

**CLAIM REPORTING PROCEDURES FOR
PUBLIC OFFICIALS LIABILITY/
EMPLOYMENT PRACTICES LIABILITY CLAIMS**



INTRODUCTION

Effective January 1, 2011, the MEL will no longer handle new Public Official Liability Policy/Employment Practices Liability (“POL/EPL”) claims. You will, however, continue to report all claims to Scibal Associates and the Fund Solicitor using current reporting procedures (see *Claims Coordinator Handbook*). Scibal will review the claim and pass along those claims that belong to the new insurance carrier (“XL Insurance”) through their claims adjuster, Summit Risk Services. All past POL/EPL claims will continue to be handled to conclusion by Scibal Associates. The coverage, deductibles, and co-pays for all new claims will continue in accordance with current policies and procedures.

The following is intended to outline in greater detail each JIF Member’s reporting obligations for claims that fall within the primary Public Official Liability Policy/Employment Practices Liability (“POL/EPL Policy”) issued by XL Insurance to the Burlington County Municipal Joint Insurance Fund (“BURLCO JIF”) and the excess layer of insurance issued by MEL (“MEL POL/EPL Excess Policy”). Each member should review these requirements carefully and share the information with the appropriate parties in your Municipality. Failure to adhere to the provisions below and/ or the terms and conditions of the POL/EPL Policy or MEL Excess POL/EPL Policy could jeopardize coverage for the submitted claim. To the extent you have questions, please contact Paul Miola (856-446-9130; Paul_Miola@AJG.COM) or Paul Forlenza (856-446-9135; Paul_Forlenza @AJG.COM).

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I. REPORTING OF A CLAIM

The POL/EPL Policy and the MEL POL/EPL Excess Policy are claims made policies, which means all claims must be reported within the policy period and in accordance with the policy's terms. Therefore, prompt reporting is essential and must be in accordance with the terms and conditions set forth below. These terms are unchanged from the current MEL POL/EPL policy.

Upon the receipt of a "Claim" (which is defined in the POL/EPL Policy), the member shall report the Claim to Scibal Associates and the Fund Solicitor, as is your current practice. A copy of the "Claims Transmittal Form" is attached. Scibal Associates shall immediately review the Claim and report it to the insurance carrier's claims adjuster, Summit Risk Services ("XL/Summit Risk Services").

To the extent the Claim includes allegations that could trigger coverage beyond the POL/EPL Policy, Scibal Associates shall report that determination to the appropriate party in accordance with existing claims reporting requirements.

Please note that the POL/EPL Policy requires that a Claim must be reported within 14 days of receipt. These terms are unchanged from the current MEL policy.

Scibal Associates shall have no further obligation related to the adjustment of the Claim once it is reported to XL/ Summit Risk Services, however, Scibal shall monitor claims that have been reported to XL/ Summit Risk Services and act as claims advocates on behalf of the JIF. If the Claim involves allegations triggering coverage under other JIF insurance policies, Scibal Associates will be obligated to remain involved in the Claim to the extent required by the JIF, as it is Scibal Associates' responsibility to ensure that all appropriate parties are notified of the claim. In addition, Scibal Associates shall contact XL/ Summit Risk Services prior to assigning counsel on claims that trigger coverage under multiple policies to avoid duplication in attorney fees.

II. REPORTING "FACTS AND CIRCUMSTANCES"

The POL/EPL Policy requires each member to report "*any incident, event, occurrence, loss or accident that might give rise to a Claim.*" These terms are unchanged from the current MEL policy. Such report of a potential claim must be completed immediately in accordance with the policy terms. Each member should report potential claims in the same manner as a Claim, as set forth in Section I above.

Please note that early reporting of facts and circumstances that might give rise to a claim is required by the POL/EPL Policy and failure to do so could result in loss of coverage in the future. Experience has demonstrated that reporting such potential claim could result in early resolution with the occurrence of no expenses. XL/ Summit

Risk Services will offer assistance with early resolution of Claims and potential claims that are reported to them in a timely fashion.

III. XL'S RECEIPT OF CLAIM AND ASSIGNMENT OF COUNSEL

Upon receipt of a Claim or potential claim, XL/ Summit Risk Services will assign a claim number and an XL/ Summit Risk Services Adjuster whom will be responsible for monitoring the claim. XL/ Summit Risk Services will send an acknowledgment of claim to the member town clerk and to individual insured defendants and copy to the following individuals:

- Fund Solicitor, William Kearns; and
- Scibal Associates, Kathy Tyler-Schohl.

