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CITIES AND COUNTIES CHARGING “ACCIDENT RESPONSE” FEES TO DRIVERS AND INSURERS

Statement of the Issue

Budget-constrained cities and counties in Florida and across the country are seeking new revenue sources. As a result, some local governments in Florida and in 17 other states¹ have begun the practice of billing drivers and their motor vehicle insurers for police and fire responses to auto accidents, no matter how routine or minor. These “accident response fees” are designed to recoup the cost of auto accident response services provided by local governments. In some cases, third-party vendors are encouraging this practice by soliciting counties and cities for the collection of these accident response fees for a percentage of the recovery, usually ten percent. Typically, the fees range from one hundred to several hundreds of dollars per accident based on the personnel, material and time spent in investigating the crash. Some auto insurers question the validity of these fees arguing that local residents already pay for these services through property taxes. Other insurers assert that police and fire accident response services are not covered under auto policies.

During the 2008 legislative session, a bill was filed and then withdrawn prohibiting counties and cities from charging fees or seeking reimbursement for costs incurred involving police, fire and other emergency responder services to a motor vehicle accident, fire, or other emergency.²

Discussion

Accident Response Fees

Florida counties and municipalities are afforded broad constitutional and statutory home rule powers with expansive legislative and service delivery authority.³ Counties have legislative and service delivery authority countywide for county purposes and within the unincorporated area for municipal functions and services.⁴ Likewise, municipalities have similar authority within their boundaries.⁵ In an effort to balance budgets in order to continue vital services and as an alternative to raising taxes, about two dozen counties and cities in the state have begun imposing accident response fees on drivers and their insurers for the delivery of police and fire services including personnel, supplies and equipment to the scene of auto accidents within their jurisdictions.⁶ Local governments generally take the position that these are not taxes, but user fees charged in exchange for services which benefit the party paying the fee, i.e., the driver involved in an accident, and are applied solely to pay for the cost of the services. In Florida, average police response fees range from \$180 to \$200 per accident while fees range from \$600 to \$800 for fire service responses. The amounts

¹ Cost Recovery Corporation.

² Senate Bill 2432.

³ Article VIII, Florida Constitution. However, such powers cannot be inconsistent with general law. Nabors, Giblin and Nickerson, *Primer on Home Rule & Local Government Revenue Sources* (June 2008).

⁴ Chapter 125, F.S.

⁵ Chapter 166, F.S.

⁶ The scope of this report does not include local governments assessing motor vehicle accident response fees for emergency medical services or for removing hazardous materials. Under s. 627.736, F.S., personal injury protection (PIP), auto insurers provide for reimbursement of emergency transport and treatment provided by ambulance services regulated under ch. 401, F.S. Local fire departments respond and handle spills or fires pertaining to accidents with hazardous materials and bill the business or individual transporting such materials. However, auto insurers would normally only pay for hazardous material cleanup under the policy’s liability coverage if their insured was liable for the spill due to his/her negligence.

collected are normally placed into a special fund used exclusively for the personnel, supplies and equipment for the police or fire services provided.

Senate professional staff has obtained accident response fee ordinances from four counties (Escambia, Martin, Sumter and Washington) and nine cities (Bellevue, Chiefland, Cocoa, Hialeah, Lauderdale Lakes, Longwood, Ocala, West Melbourne and Winter Park). The county provisions were all enacted within the past two years, assess fees for fire and rescue services only and impose fees on parties to an auto accident regardless of fault. In justifying its fee, the Escambia County ordinance provides that it "would not be fair to local property owners" to raise current property taxes to fund fire and rescue services since many of the accidents in the county involve individuals not owning property or paying property taxes in its jurisdiction.⁷ The ordinance further provides that should a party (or insurer) not pay the fee, the county may enforce payment by initiating collection procedures or commencing civil action in a court for any amounts due plus administrative collection costs and attorney's fees and may record a lien upon the individual's real or personal property. Escambia County imposes its fee on both resident and non-resident drivers/owners (and their insurers); Martin County assesses its fee on non-resident vehicle owners only (not their insurers);⁸ Sumter County levies its fee upon non-resident vehicle owners (and their insurers) and only on a resident's auto insurer;⁹ and, Washington County imposes its fee on both resident and non-resident drivers/owners (and their insurers) so long as the accident occurred in the unincorporated area of the county. The amount of the fees imposed range among the jurisdictions: a fire/rescue service fee in Sumter County based on an hourly rate is \$200 (fire chief), \$75 (firefighter), \$500 (rescue vehicle) and \$500 (tanker); in Martin County, the hourly rate is \$700 (vehicle fires), \$500 (simple extrication), and \$1,000 (complex extrication). The Escambia and Sumter county provisions designate third parties to bill and collect the fees whereas Martin and Washington counties operate the program. According to Martin County representatives, they collect about 30 to 40 percent of the fees assessed.

