

MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND

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BULLETIN MEL 09-23

Revised June 30, 2009

Date: May 8, 2009

To: Fund Commissioners of Member Joint Insurance Funds

From: Underwriting Manager
Conner Strong Companies, Inc.

Re: **Fireworks Displays/Amusement Ride Requirements Changes
Amendment to MEL Bulletin 09-08**

The bulletin does not apply to the members of the NJUA JIF, members of NJPHA JIF and “workers compensation only” members of the First Responders Joint Insurance Fund.

As you may be aware the State of New Jersey issued a memorandum dated 3/31/09 to all Municipal Clerks via their Outreach Program as respects **amusement ride** events. Attached is a copy of the memorandum and applicable Fact Sheet. The memorandum was to remind municipalities about the State amusement ride program and the rules and regulations associated with that program. You will note in the attached memorandum that for all amusement ride events the State requires the operators to be properly registered and that their amusement rides are “permitted” to operate in the state. The memorandum also emphasizes the dangers associated with amusement rides in general, but more so with inflatable rides such as slides and bounces. Small truck mounted kiddie rides, inflatable bounces and other inflatable attractions are treated by the State as amusement rides for the purpose of permit and inspection, etc. We recommend that the memorandum be distributed to the applicable township personnel.

As a result of the State’s position as outlined in the attached memorandum, the MEL is amending its amusement ride requirements as follows:

1. Small mounted kiddie rides, inflatable bounces and other inflatable attractions for the purpose of underwriting, will be treated as amusement rides. The sponsoring member entity will be required to provide the proper paperwork for underwriting approval as required by the MEL Fireworks/Amusement Ride Requirements.
2. The member entity will be expected to obtain from the vendor, evidence of registration of the vendor’s amusement rides with the State and a copy of their permit application and the permit applied to the actual ride(s) being used for the member’s event. Proof of registration of amusement ride equipment, as well as, a copy of the contractor’s permit application for the rides being utilized for the member sponsored event. Once the equipment is delivered to the event site, the member should confirm that the actual permit is affixed to the equipment. (The member can visit the NJDCA website at <http://www.nj.gov/dca/codes/ridesafetyunit/rsfty.u.shtml> to conform that the amusement vendor is registered, as required by the State.)

[Please note that, MEL’s definition of “amusement rides” is any mechanical device or devices, including but not limited to water slides exceeding 15 feet in height, which carry or convey passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement; and any passenger or gravity propelled ride when located in an amusement area or park in which there are other amusement rides. This now includes small mounted kiddie rides, inflatable bounces and other inflatable attractions.]

Attached is a copy of the revised MEL fireworks/amusement ride requirements to reflect these changes, along with the Hold Harmless Agreement wording to be provided by the **fireworks contractor** and the Hold Harmless Agreement to be provided by the **amusement ride contractor** in favor of the member entity.

The liability of member entity's associated with fireworks displays and amusement rides are always a major concern to the Fund. It is imperative that the enclosed requirements be adhered to. In order to ensure compliance with the Fund's insurance requirements, if necessary, please have your contractor or contractor's insurance company call the MEL Underwriting Manager, so we can discuss these requirements with them in more detail.

As respects to the Hold Harmless Agreement wording, all blank spaces should be completed. Please note Paragraph 3 should be completed, dated and signed by an authorized representative of the contractor and witnessed to authenticate the signature of the authorized contractor representative.

Any certificate of insurance requests from member entity's such as use of a private parking lot for spectator parking, will not be processed until the member entity meets the MELJIF fireworks display and amusement ride insurance requirements.

It is imperative that the enclosed requirements be adhered to. In order to ensure compliance with the Fund's insurance requirements, if necessary, please have your fireworks/amusement ride vendor or vendor's insurance company call the MEL Underwriting Manager, so we can discuss these requirements with them in more detail.

The fireworks display/amusement ride submissions should be sent to Lynn Hunt-Fones for review and approval. Lynn is a member of the MEL Underwriting Manager Team. Her contact information is as follows:

123 Rosenhayn Avenue, PO Box 358
Bridgeton, NJ 08302
Telephone # (856)451-9314
Fax# (856) 453-1167
E-Mail Address: lhuntfones@connerstrong.com

If you have any questions on this bulletin, please call your Risk Management Consultant, JIF Executive Director or Joe Hrubash at Conner Strong Companies, Inc. (201-587-0555).

