

Chapter 5

DEFENSE AND INDEMNIFICATION

[HISTORY: Adopted by the Board of Trustees of the Village of Saddle Rock 1-4-1984 by L.L. No. 1-1984. Amendments noted where applicable.]

§ 5-1. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE — Any person holding a position, by election, appointment or employment, in the service of the village, whether or not a sponsored volunteer expressly authorized to participate in a village-sponsored volunteer program, at the time the claim asserted in litigation subject to this law arose, including a former "employee," his estate or a judicially appointed personal representative.

§ 5-2. Defense of employees.

- A. Upon compliance by the employee with the provisions of § 5-4 of this chapter, the village shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties or which is brought to enforce a provision of § 1981 or 1983 of Title 42 of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the village.
- B. Subject to the conditions set forth in Subsection A, the employee shall be entitled to be represented by the Village Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village Attorney determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Village Attorney would be inappropriate or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Village Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The Village Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the Village Attorney, shall so certify to the Board of Trustees. Reasonable attorneys' fees and litigation expenses shall be paid by the village to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification by the Board of Trustees that the employee is entitled to representation under the terms and conditions of this

section. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon or by way of a special proceeding.

- C. Where the employee delivers to the Village Attorney process and a request for a defense as required by § 5-4 of this chapter, the Village Attorney shall take the necessary steps, including retention of private counsel under the terms and conditions provided in Subsection B, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 5-3. Indemnification of employees.

- A. The village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- B. An employee represented by private counsel shall cause to be submitted to the Board of Trustees any proposed settlement which may be subject to indemnification by the village, and, if not inconsistent with the provisions of this chapter, such settlement and certification to the Village Attorney. The Village Attorney shall review such proposed settlement as to form and amount and shall give his approval if, in his judgment, the settlement is in the best interest of the village. Nothing in this subsection shall be construed to authorize or obligate the village to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Village Attorney.
- C. Nothing in this section shall authorize the village to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties; provided, however, that the village shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State of New York or of the United States.
- D. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause a copy of such judgment or settlement to be served, personally or by certified or registered mail, within 30 days of the date of entry or settlement, upon the Board of Trustees. If not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such Board of Trustees. If the Village Attorney concurs in such certification, the judgment or settlement shall be paid.

§ 5-4. Conditions.

The duty to defend or indemnify and save harmless prescribed by this chapter shall be conditioned upon delivery to the Village Attorney by the employee of the original or a copy of

any summons, complaint, process, notice, demand or pleading within five days after he is served with such document and the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the village based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the village provide for his defense pursuant to this chapter.

§ 5-5. Scope of benefits.

The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the right of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

§ 5-6. Notice by claimant.

This chapter shall not in any way affect the obligation of any claimant to give notice to the village under any provision of law.

§ 5-7. Construal.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 5-8. Applicability.

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

§ 5-9. Existing immunities.

Except as otherwise specifically provided herein, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the village or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.