Like the county provisions, the municipal accident response fee ordinances were enacted within the past several years, but unlike the county laws, most of the city provisions pertain to police response services.¹⁰ A majority of the cities impose fees on all vehicle owners/drivers (and their insurers) regardless of fault while other ordinances specify that the fee will be assessed only against the insurer of the "responsible" party. A few of the provisions impose fees against the at-fault driver, but if there is not a determination of fault, the fee is borne proportionately by all drivers involved. In one case, the fee is charged directly to the responsible driver if the individual did not have insurance.¹¹ The Lauderdale Lakes provision imposes its fees against a driver who is under the influence of alcoholic beverages or controlled substances to the extent that his/her normal faculties are impaired and the driver must be the "proximate cause of the accident or a substantial causative factor of an accident." The ordinance sets forth standards of impairment and testing methods as to the amount of alcohol or controlled substances. Failure to pay the accident response fee constitutes a misdemeanor, punishable upon conviction by a \$500 fine. Typical city fees based on an hourly rate range from \$28 for a police officer and \$154 for a vehicle (Ocala and Longwood) to \$435 for an emergency fire/rescue response to an accident where no injuries are found (Winter Park). According to Ocala authorities, over the past six months they collected 37 percent of accident response fees from insurers.

Florida local governments either administer the billing and collection of accident response fees or utilize the administrative services of third-party vendors who may charge up to ten percent of the collections. The procedure is straightforward: a copy of the police accident report is obtained which contains the names/addresses of the parties involved (and their insurers),¹² the police or fire services are calculated according to the fee schedule, and the parties

⁷ Similar language is contained in the Bellevue, Chiefland and West Melbourne ordinances.

⁸ The Martin County charge is for the extrication of persons from vehicles and the extinguishment of vehicle fires.

⁹ The county will not bill drivers/owners who are covered by Medicare or Medicaid if such programs do not provide coverage for auto accident recovery fees.

¹⁰ The Bellevue, Chiefland, Ocala and West Melbourne provisions apply only to police services; the Cocoa and Longwood ordinances apply to both police and fire services; the Lauderdale Lakes provision applies to police, fire and emergency medical services (ambulances), the Hialeah law applies to fire and associated emergency response services and the Winter Park law covers fire services only.

¹¹ West Melbourne ordinance.

¹² Under current law (s. 316.065, F.S.), the driver of a vehicle involved in a crash resulting in injury or death of any persons or damage to any vehicle or other property in an amount of at least \$500 must immediately give notice of the crash to the local police department (if the crash occurs within a city) or to the county sheriff or the Highway Patrol. A violation of this

(and insurers) are billed depending on the provisions of the particular ordinance. According to representatives with Cost Recovery Corp., a company specializing in police and fire department billing, 56 percent of the auto insurers pay accident response fees (nationwide). Local governments justify the imposition of accident response fees stating that fire and police services provided for auto accidents are outside the scope of core law enforcement and fire duties. Traffic crashes are civil situations caused by negligent drivers and the attendant services provided by fire and police do not benefit local taxpayers. Moreover, providing accident response services detracts from the ability of fire and police officers to serve and protect their own taxpayers or residents, government officials assert.

Most auto insurers contacted by professional staff have not adopted a consistent approach on the issue of accident response fees given the lack of statutory direction and the lack of clear case law on the subject. Some insurers evaluate whether to pay the fees on a case by case basis based on the specific circumstances of the accident, the language in the local ordinance and the policy provisions. Several large insurers question the validity of the fees and refuse to pay them arguing they are improper user fees since local residents already pay for these services through property taxes. Responding to and investigating auto accidents have traditionally been handled by local police and fire departments and such responses have never been covered in insurance policies. Under Florida's no-fault law, PIP (personal injury protection) covers reasonable medical expenses, including ambulance transportation, but expenses related to accident responses are not covered. Liability coverage pays for damages caused by the insured to another person's vehicle or property (property damage liability) or for injury to others (bodily injury liability) if the insured is legally liable. Insurers contacted by professional staff generally assert that accident response fees are not covered under liability policies. If insurers start paying these fees, insurance premiums will increase, company representatives argue.

Authority for Local Governments to Charge Accident Response Fees

Counties and cities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.¹³ However, such entities do possess authority to impose user fees or assessments by local ordinance since such authority is within the constitutional and statutory home rule powers of local governments.¹⁴ A key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.¹⁵ A tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."¹⁶ Florida courts have not yet ruled on the issue of whether accident response fees are taxes, which would require general law authorization, or are valid user fees and professional staff is unaware of any legal challenges to these fees in Florida. Courts may find that accident response fees constitute valid user fees and not taxes because the fees are voluntary in that they can be avoided by not operating a vehicle in the county/city jurisdictions which impose the fee and the fees benefit the persons involved in vehicle accidents in a manner not shared by persons not involved in vehicle accidents.

