



## RISK MANAGEMENT INFORMATION **OPTIONAL “NO-FAULT” SEWER BACKUP COVERAGE**

*The League of Minnesota Cities Insurance Trust (LMCIT) offers property/casualty member cities “no-fault” sewer backup coverage. This optional coverage will reimburse a property owner for clean-up costs and damages resulting from a city sewer backup or from a city water main break, irrespective of whether the backup was caused by city negligence.*

The “no-fault” sewer backup coverage option is intended to:

- Reduce health hazards by encouraging property owners to clean-up backups as quickly as possible.
- Reduce the frequency and severity of sewer backup lawsuits (i.e. property owners may be less inclined to sue if they receive conciliatory treatment at the time of the backup).
- Give cities a way to address the sticky political problems that can arise when a property owner learns the city and LMCIT won’t reimburse for sewer backup damages because the city wasn’t negligent and therefore not legally liable.

Many cities and their citizens may find this coverage option to be a helpful tool. However, it’s also important to realize it’s not a complete solution to sewer backup problems, and not every possible backup will be covered.

### **Which sewer backups are covered?**

The “no-fault” coverage would reimburse the property owner for sewer backup damages or water main breaks, regardless of whether the city was legally liable, if the following conditions are met:

- The backup must have resulted from a condition in the city’s sewer system or lines. A backup caused by a clog or other problem in the property owner’s own line would not be covered.
- It’s not a situation that is specifically excluded in the coverage.
- The coverage limit has not been exceeded.

### **Which situations are excluded?**

The “no-fault” coverage will not apply in several “catastrophic” type situations. Specifically, these are:

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

- Any event, weather-related or otherwise, for which FEMA assistance is available;
- Any interruption in the electric power supply to the city’s sewer system or to any city sewer lift station which continues for more than 72 hours; or
- Rainfall or precipitation that exceeds the amount determined by the National Weather Service to constitute a 100-year storm event.

**What costs would be covered?**

The coverage would reimburse the property owner for the cost of cleaning up the backup, and for any damage to the property, up to the coverage limit. For purposes of the city’s deductibles, claims under the no-fault coverage are treated as liability claims, so the same per-occurrence and/or annual deductibles will apply.

However, there are certain costs that would not be reimbursed under the no-fault coverage:

- Any costs which have been or are eligible to be covered under the property owner’s own homeowner’s or other property insurance; and
- Any costs that would be eligible to be reimbursed under an NFIP flood insurance policy, whether or not the property owner actually has NFIP coverage.

**What is the coverage limit?**

The basic limit is \$10,000 per building per year. The city also has options to purchase additional limits of \$25,000 or \$40,000 per building. For purposes of the limit, a structure or group of structures that is served by a single connection to the city’s sewer system will be considered a single building.

Only true “no-fault” claims are counted toward the limit. Claims for damages caused by city negligence, for which the city would be legally liable in any case, are not charged against that limit.

**What does it cost?**

The premium charge is a percentage of the city’s municipal liability premium:

- 8.5% for the \$10,000 limit;
- 10.0% for the \$25,000 limit; or
- 12.5% for the \$40,000 limit.

Because the LMCIT Board’s intent is that this coverage be self-supporting, charges will be continually monitored and, if necessary, adjusted in the future.

**Is every city automatically eligible?**

No. To be eligible, the city must meet these underwriting criteria:

- The city must have a policy and practice of inspecting and cleaning its sewer lines on a reasonable schedule.
- If there are any existing problems in the city’s system which have caused backups in the past or are likely to cause backups, the city must have and be implementing a plan to address those problems.
- The city must have a system and the ability to respond promptly to backups or other sewer problems at any time of the day or week.
- The city must have in place an appropriate program to minimize stormwater inflow and infiltration.
- The city must have in place a system to maintain records of routine sewer cleaning and maintenance, and of any reported problems and responses.

When establishing these criteria, the goal of LMCIT was to focus on reasonableness rather than on creating specific standards. The intent isn’t to set an arbitrary requirement that sewers be inspected and cleaned every six months, every three years, every five years, etc. What makes sense in one city with some older and sometimes sagging clay lines probably wouldn’t make sense in a city with newer plastic lines, and vice versa. From the underwriting standpoint, the real concern is that the city has considered its own situation and developed policies, practices, and schedules that make sense for its own situation.

#### **More Information**

For assistance in developing sewer policies, practices, and schedules, please see the [Sewer Toolkit](#).

### **How would the “no-fault” coverage work if a sewer backup was caused by city negligence, and where the city was legally liable for the resulting damages?**

If the situation isn’t one where the “no-fault” coverage applies, the city’s LMCIT liability coverage would respond just as it does now. That is, LMCIT would investigate and if necessary defend the claim on the city’s behalf, and would pay the resulting damages if in fact the city is legally liable for those damages.

