



RISK MANAGEMENT INFORMATION
LMCIT LIABILITY COVERAGE OPTIONS
Liability Limits, Coverage Limits, and Waivers

LMCIT gives cities several options for structuring their liability coverage. The city can choose either to waive or not to waive the monetary limits the statutes provide; and the city can select from among several liability coverage limits. This memo discusses these options and identifies some issues to consider in deciding which of the options best meets the city's needs.

Statutory Limits on Municipal Tort Liability

The statutes limit a city's tort liability to a maximum of \$500,000 per claimant and \$1,500,000 per occurrence. These limits apply whether the claim is against the city, against the individual officer or employee, or against both.

Coverage Limits for LMCIT's Basic Primary Liability Coverage

LMCIT's liability coverage provides a limit of \$1,500,000 per occurrence, matching the per-occurrence part of the statutory municipal tort liability limit. Beside the overall coverage limit of \$1,500,000 per occurrence, there are also annual aggregate limits (that is, limits on the total amount of coverage for the year regardless of the number of claims), for certain specific risks. Aggregate limits apply to the following:

Something to Think About

Under the basic coverage form, the \$500,000 per claimant part of the statutory liability limit is not waived, so if the statutory limit applies to the particular claim, LMCIT and the city would be able to use that limit as a defense.

Products	\$2,000,000 annually
Failure to supply utilities	\$2,000,000 annually
EMF	\$2,000,000 annually
Limited pollution*	\$2,000,000 annually
Mold	\$2,000,000 annually
Land use litigation**	\$1,000,000 annually
Employers liability (work comp)	\$1,500,000 annually

* Includes sudden and accidental releases of pollutants; herbicide and pesticide application; sewer ruptures, overflows and backups; and lead and asbestos claims. The limit applies to both damages and defense costs.

** Coverage is on a sliding scale percentage basis, and applies to both damages and litigation costs.

If the Statute Limits our Liability, Why Purchase Higher Coverage Limits?

There are several different reasons why cities should strongly consider carrying higher limits of liability coverage.

The Statutory Tort Limits Either Do Not or May Not Apply to Several Types of Claims

Some examples include:

- *Claims under federal civil rights laws.* These include Section 1983, the Americans with Disabilities Act, etc.
- *Claims for tort liability that the city has assumed by contract.* This occurs when a city agrees in a contract to defend and indemnify a private party.
- *Claims for actions in another state.* This might occur in border cities that have mutual aid agreements with adjoining states, or when a city official attends a national conference or goes to Washington to lobby, etc.
- *Claims based on liquor sales.* This mostly affects cities with municipal liquor stores, but it could also arise in connection with beer sales at a fire relief association fund-raiser, for example.
- *Claims based on a “taking” theory.* Suits challenging land use regulations frequently include an “inverse condemnation” claim, alleging that the regulation amounts to a “taking” of the property.

LMCIT’s Primary Liability Coverage has Annual Limits on Coverage for a few Specific Risks

The table on page one lists the liability risks to which aggregate coverage limits apply. If the city has a loss or claim in one of these areas, there might not be enough limits remaining to cover the city’s full exposure if there is a second loss of the same sort during the year. Excess liability coverage gives the city additional protection against this risk as well.

However, there are a couple important restrictions on how the excess coverage applies to risks that are subject to aggregate limits:

- The excess coverage *does not apply* to three risks: *failure to supply utilities; mold; and “limited pollution” claims if either the pollutant release or the damage is below ground or in a body of water;* and
- The excess coverage *does not automatically apply to liquor liability* unless the city specifically requests it.

The City may be Required by Contract to Carry Higher Coverage Limits

Occasionally, a contract might include a requirement the city carry more than \$1,500,000 of coverage limits. Carrying excess coverage is a way to meet these requirements. (There's also another option for cities in this situation. LMCIT can issue an endorsement to increase the city's coverage limit only for claims relating to that particular contract. There's a small charge for these "laser" endorsements.)

There may be more than One Political Subdivision Covered Under the City's Coverage

An HRA, EDA, or port authority is itself a separate political subdivision. If the city EDA, for example, is named as a covered party on the city's coverage and a claim were made that involved both the city and the EDA, theoretically the claimant might be able to recover up to \$1,500,000 from both the city and the EDA, since there are two political subdivisions involved. Excess coverage is one way to provide enough coverage limits to address this situation. Another solution is for the HRA, EDA, or port authority to carry separate liability coverage in its own name.

This issue of multiple covered parties can also arise if the city has agreed by contract to name another entity as a covered party, or to defend and indemnify another entity.

Cities Sometimes Carry Higher Coverage Limits Because of a Concern the Courts Might Overturn the Statutory Liability Limits

However, those limits have now been tested and upheld several times in Minnesota. While it's always possible that a future court might decide to throw out the statutory limits, this is now less of a concern.

Available Excess Liability Coverage Limits

Excess coverage is available in \$1 million increments, up to a maximum of \$5 million.

Does the Optional Excess Coverage Apply to all Types of Claims?

No. The excess liability coverage does not apply to the following types of claims: limited pollution, mold, failure to supply utilities, auto no-fault, uninsured / underinsured motorist, workers compensation, disability, unemployment claims, or claims under the medical payments coverage.