This acknowledgment letter will include contact information of the Assigned Adjuster and a Claim Number for the Claim.

The XL/ Summit Risk Services Adjuster will contact the Fund Solicitor and discuss the matter and appropriate choice of counsel to be assigned to handle the matter on behalf of the member. The selection of counsel will be limited to the list of approved attorneys for the local JIF. Upon selecting counsel, XL/ Summit Risk Services will issue a Reservation of Rights and/or if appropriate, a denial. Such letter will be directed to the member town clerk and to individual insured defendants seeking coverage and will copy the following individuals:

- Executive Director, Paul J. Miola;
- Fund Solicitor, William Kearns, Jr.; and
- Scibal Associates, Kathy Tyler-Schohl.

XL/ Summit will attach an "*Acknowledgment of a Defense by XL Pursuant to a Reservation of Rights,*" which shall read in a form similar to below:

It is hereby acknowledged by _____ that the Fund's provision of a defense to it, for the claims being made by Plaintiffs', is pursuant to a full and complete reservation of rights to disclaim coverage for any potential liability arising out of such action. The provision of such defense shall not constitute a waiver of any of the terms, conditions, limitations, or exclusions of any _____. It is also acknowledged by _____ that _____ has offered the opportunity to reject the defense, and undertake its own defense subject to the provisions stated in this letter.

There are 3 things that the insured may do in response to the acknowledgment:

1. The insured can consent to the defense and the attorney assigned pursuant to the Reservation of Rights by executing the acknowledgment form and returning it to the assigned XL/ Summit Risk Services Adjuster within 20 days of receipt.
2. If the insured does not consent to the assignment of counsel and XL defending them in the action, the insured should contact XL/ Summit Risk Services in writing within 20 days of receipt of the Reservation of Rights. In this circumstance, the insured will be responsible for retaining its own counsel to defend them in the action.
3. If the insured member/ defendant does not object in writing to the assignment of counsel within 20 days in the manner described above, the insured member/ defendant will be deemed to have consented to the defense and attorney assigned pursuant to the Reservation of Rights.

Please note that XL/ Summit Risk Services has the right to assign counsel at their discretion. XL/ Summit Risk Services has agreed to utilize attorneys that are on the approved list of Panel Counsel Attorneys approved by the local JIF. In addition, XL/ Summit Risk Services anticipates that XL/ Summit Risk Services will consult with the Fund Solicitor prior to assignment of counsel.

To the extent the insured disagrees with the Reservation of Rights/ Denial, the insured shall appeal the decision as set forth below.

IV. LITIGATION MANAGEMENT AND REPORTING OBLIGATIONS

The assigned attorney is responsible for defending the claim and for adhering to the Litigation Management Guidelines of XL. The Litigation Management Guidelines have been sent to each approved Panel Counsel and copies are available upon request.

V. APPEAL OF RESERVATION OF RIGHTS / DENIALS

If the insured disagrees with the coverage position letter, the insured through its designated contact shall respond in writing sent to the attention of assigned claim adjuster. As our Claims Advocates, **Scibal Associates shall assist with this process and you should copy them on all correspondence.**

The assigned adjuster at XL/ Summit Risk Services will be required to review the letter with a supervisor to make an initial determination. If the assigned adjuster and supervisor agree with the insured, XL/ Summit Risk Services will issue a revised coverage position letter. If the assigned adjuster and supervisor do not agree with the insured and the dispute over coverage continues, the parties shall resolve the claim in accordance with the policy terms.

VI. DEDUCTIBLES AND CO-INSURANCE

Despite deductibles and co-insurance, XL/ Summit Risk Services will pay attorney bills from dollar one. Upon payment of the bills, Summit Risk Services will bill such amounts subject to the deductible and co-insurance to the insured thus eliminating large bills at the conclusion of litigation. The insured shall pay such amounts promptly.

VII. REPORTING CLAIMS TO MEL EXCESS LAYER

In the event that the insured municipality has purchased optional excess limits, and a claim is expected to pierce XL/Summit's level of coverage, there is no additional reporting obligation to the MEL Excess Layer. XL/ Summit Risk Services will send notice to the MEL Excess layer.

VIII. LOSS RUNS REQUESTS

All loss run requests should be sent to the Paul Forlenza (856-446-9135; Paul_Forlenza@AJG.COM) whom will be responsible for obtaining the loss run.