The same would be true for damages that exceed the \$10,000 no-fault limit, or for a subrogation claim against the city by the homeowner’s insurance company. The city’s existing LMCIT liability would respond just as it does now.

### **What’s the legal basis for this coverage? Wouldn’t it be a gift of public funds to pay for damages the city isn’t legally liable for?**

First, as noted earlier, one goal is to help reduce health hazards by encouraging prompt clean-ups. That’s clearly a public purpose and in the public interest.

Second, the law and facts surrounding most sewer backup claims are rarely so clear that the liability issue is entirely black and white. There’s virtually always a way that a claimant’s attorney can make some type of argument for city liability. Having this coverage in place should help eliminate the need to spend public funds on litigation costs in many of these cases.

Finally, part of the process for putting the coverage in place is for the city council to pass a formal resolution that makes this no-fault sewer backup protection part of the agreement between the city and the sewer customer. The idea is that by paying their sewer bill, the sewer user is purchasing not just sewer services but also the right to be reimbursed for certain specified sewer backup costs and damages. In other words, the basis for the no-fault payments to the property owner would be the contract between the city and the sewer user.

### **How do we put coverage in place?**

Contact your LMCIT underwriter for an application. If the city qualifies for coverage, we'll send the city a formal quote, along with a model resolution. To put coverage in place, the city council must formally pass that resolution, and send a copy to LMCIT.

If the city decides to add this coverage, it will also be important to make sure citizens know about it. LMCIT can also provide models for a press release, newsletter article, utility bill insert, etc.

#### **Your League Resource**

Contact your LMCIT underwriter at 651-281-1200 or 800-925-1122 for more information about the "no-fault" sewer backup coverage.

### **What if we decide to discontinue the coverage sometime in the future?**

Make sure your agent notifies your LMCIT underwriter. In addition, it's important to let your citizens know if and when the coverage is discontinued. The council should formally rescind the resolution that made the no-fault sewer backup protection part of the agreement between the city and the sewer customer.

Pete Tritz 07/11

## COMPREHENSIVE MUNICIPAL COVERAGE

### No-Fault Sewer Back-up and Water Main Break Coverage Endorsement (\$10,000 Limit)

Section I, Coverage A, Municipal Liability Coverage, is amended to include no-fault sewer back-up and water main break coverage as outlined below.

#### 1. No-fault sewer back-up coverage

- a. If all of the following four conditions are met, *LMCIT* will pay for claims presented by the *city* for *sewer back-up damage* to property of others which was not caused by *city* negligence:
  - (1) The sewer back-up resulted from a condition in the *city's* sewer system;
  - (2) The sewer back-up was not the result of an obstruction or other condition in sewer pipes or lines which are not part of the *city's* sewer system or which are not owned or maintained by the *city*; and
  - (3) The sewer back-up was not caused by or related to a *catastrophic incident*.
  - (4) The date of the *occurrence* giving rise to the claim for *damages* must be on or after the retroactive date shown on this endorsement.
- b. However, *LMCIT* will not pay for any *damages* or expenses:
  - (1) Which are or would be covered under a National Flood Insurance Program flood insurance policy, whether or not such insurance is in effect; or
  - (2) For which the property owner has been reimbursed or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 2. No-fault water main break coverage.

*LMCIT* will pay for claims presented by the *city* for *water main break damage* to property of others which was not caused by *city* negligence. But *LMCIT* will not pay for any *damages* or expenses for which the property owner has been or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 3. Definitions

For purposes of this endorsement, the following definitions apply.

- a. *Catastrophic incident* means any of the following:
  - (1) Any weather-related or other event for which FEMA (Federal Emergency Management Administration) assistance is available;

- (2) Any interruption in the electric power supply to the *city's* sewer system or to any *city* sewer lift station which continues for more than 72 hours; or
  - (3) Rainfall of precipitation which exceeds the amount determined by the National Weather Service to constitute a 100-year storm event.
- b. *Sewer back-up damage* means damage to property, including removal and clean-up costs, resulting from a sewer back-up.
  - c. *Water main break damage* means damage to property, including removal and clean-up costs, resulting from the rupture of a *city* water main, line, or pipe.

