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Regional Director
Region 3, Cleveland

General Counsel

Federal Tort Claims Act

This is in response to your inquiry of April 9, 1980, concerning coverage under the Federal Tort Claims Act of employees using their private automobiles on Board business. The Federal Tort Claims Act provides that the United States is liable for injuries or loss of property or death caused by the negligence of a government employee operating within the scope of his employment under circumstances where the United States, if a private person, would be liable to the injured party in accordance with the law of the place where the negligence occurred. Therefore, liability of the United States under the Federal Tort Claims Act hinges upon whether the employee was in the scope of his employment at the time of the injury and whether the employee was negligent under the law of the state in which the accident took place.

As you can see from the above, the Federal Tort Claims Act deals with liability to third parties for injuries caused by the negligence of Board employees who are acting in the scope of their employment. Section 9(b) of the Federal Tort Claims Act (28 U.S.C. § 2679) provides:

"The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim."

This section has been interpreted to mean that the United States is solely liable for the negligent act of one of its

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employees while he is operating a motor vehicle within the scope of his employment, and that there is no cause of action whatever against the employee himself.

This does not mean, however, that an employee who uses his own car on Board business should not have his own insurance coverage. For instance, should it be determined that the employee was not in the scope of his employment at the time of the accident, then he would be personally liable for any injuries caused by his negligence, and thus, would need insurance coverage. In addition, it should be noted that where the government is liable for the negligent use of a private automobile by one of its employees, it may, in certain cases, recover from the insurance company of the employee as an "additional insured" under the policy. Because an employee is covered under the Federal Tort Claims Act when he is using his car on Board business, he should generally not have to pay an increased premium because he uses his car for business.

If an employee is involved in an automobile accident in which his own car is damaged, he or she may seek reimbursement for this damage pursuant to Board Order 75-4, part 15. This Board Order provides compensation for damage to a Board employee's automobile in circumstances in which the vehicle was used for the benefit of the government or at the direction of a superior, but only to the extent that the employee's loss is not reimbursed by insurance. However, if a Board employee is even partially at fault in causing damage to his vehicle, his loss is not reimbursable under the above Board Order.

Finally, if a Board employee suffers personal injury in an automobile accident while on Board business, whether or not the accident was his fault, he may be eligible for medical benefits and compensation under the Federal Employees Compensation Act.

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