



INFORMATION MEMO

Liability Claim Procedures

Understand why LMCIT may deny a liability claim and the consent to settle provisions of the LMCIT liability coverage.

RELEVANT LINKS:

I. When LMCIT denies a liability claim

When a third party makes a claim against the city and the city submits that claim to LMCIT, the key issue LMCIT must look at is liability. The city isn't automatically liable simply because, for example, an injury occurred on city property or because city equipment or personnel were involved.

In general, for the city to be liable for someone else's damages three conditions must be met:

- The city must have been negligent. That is, the city must have done something it shouldn't have done, or failed to do something it should have done.
- The damages must have been caused by the city's negligence.
- It isn't an area in which the city is immune from liability.

When the city reports a liability claim to LMCIT, the LMCIT claim adjuster must determine whether the city is legally liable for the damages that are being claimed. Sometimes it's very clear the city is liable and in such cases, the adjuster's job is to pay the claimant a fair settlement of the damages as quickly as possible. In other cases, it may be clear the city is not liable, in which case the adjuster will deny liability and decline to offer any settlement.

In many cases though, it may not be obvious whether the city is liable. The facts may be unclear or disputed; it may be debatable whether the city acted negligently; other parties' negligence (including the claimant's) may be involved; there may be questions about what really caused the damages; and so on. Depending on the particular facts and circumstances and how likely it seems the city will ultimately be held liable, the claim adjuster may or may not attempt to negotiate a compromise settlement in these kinds of cases.

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

RELEVANT LINKS:

Ultimately, of course, evaluating and deciding on liability is what the court system is for. If a claimant disagrees with LMCIT's denial of a claim, the claimant can bring the issue to the courts. If that happens, it's LMCIT's responsibility to pay for the cost of defense and to pay the damages the court awards against the city.

Legally, the burden is on the person making the claim to prove the defendant is liable. In other words, it's the claimant's responsibility to show the city is liable; not the city's responsibility to show the city isn't liable. That doesn't mean the claim adjuster will do nothing and simply wait for the claimant to assemble and present the evidence. The claim adjuster will investigate the claim, collect the relevant facts and information, and make a reasonable evaluation of whether the city is liable. It does mean, though, that if the investigation doesn't produce good evidence to show the city is liable, LMCIT's position will be to deny city liability. Keep in mind too that when LMCIT denies liability on a claim, it shouldn't necessarily be interpreted as saying the damage is the claimant's own fault.

A. LMCIT legal liability standard

No one – neither city officials nor LMCIT staff – enjoys telling a citizen the city is not responsible for their damages because their problem was not caused by city negligence. But if the standard of legal liability is applied, sometimes that's exactly what must be said.

Sometimes this means city officials will hear complaints from an angry citizen. From a political standpoint, it would sometimes be a lot easier to simply make a payment to the damaged party, even though legally the city isn't liable for that payment. However, there are at least three good reasons why it wouldn't be appropriate for LMCIT to do so:

- The funds LMCIT uses to pay claims are *public* funds that are the joint property of LMCIT member cities. LMCIT has a duty to ensure those funds are paid out only when legally owed. To do otherwise would make a gift of those public funds to a private individual.
- The funds LMCIT uses to pay claims belongs jointly to all LMCIT member cities. LMCIT is simply holding the money in trust for these members. Each member city has the right to expect that LMCIT will make claim payments only if the money is legally owed.
- If LMCIT were to make a payment on a claim to one person in one city where the city wasn't liable, LMCIT would have to be prepared to do so for every claimant in every member city that faces a similar situation.

RELEVANT LINKS:

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B. Disagreement with adjuster's determination

There's often a good deal of judgment involved in evaluating liability, and it's certainly possible that city officials may disagree or have questions about the LMCIT adjuster's evaluation and conclusions. Those disagreements can be in either direction. It could be a case where the city thinks a denied claim should rather be paid, or where a city thinks a claim paid claim should be denied.

The first thing to do is to talk with the LMCIT adjuster assigned to the claim. If there are facts or information the adjuster isn't aware of, or if there are issues that she or he hasn't investigated which the city feels should be, contact the adjuster. It's not the adjuster's job to do everything possible to either deny or to pay a claim; the adjuster's job is to try to get it right.

In some cases, the city may still have concerns or questions after talking with the adjuster. If so, contact the LMCIT Claims Manager. He can review the claim to ensure it's the right position or modify it if appropriate.

C. City option to pay claim itself

City officials may feel it's appropriate to pay a denied claim out of city funds. They may feel it's the city's responsibility to take care of its citizens regardless of legal liability, or they may understandably feel sympathy for the claimant's situation. Obviously, the city council is responsible for the city's funds and has the power to decide when and how those funds should be spent. While it's clearly the council's decision, the city also needs to think about some of the same issues that LMCIT must consider.

One important question, of course, is whether this is an appropriate and authorized use of city funds. LMCIT suggests the city discuss this with its city attorney before making a payment in these kinds of circumstances.

Another important issue is the precedent the city would set by making a voluntary payment. Once the city has made a payment in one circumstance, it would be very difficult not to do so again for the next citizen who's in a similar circumstance. Depending on the size and number of such future claims, the total cost to the city could be much greater than the amount in question on this one claim.

RELEVANT LINKS:

While it is, of course, the council's decision, in many cases a better solution may be to focus on solving the problems that have resulted in claims against the city, and to provide citizens with the information they need to protect themselves from loss.

II. Claim settlement and consent to settle provisions

The LMCIT liability coverage document gives LMCIT the legal authority to settle a covered liability claim on the city's behalf. However, as a cooperative organization of cities, LMCIT tries to keep the city informed on how a case is developing, whether a settlement is being discussed or pursued, and so on. LMCIT claim adjusters always welcome city officials' comments, suggestions, and opinions on how a claim should be approached, whether a settlement should be offered and how much, and so on. Only rarely is there much disagreement over whether a claim should or should not be settled.