However, even if accident response fees are found to be valid user fees which can be imposed on drivers/owners involved in accidents, such fees are not necessarily covered by a driver's auto insurance. To the extent these ordinances attempt to create coverage for the imposed fees (by implicating that the fees are part of bodily injury or property damage liability coverages),¹⁷ this attempt infringes upon the Florida legislature's exclusive authority to regulate

provision constitutes a noncriminal traffic infraction under ch. 318, F.S. Law enforcement officers investigating a motor vehicle crash which resulted in death or personal injury must write a crash report and forward such report within 10 days to the Department of Highway Safety and Motor Vehicles (DHSMV) (s. 316.066, F.S.). Each party to the crash must provide the law enforcement officer with proof of insurance to be included in the crash report (s. 316.066, F.S.).

¹³ Article VII, section 1(a), Florida Constitution.

¹⁴ *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

¹⁵ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756 (Fla. 3rd DCA 2002) (holding that a fee charged to pawnshop owners to cover the cost of police inspections of pawn shops is a constitutionally permissible fee and not a tax because the fee is voluntary and benefits the pawnshop owners in a manner not shared by others). User fees are based on the proprietary right of the governing body and are charged in exchange for a particular governmental service which benefits the party paying the fee in a way not shared by other members of society and, they are paid by choice in that the party paying the fee has the option of not utilizing the governmental service and thus avoiding the charge. *State v. City of Port Orange*, 650 So.2d 1 (Fla. 1994).

¹⁶ *Quik Cash*, 811 So.2d at 758-59.

¹⁷ Several of the ordinances state that the fees represent an "add-on-cost of the claim for damages to the vehicle, property

insurance. Local governments cannot legislate on subjects that have been preempted exclusively by the state.¹⁸ Additionally, these ordinances may be subject to a challenge that they impair the obligations of contracts by directly affecting the contractual rights between the insurer and the insured.¹⁹ The standard auto policy does not provide for coverage for accident response fees according to insurers, and to the extent these ordinances attempt to rewrite the insurance contract to a category of coverage which was not bargained for by the parties, the constitutional prohibition against laws that impair contracts is implicated.²⁰

Auto insurers in some states have successfully challenged the imposition of accident response fees under a common law doctrine known as the “free public services doctrine” (also known as the “municipal cost recovery rule”) which provides that a government entity cannot recover from a tortfeasor the costs of public services occasioned by the tortfeasor’s wrongdoing.²¹ The theory underpinning the doctrine is that local governments are to provide core services for the public and pay for these services by spreading the costs to all citizens through taxation. Although this doctrine has not been specifically adopted by a Florida court, it has been adopted in other jurisdictions and an argument can be made that the instant fees would be barred under the free public services doctrine.

States That Prohibit Accident Response Fees

Five states have banned their local governments from imposing accident response fees primarily because lawmakers view such assessments as invalid or inappropriate user fees. In 2007, Missouri outlawed this practice by prohibiting local entities from imposing such fees on insurers, vehicle owners or drivers for law enforcement agencies responding or investigating motor vehicle accidents. That same year, Pennsylvania prohibited its cities from charging these fees incurred as a result of police responding to a motor vehicle accident. In 2008, Tennessee prohibited local entities from imposing law enforcement accident response fees on insurers, drivers or owners of motor vehicles, but made an exception for ambulance services provided in conjunction with emergency response to accidents. Indiana also banned its political subdivisions from collecting accident fees from drivers or other persons for police agencies responding to or investigating auto accidents. Georgia’s ban was much broader in that it outlawed counties and cities from imposing fees on insurance companies for “any” kind of service provided by local governments for auto accidents, but provided for three exceptions: 1) where coverage for services was provided by the insurer to the policyholder and services were lawfully billed to the policyholder; 2) where the policyholder’s medical insurance covered emergency medical services and the policyholder made an assignment to the service provider; or 3) where other services are provided to the policyholder by the local government which are expressly authorized by state or federal law to be billed directly to the insurer.

and/or injuries sustained by the vehicle occupants.”

¹⁸ *Tallahassee Memorial Regional Med. Ctr. Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So.2d 826 (Fla. 1st DCA 1996). The State of Florida has adopted an insurance regulatory scheme that comprehensively regulates all aspects of the insurance contract between the insurer and the insured. *See, e.g.*, Chapter 627, Part XI, F.S., (“Motor Vehicle and Casualty Insurance Contracts”); McCarran-Ferguson Act, 15 U.S.C. 1011 (providing for state regulation of insurance).

¹⁹ Article 1, section 10 of the Florida Constitution prohibits laws impairing the obligation of contracts.

²⁰ *State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So.2d 128 (2d DCS 1995).

²¹ *City of Flagstaff v. Atchison, Topeka & Santa Fe R. Co.*, 719 F.2d 1077 (D.C. Cir. 1984). The Court found that the cost of public services for fire protection is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence created the need for the service.