

**Consider the following request in the April 2009 IHL report.**

**<http://www.mississippi.edu/board/downloads/boardbooks/0904.pdf> What have our administrators done to request "...expansion of [liability] coverage [\$4 million] ... intended to include claims against IHL trustees and employees for libel, slander and/or defamation that are not otherwise covered under the Tort Claims Act...? (Emphasis added.)**

"3. SYSTEM ADMINISTRATION – APPROVAL TO REQUEST AN ATTORNEY GENERAL'S OPINION

Permission is requested to seek an official Attorney General's opinion regarding whether IHL is covered under its February 17, 2005 expansion of tort claims coverage for libel, slander and/or defamation claims, as per the below letter requesting such an official opinion.

April 16, 2009  
Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205

Re: Request for Official Opinion

Dear General Hood:

As Interim Commissioner of Higher Education, appointed pursuant to Miss. Code Ann. §37-101-7 (1972), and in accordance with Miss. Code Ann. §7-5-25 (1972), I request your official opinion on the following:

On February 17, 2005, the Board of Trustees of State Institutions of Higher Learning (IHL Board), pursuant to Miss. Code Ann. §11-46-17 (1972), as amended, approved and adopted the following language as an expansion of self-insurance coverage for claims that fall outside the provisions of the Mississippi Tort Claims Act, Chapter 46 of Title 11 of the Mississippi Code, including, but not limited to, liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code, liabilities arising from actions brought in foreign jurisdictions and liabilities arising from any Mississippi state court claims not covered specifically by the Mississippi Tort Claims Act:

In addition to the coverage authorized under the Mississippi Tort Claims Act (MCTA) as set out in Miss. Code Annotated Section 11-46-1, et seq., the Board of Trustees of State Institutions of Higher Learning (IHL), through its IHL and IHL/UMMC Tort Claims Plans, hereby elects to provide coverage for liabilities outside and in addition to the provisions of the MCTA, including, but not limited to, liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code, liabilities arising from claims brought in foreign jurisdictions, and liabilities arising from any Mississippi state court claims not covered specifically by the MCTA. In any of these claims or causes of action for damages against IHL, including any IHL university, department, trustee, employee, volunteer and/or facility, brought as a federal cause of action, brought in a foreign jurisdiction, or brought as a Mississippi state court claim not covered specifically by the MCTA, the liability shall not exceed the sum of four million dollars (\$4,000,000.00) for all claims arising out of a single occurrence for all damages. The statutory caps on damages/liability for all tort claims specifically covered by Miss. Code Ann. 11-46-1, et seq., are not waived by IHL and shall not exceed the amounts set out in Miss. Code Ann. 11-46-15.

This expansion of liability coverage by IHL through its IHL and IHL/UMMC Tort Claims Plans does not include coverage for any liabilities arising from malicious acts performed outside the course and scope of employment. Additionally, the expansion of coverage does not include any liabilities arising from criminal acts.

Nothing in this expansion of coverage should be construed to waive Eleventh Amendment or Sovereign Immunities on behalf of IHL or its universities. Furthermore, nothing in this expansion of coverage should be construed to waive any rights or defenses of IHL or the State of Mississippi granted pursuant to the MTCA, as set out in Miss. Code Ann. 11-46-1, et seq.

This expansion of coverage was intended to include claims against IHL trustees and employees for libel, slander and/or defamation that are not otherwise covered under the Tort Claims Act (the State has not waived sovereign immunity or consented to suit) but nevertheless arise in the course and scope of employment, including providing coverage for costs of defense and/or the payment of settlements on behalf of or judgments against IHL employees. The IHL intended to provide this protection to its trustees and employees because of the risks associated with scholarly publications and teaching curricula, exposing IHL employees to potential claims for negligent defamation, or an unintentional oral or written false statement. Additionally, this language replaced an insurance policy that covered these exposures.

Does the above-stated expansion of coverage adopted by the IHL Board on February 17, 2005 legally permit coverage for liabilities arising from conduct of trustees and/or employees that constitutes libel, slander and/or defamation?

Your opinion on this matter is greatly appreciated.

Sincerely,  
Aubrey K. Lucas  
Interim Commissioner of Higher Education  
cc: Ms. Amy Whitten

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**STAFF RECOMMENDATION: Board staff recommends approval of this item." (Emphasis added.)**