Occasionally, a situation can arise where LMCIT's claims staff believes a liability claim should be settled, but the city strongly disagrees. In those situations, the consent to settle provisions of the LMCIT liability coverage gives the city 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 LMCIT land use and special risk litigation coverage, since under those coverages all decisions must be made mutually between LMCIT and the city.

To exercise the rights of the consent to settle provisions, the city needs to be aware of and follow the procedures spelled out in the LMCIT liability coverage document. The city must also understand the financial risks that are involved.

A. Procedural requirements

1. City's notice to LMCIT

To exercise the right to review and approve or disapprove a settlement on a liability claim, the city must give notice to LMCIT before LMCIT has offered or made a settlement. That notice must be given for each specific claim on which the city wishes to exercise its consent to settle rights.

The city's notice must designate an individual who is authorized to approve or disapprove a proposed settlement on the city's behalf, and must include the name, address, and phone number of that individual.

RELEVANT LINKS:

Unless and until the city gives that notice, the LMCIT claim adjuster has the authority to settle the claim if he or she believes it's appropriate. Once the city gives that notice to LMCIT, LMCIT no longer has the authority to settle that claim without the city's specific approval.

2. Time period for city review

When the city has notified LMCIT that a case may not be settled without the city's permission, LMCIT will contact the designated individual to notify the city of the terms and conditions of any proposed settlement on that claim. The city then has 14 days to disapprove or approve the proposed settlement. If the city does not notify LMCIT within 14 days that it has disapproved the settlement, the city is deemed to have approved it and the LMCIT claims staff is then authorized to proceed with the settlement.

In individual situations, the city and LMCIT may agree to a review period that's longer or shorter than the standard 14 days. However, the 14-day limit applies unless both the city and LMCIT have agreed to a different time period.

If the city does not consent to the settlement, it must notify LMCIT within 14 days of the date that it receives the notice of the proposed settlement, unless both parties agree to a shorter or longer period. If the city doesn't inform LMCIT within the agreed upon time that the city has disapproved the proposed settlement, the city is deemed to have consented to the settlement.

B. Financial risks if city vetoes proposed settlement

If the city decides to veto a proposed settlement, it must be aware of three potential financial risks.

1. Final cost may be greater

If a city disapproves a proposed settlement, there's a risk that the ultimate cost of the case will turn out to be greater than the proposed settlement. The city bears the risk of that potential increase in costs. Specifically, 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 city is responsible for the difference.

2. Additional claims

If the city's refusal to consent to a proposed settlement results in a further claim for damages or action seeking penalties against LMCIT, the city must defend and indemnify LMCIT for that claim. The city must also defend itself against any such claims or actions, and the city is responsible for any damages or penalties awarded against the city.

As an example, a claimant sues both the city and a police officer for alleging the officer used excessive force. The claim includes allegations that the officer acted maliciously and intentionally. Based on LMCIT's investigation, it seems to be a borderline question whether the officer's actions constituted malfeasance, willful neglect of duty, or bad faith. The city exercises its consent to settle rights and decides to litigate the case instead of accepting a proposed settlement. The court determines the police officer's actions did constitute malfeasance and intentional use of excessive force, and awards damages, including punitive damages, against the officer.

Because the officer's actions constituted malfeasance, those damages are not covered by LMCIT. Under statute, the officer is also not entitled to indemnification from the city for either the actual or the punitive damages, which means the officer is now on his or her own for this judgment. The officer could sue the city and LMCIT for the failure to settle the original claim, since settling the claim would have eliminated the officer's personal risk. It is the city's responsibility to pay for defending both itself and LMCIT against this new claim by the officer, and to pay any damages awarded against either the city or LMCIT.

3. Medicare reimbursement costs

In situations where Medicare is involved and members do not consent to a settlement, the member must cooperate with LMCIT 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 LMCIT for Medicare claims that result.

C. Procedures if city vetoes proposed settlement after exercising its consent to settle rights

There are two possible ways to proceed if the city vetoes the proposed settlement after exercising its consent to settle right:

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[LMCIT claim forms,
information sheets, and other
resources.](#)

[Submit a claim online.](#)

Email: claims@lmc.org

Fax: 651.281.1297 or
888.234.7839

Mail: 145 University Ave W,
St. Paul MN 55103-2044

Phone: 651.281.1200 or
800.925.1122

- LMCIT can make a payment to the city, equal to the amount of the proposed settlement minus any applicable deductible. LMCIT then has no further responsibility in the case, and it becomes the city's duty to defend both itself and any other covered party. The city is then free to manage the litigation in any manner it sees fit.
- LMCIT can continue to defend and manage the claim. If the ultimate cost turns out to be greater than what it could have been settled for, the city must reimburse LMCIT for the excess cost.

The decision of which of these two procedures to use is at LMCIT's sole discretion. However, the city's preference in the matter would certainly be an important consideration.

D. Usage of the consent to settle provision

The consent to settle provisions are not used frequently, which shouldn't be surprising. If there's good ongoing communication between the city and the LMCIT claim adjuster, it should be very rare to have the kind of fundamental disagreement that would lead the city to feel that it had to use these procedures.

III. Additional assistance

If the city receives questions from citizens or the press, or if it has questions regarding the city's coverage, its liability, LMCIT's investigation of the claim, or any related area of concern, contact the LMCIT claim adjuster.

If the city still has concerns or questions, contact the LMCIT Claims Manager.

IV. Filing a liability claim

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

- Online
- Email
- Fax
- Mail
- Phone