Dempkowski, Angela (Treasury)

From: Headen, Frederick (Treasury)
Sent: Friday, October 30, 2015 5:54 PM
To: Connors, Paul (Treasury); Workman, Wayne (TREASURY); Koryzno, Edward (Treasury); Saxton, Thomas (Treasury)
Cc: Storberg, Ann Marie (TREASURY)
Subject: RE: Professional Liability Insurance

Paul:

That would not be my interpretation. You did not indicate how Meadowbrook staff reached the conclusion that governmental immunity no longer would apply to Darnell for acts taken by him while at the City of Flint. I will presume that they read § 20(1) of the Act to apply only to an Emergency Manager currently serving in the local government regarding which litigation arises and concluded it would not apply to Darnell since he no longer is Emergency Manager for the City of Flint. That conclusion may appear reasonable if § 20(1) is read in isolation. However, when read as a whole, § 20 is replete with instances where the term "Emergency Manager" refers to past as well as current occupants of that office.

Section 20 was intended to remedy two shortcomings in Act 72: providing legal representation for Emergency Financial Managers while in office and after *leaving* office. Section 20(2) was intended to address the former and § 20(5) to address the latter, which was of particular concern since two former Act 72 Emergency Financial Managers had been subjected to litigation after leaving office.

With one exception, the Attorney General's Office consistently took the position under Act 72 that it would not provide legal representation for Emergency Financial Managers because they were not State officials. Section 20(2) requires such representation, but only if litigation challenges: (a) the validity of the Act, (b) the authority of a State official or officer acting under the Act, or (c) the authority of an Emergency Manager and even then only if he or she was acting within the scope of his or her authority under the Act. If, hypothetically speaking, litigation were to be filed against Darnell for acts taken by him while at the City of Flint, the Attorney General's Office would be obligated to provide legal representation only if such litigation involved (a) or (c); (b) would not apply because Emergency Managers are neither State officials or officers.

As noted above, § 20(5) would address, again hypothetically speaking, litigation filed against Darnell for acts taken by him while at the City of Flint. If not covered by insurance, his litigation-related expenses, actual and *anticipated*, would be assessed against the City of Flint, if approved by the State Treasurer after determining that Darnell's conduct had been within the scope of his authority and occurred on behalf of a local government while it was in receivership. See § 20(5)(a) and (b).

Let me know should you have further questions.

Fred

From: Connors, Paul (Treasury)
Sent: Friday, October 30, 2015 2:00 PM
To: Workman, Wayne (TREASURY) <WorkmanW@michigan.gov>; Koryzno, Edward (Treasury) <KoryznoE@michigan.gov>; Headen, Frederick (Treasury) <HeadenF@michigan.gov>; Saxton, Thomas (Treasury) <SaxtonT@michigan.gov>

Cc: Storberg, Ann Marie (TREASURY) <StorbergA@michigan.gov>
Subject: RE: Professional Liability Insurance

Tom

I spoke to Meadowbrook and they are confident that they can find another carrier for Darnell. There chief concern is that if Darnell is sued for an action taken as Flint EM, PA 436 governmental immunity no longer covers him--Section 20 (4) (5).

Fred is that your interpretation?

Also, insurance will cost approx. $5,000 which, in their opinion, is probably less that it would cost the AG to defend him.

I talked to Darnell who really wants the additional protection and is discussing the matter further with Meadowbrook.

http://www.legislature.mi.gov/(S(nojcldiedb45grz1rqeqbtvc))/documents/mcl/pdf/mcl-141-1560.pdf

From: Workman, Wayne (TREASURY)
Sent: Friday, October 30, 2015 12:52 PM
To: Connors, Paul (Treasury) <ConnorsP@michigan.gov>; Koryzno, Edward (Treasury) <KoryznoE@michigan.gov>
Cc: Storberg, Ann Marie (TREASURY) <StorbergA@michigan.gov>
Subject: RE: Professional Liability Insurance

Should let Tom know also

From: Connors, Paul (Treasury)
Sent: Friday, October 30, 2015 12:38 PM
To: Workman, Wayne (TREASURY) <WorkmanW@michigan.gov>; Koryzno, Edward (Treasury) <KoryznoE@michigan.gov>
Cc: Storberg, Ann Marie (TREASURY) <StorbergA@michigan.gov>
Subject: FW: Professional Liability Insurance

I talked to Darnell and he wants Meadowbrook to find another carrier even though he knows as EM he has immunity. I think Ann makes some good points.

From: Storberg, Ann Marie (TREASURY)
Sent: Friday, October 30, 2015 12:36 PM
To: Connors, Paul (Treasury) <ConnorsP@michigan.gov>
Subject: RE: Professional Liability Insurance

He probably isn't trusting the state to back him up and wants added assurance of liability coverage, which is outlined in Sec. 20(4) of the statute. He also may not feel comfortable having the AG represent him and would again prefer to have the extra insurance coverage [which provide for legal defense if needed]. After reading Sec. 20(5) in the statute, there is reliance that the state treasurer will approve the legal expenses and determine that his actions fell within (5)(a)(b). I can see some possible holes in the statute that would make me feel uncomfortable, especially in light of all the legal threats being thrown his way.

From: Connors, Paul (Treasury)
Sent: Friday, October 30, 2015 12:20 PM