#### 4. Limits

- a. *LMCIT* will not pay more than \$10,000 for *sewer back-up damage* to any building under this endorsement, regardless of the number of *occurrences* or the number of claimants. For purposes of this limit
  - (1) A structure or group of structures served by a single connection to the *city's* sewer system is considered a single building.
  - (2) If a single structure is served by more than one connection to the *city's* sewer system, the portion of the structure served by each respective connection is considered a separate building.
- b. *LMCIT* will not pay more than \$10,000 for *water main break damage* to any claimant, regardless of the number of *occurrences* or the number of properties affected.
- c. *LMCIT* will not pay more than \$250,000 for *water main break damage* resulting from any single occurrence. All *water main break damage* which occurs during any period of 72 consecutive hours is deemed to result from a single *occurrence*.

If the total *water main break damage* for all claimants in a single *occurrence* exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:

- (1) A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual *damages* or \$10,000.
- (2) The sum of the preliminary reimbursement figures for all claimants will be calculated.
- (3) Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

#### 5. Deductibles

The amount *LMCIT* pays for *sewer back-up damages* or *water main break damage* under this endorsement is subject to the Municipal Liability Deductible shown in the Municipal Liability Declarations or the General Annual Aggregate Deductible if any shown in the Common Coverage Declarations.

For purposes of the Municipal Liability Deductible, all claims for *sewer back-up damages* which are covered under this endorsement, which occur within a 72 hour period, and which result from or are related to the same condition or conditions in the *city's* sewer system are deemed to be a single *occurrence*; and *water main break damage* which is covered under this endorsement and which occurs during any period of 72 consecutive hours is deemed to be a single *occurrence*.

**6. Retroactive Date**

The retroactive date for this endorsement is \_\_\_\_\_.

All other terms and conditions remain unchanged.

## COMPREHENSIVE MUNICIPAL COVERAGE

### No-Fault Sewer Back-up and Water Main Break Coverage Endorsement (\$25,000 Limit)

Section I, Coverage A, Municipal Liability Coverage, is amended to include no-fault sewer back-up and water main break coverage as outlined below.

#### 1. No-fault sewer back-up coverage

- a. If all of the following four conditions are met, *LMCIT* will pay for claims presented by the *city* for *sewer back-up damage* to property of others which was not caused by *city* negligence:
  - (1) The sewer back-up resulted from a condition in the *city's* sewer system;
  - (2) The sewer back-up was not the result of an obstruction or other condition in sewer pipes or lines which are not part of the *city's* sewer system or which are not owned or maintained by the *city*; and
  - (3) The sewer back-up was not caused by or related to a *catastrophic incident*.
  - (4) The date of the *occurrence* giving rise to the claim for *damages* must be on or after the retroactive date shown on this endorsement.
- b. However, *LMCIT* will not pay for any *damages* or expenses:
  - (1) Which are or would be covered under a National Flood Insurance Program flood insurance policy, whether or not such insurance is in effect; or
  - (2) For which the property owner has been reimbursed or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 2. No-fault water main break coverage.

*LMCIT* will pay for claims presented by the *city* for *water main break damage* to property of others which was not caused by *city* negligence. But *LMCIT* will not pay for any *damages* or expenses for which the property owner has been or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 3. Definitions

For purposes of this endorsement, the following definitions apply.

- a. *Catastrophic incident* means any of the following:
  - (1) Any weather-related or other event for which FEMA (Federal Emergency Management Administration) assistance is available;

- (2) Any interruption in the electric power supply to the *city's* sewer system or to any *city* sewer lift station which continues for more than 72 hours; or
  - (3) Rainfall of precipitation which exceeds the amount determined by the National Weather Service to constitute a 100-year storm event.
- b. *Sewer back-up damage* means damage to property, including removal and clean-up costs, resulting from a sewer back-up.
  - c. *Water main break damage* means damage to property, including removal and clean-up costs, resulting from the rupture of a *city* water main, line, or pipe.

#### **4. Limits**

- a. *LMCIT* will not pay more than \$25,000. for *sewer back-up damage* to any building under this endorsement, regardless of the number of *occurrences* or the number of claimants. For purposes of this limit
  - (1) A structure or group of structures served by a single connection to the *city's* sewer system is considered a single building.
  - (2) If a single structure is served by more than one connection to the *city's* sewer system, the portion of the structure served by each respective connection is considered a separate building.
- b. *LMCIT* will not pay more than \$25,000 for *water main break damage* to any claimant, regardless of the number of *occurrences* or the number of properties affected.
- c. *LMCIT* will not pay more than \$250,000 for *water main break damage* resulting from any single occurrence. All *water main break damage* which occurs during any period of 72 consecutive hours is deemed to result from a single *occurrence*.

If the total *water main break damage* for all claimants in a single *occurrence* exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:

- (1) A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual *damages* or \$25,000.
- (2) The sum of the preliminary reimbursement figures for all claimants will be calculated.
- (3) Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

#### **5. Deductibles**

The amount *LMCIT* pays for *sewer back-up damages* or *water main break damage* under this endorsement is subject to the Municipal Liability Deductible shown in the Municipal Liability Declarations or the General Annual Aggregate Deductible if any shown in the Common Coverage Declarations.