This bulletin is for information purposes only. It is not intended to be all-inclusive but merely an overview. It does not alter, amend or change your coverage. Please refer to specific policies for limits, terms, conditions and exclusions.

cc: Risk Management Consultants
Fund Professionals
Fund Executive Directors

**2009 FIREWORKS DISPLAY/AMUSEMENT RIDE REQUIREMENTS
MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND**

The following information must be filed with and approved by the Underwriting Manager as soon as possible prior to the event:

- 1) **Copy of contract** between the fireworks/amusement ride contractor and the member entity.
[As respects to fireworks displays, a majority of the contracts with the various contractors are silent or ambiguous as to who is responsible for policing the fireworks display and searching for and disposing of unfired fireworks. When submitting your fireworks paperwork to us for approval we will be looking closely at each contract for this. If the contract is unclear as to who is responsible for policing the fireworks display and searching for and disposing of unfired fireworks, we will be requesting that you obtain an addendum to the contract or a letter from the contractor on their letterhead stating that they will be responsible for policing the fireworks display and searching for and disposing of unfired fireworks. Event date and rain date, if applicable, should also be shown in the contract.
- 2) **Certificate of insurance** to include the following information:
 - **General liability** limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage with at least \$2,000,000 general aggregate. Contractual liability must be included.
 - **Automobile liability** limits of \$1,000,000 per occurrence combined single limit for bodily injury and property damage with no aggregate.
 - Statutory workers compensation limits including employers liability minimum limits of \$500,000.
 - **Umbrella liability** limits of \$1,000,000 to \$2,000,000 are also preferred.
 - The member entity and any associations, recreations or committees formed by the member entity to organize the "event" must be named as **additional insureds** on all liability policies.
 - Event date and rain date, if applicable, should also be shown on the description section of the certificate of insurance.
- 3) An executed **hold harmless** agreement in favor of the member entity must be signed by the fireworks/amusement ride contractor. Enclosed is suggested hold harmless agreement wording to be used by the fireworks display contractor and suggested hold harmless agreement wording to be used by the amusement ride contractor. The Fund will not accept a "Null and Void" clause in favor of the contractor as part of the hold harmless agreement. Event date and rain date, if applicable, should also be shown on the Hold Harmless.
- 4) As respects to **fireworks displays**, a **surety** which may be by way of cash, government bonds, personal bond or other form of insurance for not less than \$2,500 needs to be posted by the fireworks contractor retained by the Municipality. Sample wording is attached. However, the decision as to whether or not the surety provided is in compliance with N.J.S.A. 21:3-5 is a decision to be made by the Municipality and not the Fund.
- 5) As respects to **amusement rides**, the contractor will need to provide proof of registration of their amusement ride equipment, as well as, a copy of the contractor's permit application for the rides being utilized for the member sponsored event. Once the equipment is delivered to the event site, the member should confirm that the actual permit is affixed to the equipment.

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NOTE: The attached checklist (Page Six) can be used as a guide in making sure that a complete submission is being made by the member to the MEL Underwriting Manager.

FIREWORKS DISPLAY
HOLD HARMLESS AGREEMENT

Between the Borough/Township/City/County of _____
and _____ (Contractor).

WITNESSETH:

1. _____ (Contractor) agrees to release, indemnify and hold harmless the Borough/Township/City/County of _____ from and against any loss, damage or liability, including attorneys' fees and expenses incurred by the latter entities and their respective employees, agents, volunteers or other representatives arising out of or in any manner relating to the manufacture, installation, firing or disassembly of any pyrotechnic equipment or device and/or the supervision and presentation thereof.

2. The applicant has furnished the Certificate of Insurance with limits of liability described below:

Workers Compensation/Employers Liability: _____

General Liability: _____

Automobile Liability: _____

Umbrella Liability: _____

A true copy of the Certificate of Insurance is attached indicating the member entity and applicable associations, recreations or committees formed by the member entity to organize the "event" must be named as additional insured on all liability policies.

3. The facilities will be used for the following purpose and no other:

Event: _____ Date: _____ Rain Date: _____

Dated: _____ Signed: _____
(Contractor)

Witness: _____

AMUSEMENT RIDES
HOLD HARMLESS AGREEMENT

Between the Borough/Township/City/County of _____
and _____ (Contractor).

