INFORMATION MEMO

Liability Claim Procedures

Understand how the League of Minnesota Cities Insurance Trust (LMCIT or Trust) determines member liability and members’ authority to make final decisions on whether a settlement will be offered under the consent to settle provisions of the Trust’s liability coverage.

RELEVANT LINKS:

I. Determining member liability

When a member reports a liability claim to the Trust, the Trust’s claim adjusters must determine whether the member is legally liable for the damages that are being claimed. In general, for a member to be liable for someone else’s damage, three conditions must be met:

- The member must have been negligent.
- The damages must have been caused by the member’s negligence.
- It isn’t an area where the member is immune from liability.

If a member is not responsible for a claimant’s damages because their claim was not caused by member negligence, the claim will most certainly be denied. In some situations, it may seem easier to make a payment to the damaged party, even though legally the member isn’t liable for that payment. The Trust, though, cannot do this because the funds the Trust uses to pay claims are public funds that are the joint property of all Trust members. The Trust has a duty to ensure those funds are paid out only when legally owed. To do otherwise would be a gift of public funds to a private individual.

There’s often a good deal of judgment involved in evaluating liability, and members may disagree or have questions about the Trust’s evaluation and conclusion. If there are facts or information the adjuster isn’t aware of, or if there are issues they haven’t investigated, the member should always bring those concerns to their assigned adjuster. If questions persist, contact the Trust’s Claims Manager. He can review the claim to ensure it’s the right position or modify if appropriate.
II. Members’ authority to make final settlement decisions

The Trust has the legal authority to settle a covered liability claim on a member’s behalf. However, because the Trust is a cooperative organization, it strives to keep members informed on how a case is developing and whether a settlement is being discussed or pursued. The Trust’s claim adjusters always welcome members’ comments, suggestions, and opinions on how a claim should be approached and whether a settlement should be offered and how much.

Rarely, situations can arise where the Trust’s claim adjusters believe a liability claim should be settled, but the member strongly disagrees. In those situations, the consent to settle provisions of the Trust’s liability coverage gives the member the right to review a proposed settlement before it’s finalized, and the authority to make the final decision on whether the settlement will be offered. The consent to settle provisions do not apply to workers’ compensation claims, nor do they apply to claims handled under the Trust’s land use and special risk litigation coverage, since under those coverages all decisions must be made mutually between the Trust and member.

To exercise the rights of the consent to settle provisions, the member needs to be aware of and follow the procedures spelled out in the Trust’s liability coverage document, and the financial risks involved. Procedural requirements are as follows.

- **Member must provide notice to the Trust before settlement.** To exercise the right to review and approve or disapprove a settlement on a liability claim, the member must give notice to the Trust before it has offered or made a settlement. A notice must be given for each specific claim on which the member wishes to exercise its consent to settle rights, it must designate an individual who is authorized to approve or disapprove a proposed settlement on the member’s behalf, and it must include the name, address, and phone number of that individual. Unless and until the member gives notice, the Trust’s claim adjusters have the authority to settle the claim if they believe it appropriate.
• **Member must review settlement and understand financial risks.** When the member has notified the Trust a case may not be settled without its permission, the Trust will contact the designated individual to inform them of the terms and conditions of any proposed settlement on that claim. The member has 14 days to disapprove or approve the proposed settlement (in certain situations, this period can be extended or shortened if agreed to by both parties). If the member does not notify the Trust within 14 days that it has disapproved the settlement, the member is deemed to have consented to the settlement, and the Trust’s claim adjusters are authorized to proceed with the settlement if appropriate.

If a member decides to veto a proposed settlement, it must be aware of three potential financial risks. First, final costs may be greater. If a member disapproves a proposed settlement, there’s the risk the cost of the case will turn out to be greater than the proposed settlement. If the ultimate total cost for damages and defense costs on the claim is greater than the proposed settlement plus the defense costs incurred to that date, the member is responsible for the difference. Second, if the member’s refusal to consent to a proposed settlement results in a further claim for damages or action seeking penalties against the Trust, the member must defend and indemnify the Trust for that claim, defend itself against any such claims or actions, and will be responsible for any damages or penalties awarded against the member. Third, in situations where Medicare is involved and members do not consent to a settlement, the member must cooperate with the Trust so it can ensure that Medicare’s financial interests are protected, as required by federal regulations. Members that do not consent to settlement must defend and indemnify the Trust for Medicare claims that result.

• **Member may veto settlement after exercising consent to settle rights.** If a member vetoes the proposed settlement after exercising its consent to settle right, there are ways to proceed, which is at the Trust’s discretion. Either the Trust can make payment to the member, equal to the amount of the proposed settlement minus any applicable deductible, at which point it becomes the member’s duty to defend both itself and any other covered party; or the Trust can continue defending and managing the claim, but if costs turn out greater than what it could have been settled for, the member must reimburse the Trust for the excess cost.
III. Additional assistance

If a member receives questions from citizens or the press, or if it has questions regarding coverage, the Trust’s investigation of the claim, or any related concern, contact the assigned claim adjuster. If there are still questions or concerns, contact the Trust’s Claims Manager.

IV. Filing a liability claim

Claims can be submitted to the Trust using any of the following formats:

- Online
- Email
- Fax
- Mail
- Phone