For purposes of the Municipal Liability Deductible, all claims for *sewer back-up damages* which are covered under this endorsement, which occur within a 72 hour period, and which result from or are related to the same condition or conditions in the *city's* sewer system are deemed to be a single *occurrence*; and *water main break damage* which is covered under this endorsement and which occurs during any period of 72 consecutive hours is deemed to be a single *occurrence*.

**6. Retroactive Date**

The retroactive date for this endorsement is \_\_\_\_\_.

All other terms and conditions remain unchanged.

## COMPREHENSIVE MUNICIPAL COVERAGE

### No-Fault Sewer Back-up and Water Main Break Coverage Endorsement (\$40,000 Limit)

Section I, Coverage A, Municipal Liability Coverage, is amended to include no-fault sewer back-up and water main break coverage as outlined below.

#### 1. No-fault sewer back-up coverage

- a. If all of the following four conditions are met, *LMCIT* will pay for claims presented by the *city* for *sewer back-up damage* to property of others which was not caused by *city* negligence:
  - (1) The sewer back-up resulted from a condition in the *city's* sewer system;
  - (2) The sewer back-up was not the result of an obstruction or other condition in sewer pipes or lines which are not part of the *city's* sewer system or which are not owned or maintained by the *city*; and
  - (3) The sewer back-up was not caused by or related to a *catastrophic incident*.
  - (4) The date of the *occurrence* giving rise to the claim for *damages* must be on or after the retroactive date shown on this endorsement.
- b. However, *LMCIT* will not pay for any *damages* or expenses:
  - (1) Which are or would be covered under a National Flood Insurance Program flood insurance policy, whether or not such insurance is in effect; or
  - (2) For which the property owner has been reimbursed or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 2. No-fault water main break coverage.

*LMCIT* will pay for claims presented by the *city* for *water main break damage* to property of others which was not caused by *city* negligence. But *LMCIT* will not pay for any *damages* or expenses for which the property owner has been or is eligible to be reimbursed by any homeowners' or other property insurance.

#### 3. Definitions

For purposes of this endorsement, the following definitions apply.

- a. *Catastrophic incident* means any of the following:
  - (1) Any weather-related or other event for which FEMA (Federal Emergency Management Administration) assistance is available;

- (2) Any interruption in the electric power supply to the *city's* sewer system or to any *city* sewer lift station which continues for more than 72 hours; or
  - (3) Rainfall of precipitation which exceeds the amount determined by the National Weather Service to constitute a 100-year storm event.
- b. *Sewer back-up damage* means damage to property, including removal and clean-up costs, resulting from a sewer back-up.
  - c. *Water main break damage* means damage to property, including removal and clean-up costs, resulting from the rupture of a *city* water main, line, or pipe.

#### **4. Limits**

- a. *LMCIT* will not pay more than \$40,000. for *sewer back-up damage* to any building under this endorsement, regardless of the number of *occurrences* or the number of claimants. For purposes of this limit
  - (1) A structure or group of structures served by a single connection to the *city's* sewer system is considered a single building.
  - (2) If a single structure is served by more than one connection to the *city's* sewer system, the portion of the structure served by each respective connection is considered a separate building.
- b. *LMCIT* will not pay more than \$40,000 for *water main break damage* to any claimant, regardless of the number of *occurrences* or the number of properties affected.
- c. *LMCIT* will not pay more than \$250,000 for *water main break damage* resulting from any single occurrence. All *water main break damage* which occurs during any period of 72 consecutive hours is deemed to result from a single *occurrence*.

If the total *water main break damage* for all claimants in a single *occurrence* exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:

- (1) A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual *damages* or \$40,000.
- (2) The sum of the preliminary reimbursement figures for all claimants will be calculated.
- (3) Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

#### **5. Deductibles**

The amount *LMCIT* pays for *sewer back-up damages* or *water main break damage* under this endorsement is subject to the Municipal Liability Deductible shown in the Municipal Liability Declarations or the General Annual Aggregate Deductible if any shown in the Common Coverage Declarations.

For purposes of the Municipal Liability Deductible, all claims for *sewer back-up damages* which are covered under this endorsement, which occur within a 72 hour period, and which result from or are related to the same condition or conditions in the *city's* sewer system are deemed to be a single *occurrence*; and *water main break damage* which is covered under this endorsement and which occurs during any period of 72 consecutive hours is deemed to be a single *occurrence*.

**6. Retroactive Date**

The retroactive date for this endorsement is \_\_\_\_\_.

All other terms and conditions remain unchanged.