WITNESSETH:

1. _____ (Contractor) agrees to release, indemnify and hold harmless the Borough/Township/City/County of _____ from and against any loss, damage or liability, including attorneys' fees and expenses incurred by the latter entities and their respective employees, agents, volunteers or other representatives arising out of or in any manner relating to the installation, operation, use, or disassembly of any amusement ride equipment or device and/or the supervision thereof.

2. The applicant has furnished the Certificate of Insurance with limits of liability described below:

Workers Compensation/Employers Liability: _____

General Liability: _____

Automobile Liability: _____

Umbrella Liability: _____

A true copy of the Certificate of Insurance is attached indicating the member entity and applicable associations, recreations or committees formed by the member entity to organize the "event" must be named as additional insured on all liability policies.

3. The facilities will be used for the following purpose and no other:

Event: _____ Date: _____ Rain Date: _____

Dated: _____ Signed: _____

(Contractor)

Witness: _____

CHECKLIST FOR SUBMISSION TO UNDERWRITING MANAGER FOR APPROVAL

TOWN: _____

JIF: _____

VENDOR: _____

DATE OF EVENT: _____

RAIN DATE (IF APPLICABLE): _____

RMC DATE OR MUNICIPALITY E MAIL ADDRESS: _____

_____ (1) Copy of Complete Contract (As respects to fireworks, the contract should indicate that the Fireworks Contractor is responsible for the inspection, clean up and disposal of any unexploded aerial shells or live components, as required under NFPA 1123, 1995 edition, Section 4-1.12).

_____ (2) Hold Harmless Agreement

_____ (3) Certificate of Insurance for General Liability naming member as Additional Insured

_____ (4) Certificate of Insurance for Workers Compensation and Automobile

_____ (5) Surety Bond or alternate surety (\$2,500) as per Statute N.J.S.A. 21:3-5. (A copy of Statute N.J.S.A. 21:3-5 is available upon request. **(This applies to Fireworks Displays only).**)

_____ (6) A letter from the contractor indicating that they are responsible for the inspection, clean up and disposal of any unexploded aerial shells or live components, as required under NFPA 1123, 1995 edition, Section 4-1.12. **THIS LETTER IS ONLY NECESSARY IF THE CONTRACT, AS STATED IN (1) ABOVE, DOES NOT INCLUDE THIS STATEMENT. (This applies to Fireworks Displays only).**

_____ (7) Proof of registration of amusement ride equipment, as well as, a copy of the contractor's permit application for the rides being utilized for the member sponsored event. Once the equipment is delivered to the event site, the member should confirm that the actual permit is affixed to the equipment. **(This applies to Amusement Rides only).**

The fireworks display/amusement ride submissions should be sent to Lynn Hunt-Fones for review and approval. Lynn is a member of the MEL Underwriting Manager Team. Her contact information is as follows:

123 Rosenhayn Avenue, PO Box 358
Bridgeton, NJ 08302
Telephone # (856)451-9314
Fax# (856) 453-1167
E-Mail Address: lhuntfones@connerstrong.com

SURETY REQUIREMENT

New Jersey Statute N.J.S.A. 21:3-5 requires that the Governing Body of the Municipality require “surety” which may be in the form of cash, government bonds, personal bond or other form of insurance for not less than \$2,500 to be posted by the fireworks vendor retained by the Municipality for a fireworks display and shall run to the Municipality in which the license is granted. A copy of Statute N.J.S.A. 21:3-5 is available upon request.

The “surety” requirement is in addition to the requirement for the vendor to provide evidence of liability insurance and the requirement for the vendor to provide the Municipality with a hold harmless in favor of the Municipality. It is our understanding that the “surety” posted will respond to third party damages (bodily injury or property damage) resulting from the fireworks display irregardless of negligence on the part of the fireworks vendor or the Municipality. In addition to this, certain insurance companies providing the liability insurance for the fireworks vendors will not provide the necessary liability insurance unless the “surety” is posted. This is a result of prior claim experience where the “surety” was not posted for the display and it was found by the courts that the fireworks vendor’s liability insurance policy would also serve as the “surety” and would respond without proof of negligence by the claimant(s). In this case double indemnity was awarded and paid out by the vendor’s insurance company.

It is also our interpretation that the Act requires the Municipality obtain “surety” from the fireworks vendor when the Municipality grants a permit for a fireworks display in their respective municipality and where the fireworks display is sponsored by a third party.