Who Needs Excess Liability Coverage?

If anything, excess liability coverage is even more important to a small city, rather than a large city.

If a city ends up with more liability than it has coverage, the city will have to either draw on existing funds or go to its taxpayers to pay that judgment. A large city faced with, say, a million dollars of liability over and above what its LMCIT coverage pays might be able to spread that \$1 million cost over several thousand taxpayers. The small city by contrast might be dividing that same \$1 million cost among only a couple hundred taxpayers. \$1 million divided among 5,000 taxpayers is \$200 apiece – annoying but probably at least manageable for most taxpayers. \$1 million divided among 200 taxpayers is \$5,000 apiece – enough to be a real problem for many.

What's the Effect of Waiving the Per Claimant Statutory Liability Limit?

If the city chooses the “waiver” option, the city and LMCIT no longer can use the statutory limit of \$500,000 per claimant as a defense. Because the waiver increases the exposure, the premium is roughly 3% higher for coverage under the waiver option.

If the city waives the statutory limit, an individual claimant could therefore recover up to \$1,500,000 in damages on a claim. Of course, the individual would still have to prove to the court or jury that s/he really does have that amount of damages. Also, the statutory limit of \$1,500,000 per occurrence would still apply; that would limit the individual's recovery to a lesser amount if there were multiple claimants.

Why Would the City Choose to Pay More to get Waiver-Option Coverage?

The statutory liability limit only comes into play in a case where

- The city is in fact liable.
- The injured party's actual proven damages are greater than the statutory limit.

Highlight

The waiver option coverage does not give the city better protection. The benefit is to the injured party.

Very literally, applying the statutory liability limit means an injured party won't be fully compensated for his/her actual, proven damages that were caused by city negligence. Some cities as a matter of public policy may want to have more assets available to compensate their citizens for injuries caused by the city's negligence. Waiving the statutory liability limits is a way to do that.

Other cities may feel that the appropriate policy is to minimize the expenditure of the taxpayers' funds by taking full advantage of every protection the legislature has decided to provide. There's no right or wrong answer on this point. It's a discretionary question of city policy that each city council needs to decide for itself.

For claims the statutory tort liability limits don't apply to, it doesn't affect how the city's coverage or risk on those claims. Waiving the statutory tort limits has no effect on claims the statutory limits don't apply to.

Effects of Waiving the Statutory Limits if there is Excess Coverage

If the city has \$1 million of excess coverage and chooses to waive the statutory tort limits, the claimants (whether it's one claimant or several) could then potentially recover up to \$2.5 million in damages in a single occurrence. If the city carries higher excess coverage limits, the potential maximum recovery per occurrence is correspondingly higher.

Carrying excess coverage under the waiver option is a way to address an issue that some cities find troubling: the case where many people are injured in a single occurrence caused by city negligence. Suppose, for example, that a city vehicle negligently runs into a school bus full of kids, causing multiple serious injuries. \$1,500,000 divided 50 ways may not go far toward compensating for those

injuries. Excess coverage under the waiver option makes more funds available to compensate the victims in that kind of situation.

The cost of the excess liability coverage is about 25% greater if the city waives the statutory tort limits. The cost difference is proportionally greater than the cost difference at the primary level because for a city that carries excess coverage, waiving the statutory tort limits increases both the per-claimant exposure and the per-occurrence exposure.

Waiving Statutory Tort Liability Limits: Increase in Risk?

There is no increase in risk for the city to end up with liability if LMCIT doesn't cover it. The waiver form specifically says the city is waiving the statutory tort liability limits only to the extent of the city's coverage.

Of course, that's not to say there is no risk the city's liability could exceed its coverage limits. We listed earlier a number of ways that could happen to any city. But the waiver doesn't increase that risk.

Can we Waive the Statutory Tort Limits for the Primary Coverage but not for the Excess Coverage?

No. If the city decides to waive the statutory tort limits, that waiver applies to the full extent of the coverage limits the city has. The city cannot partially waive the statutory limits.

Is there a Simple way to Summarize the Options?

It's not necessarily simple, but the table on the following page is a shorthand summary of what the effect would be of the various coverage structure options in different circumstances.

Your League Resource

Feel free to call the Underwriting Department at 651-281-1200 or 800-925-1122 with any questions.

Pete Tritz 12/09



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LMCIT Liability Coverage Options

Coverage structure If the city:	On a liability claim to which the statutory limits apply		On a liability claim to which the statutory limits do not apply
	This is the maximum amount a single claimant could recover on an occurrence.	This is the maximum total amount that all claimants could recover on a single occurrence.	This is the maximum amount of damages which LMCIT would pay on the city's behalf for a single occurrence, regardless of the number of claimants.
Does not have excess coverage & Does not waive the statutory limits	\$500,000	\$1,500,000	\$1,500,000
Does not have excess coverage & Waives the statutory limits	\$1,500,000	\$1,500,000	\$1,500,000
Has \$1,000,000 of excess coverage & Does not waive the statutory limits	\$500,000	\$1,500,000	\$2,500,000
Has \$1,000,000 of excess coverage & Waives the statutory limits	\$2,500,000	\$2,500,000	\$2,500,000