution

- Full policy limits for:
 - Leakage of fluids from auto accident
 - Potable water treatment
 - Emergency Operations
- \$50,000 pesticide and herbicide
- \$250,000 all other (sudden and accidental only)



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Additional Coverage

Others

- Fungal pathogens (Mold)
 - \$100,000 in defense costs per occurrence and in the aggregate
- Oregon Consumer Identity Theft Protection Act (OCITPA)
 - \$100,000 occurrence and in the aggregate with \$500,000 pool aggregate
- Third party data disclosure liability
 - \$1,000,000 per occurrence and in the aggregate



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Additional Coverage

Others

- Lead Liability Defense Costs
 - \$50,000 per occurrence and in the aggregate, \$200,000 in the aggregate for the pool
- Marine Salvage Expense Reimbursement
 - \$250,000 per occurrence and in the aggregate
- Criminal Defense Costs
 - \$100,000 per occurrence and in the aggregate and \$500,000 in the aggregate for the pool



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Additional Coverage

Others

- Premise Medical Expense
 - \$5,000 per occurrence and in the aggregate
- Injunctive Relief defense
 - \$25,000 per occurrence and in the aggregate and \$100,000 in the aggregate for the pool



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Exclusions

- Intentional Acts
- Breach of contract
- Owned or operated aircraft
- Nuclear
- Watercraft excess of 30 feet
- Damage of owned property
- Communicable Disease – effective 1/1/2021
- Bodily injury to employees and volunteers (wc)
- Eminent domain and condemnation
- Owned or operated clinic or hospital
 - Other professional incidental medical is not excluded

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Exclusions

- Pollution (except for Additional Coverage)
- Asbestos
- Failure to secure insurance
- Personal injury liability if:
 - Written publication of knowingly false material
 - Willful violation of penal statute
 - Course or conduct of law practice
- Acts or omission outside the scope of powers and duties, including malfeasance and willful or wanton neglect of duty



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Exclusions

- War
- Back wages including employee benefits
- Failure of performance of insurance contract
- Breach of fiduciary duty – (ERISA)
- Failure of investment programs or plans
- Terrorism
- Fungal Pathogens (Other than additional coverage for defense costs)
- Owned and/or operated railroads
- Lead (Other than additional coverage for defense costs)



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Administered By
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