Attached is sample “surety” bond wording acceptable to the MEL that the fireworks vendor should be required to provide along with the insurance certificates and hold harmless. One sample “surety” bond wording is in a blanket format that would apply to all of the vendor’s displays in the various Municipalities. The second sample “surety” bond is specific to a Municipality. However, the decision as to whether or not the type of “surety” provided is in compliance with N.J.S.A. 21:3-5 is a decision to be made by the Municipality and not the MEL.

Blanket

BOND NO:
BOND AMOUNT: \$2,500.00
BOND TERM:

**THE STATE OF NEW JERSEY
DEPARTMENT OF LABOR
OFFICE OF SAFETY COMPLIANCE**

SURETY BOND

**Discharging, Firing-off, Exploding or Displaying Fireworks,
at any Public Exhibition or Exhibition.**

Know All Men by these Presents, that we (FIREWORKS VENDOR), (FIREWORKS VENDOR STREET ADDRESS) of (in the County of (COUNTY NAME), as Surety, are held and stand firmly bound unto the Treasurer and Receiver General of the State of New Jersey in the just sum of TWO THOUSAND FIVE HUNDRED dollars (\$2,500) to be paid to the Treasurer and Receiver General or his successor in office, to which payment well and truly to be made, we hereby jointly and severally bind ourselves, our respective heirs; executors and administrators, successors and assigns, firmly by these presents.

The Condition of this Obligation, is such that if the said, (INSURANCE COMPANY NAME), his heirs, executors and administrators, successors and assigns, shall pay any judgment obtained in an action brought against the said, (FIREWORKS VENDOR NAME), for discharging, firing-off, exploding or displaying of said fireworks at any public exhibition or exhibitions hereof, for or on account of any loss, damage or injury resulting to persons or property by reason of the said discharging, firing-off, exploding or displaying of said fireworks, at said public exhibition or exhibitions; provided that said judgment is obtained in an action brought within a period of twelve months following the date of the public exhibition or exhibitions, in which cause of said action is alleged to have occurred, this obligation shall be void, otherwise it shall remain in full force an effect. The maximum amount of said bond shall in no way exceed the face amount of said bond no matter how many claims are made on said bond, in each Municipality, per display.

In Witness Whereof, we hereunto set our hands and seals, this day of , 2009.

(NAME OF VENDOR)

WITNESS

(INSURANCE COMPANY NAME)

WITNESS

(AUTHORIZED SIGNATURE)

Specific

BOND NO:
BOND AMOUNT: \$2,500.00
BOND TERM:

**THE STATE OF NEW JERSEY
DEPARTMENT OF LABOR
OFFICE OF SAFETY COMPLIANCE**

SURETY BOND

**Discharging, Firing-off, Exploding or Displaying Fireworks,
at any Public Exhibition or Exhibition.**

Know All Men by these Presents, that we (FIREWORKS VENDOR), (FIREWORKS VENDOR STREET ADDRESS) of (in the County of (COUNTY NAME), as Surety, are held and stand firmly bound unto the Treasurer and Receiver General of the State of New Jersey in the just sum of TWO THOUSAND FIVE HUNDRED dollars (\$2,500) to be paid to the Treasurer and Receiver General or his successor in office, to which payment well and truly to be made, we hereby jointly and severally bind ourselves, our respective heirs; executors and administrators, successors and assigns, firmly by these presents.

The Condition of this Obligation, is such that if the said, (INSURANCE COMPANY NAME), his heirs, executors and administrators, successors and assigns, shall pay any judgment obtained in an action brought against the said, (FIREWORKS VENDOR NAME), for discharging, firing-off, exploding or displaying of said fireworks at any public exhibition or exhibitions hereof, for or on account of any loss, damage or injury resulting to persons or property by reason of the said discharging, firing-off, exploding or displaying of said fireworks, at said public exhibition or exhibitions; provided that said judgment is obtained in an action brought within a period of twelve months following the date of the public exhibition or exhibitions, in which cause of said action is alleged to have occurred, this obligation shall be void, otherwise it shall remain in full force an effect. The maximum amount of said bond shall in no way exceed the face amount of said bond no matter how many claims are made on said bond per display for (NAME OF THE MUNICIPALITY).

In Witness Whereof, we hereunto set our hands and seals, this day of , 2009.

(NAME OF VENDOR)

WITNESS

(INSURANCE COMPANY NAME)

WITNESS

(AUTHORIZED SIGNATURE)