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Risk Management Information

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PROVIDING ASSISTANCE IN EMERGENCIES: COVERAGE AND LIABILITY ISSUES

When disaster strikes in Minnesota, the response is always the same. Cities and other local governments around the state pitch in to help, sending equipment and crews of firefighters, police officers, public works and utilities workers, building inspectors, and whatever other help is needed. We saw that response when the floods devastated the northwest in 1997 and again when the tornadoes hit southern Minnesota in 1998, to take a couple of recent examples.

Providing and receiving disaster assistance raises some coverage and liability issues for cities on both sides. This memo outlines the applicable statutes, summarizes how the city's LMCIT coverages apply, and identifies some potential problems that cities need to be aware of. There's also a checklist of potential coverage issues in emergency assistance situations.

The local emergency assistance statute

M.S. 12.331 was first passed as part of the tornado relief bill in 1998. You could think of this law as a "default" mutual aid agreement for disasters. It clarifies local governments' authority both to request and to provide emergency assistance even without an existing mutual aid agreement. It also addresses the various liability issues much as a mutual aid agreement would.

M.S. 12.331 sets out the following rules for when one political subdivision sends assistance to another in an emergency. (We'll refer to cities below, but this statute also applies to counties, towns and other political subdivisions as well.)

- *Workers' compensation.* For purposes of workers' compensation, the sending city's employees are deemed to be acting within the scope of their duties as employees of the sending city. An injury to an employee of a city providing assistance would therefore be covered under his/her own city's work comp coverage.
- *Liability.* For purposes of tort liability, employees of the city sending assistance are deemed to be employees of the city receiving assistance. It would therefore be the responsibility of the city receiving the assistance (and that city's liability carrier) to defend and indemnify the assisting city's employee if that employee were sued for actions taken while providing the assistance. This provision eliminates much of the potential for conflicts between the two cities if both were sued in a tort claim arising from the emergency assistance.
- *Equipment.* Damage to the sending city's equipment is the sending city's own responsibility.

The statute also provides that the city receiving the assistance must reimburse the city providing the assistance for the compensation of the assisting city's employees, for those employees' travel and maintenance expenses, and for any supplies used.

Keep in mind that these statutory provisions only apply if there's not a written agreement between the two cities that addresses these points. If the sending and receiving cities prefer to handle any of these points differently, they can simply develop and sign a written agreement that addresses these points in whatever way the two cities agree.

How does LMCIT coverage work when one city provides emergency assistance to another under the statute?

If your city sends vehicles or equipment and city employees to operate those vehicles or equipment or to otherwise assist another city in an emergency:

- Injuries to the sending city's employees while assigned by the city to provide emergency assistance in another city will be covered under the assisting city's LMCIT workers' compensation coverage.
- Damage to the sending city's vehicles or equipment will be covered by the sending city's LMCIT property or auto physical damage coverage, just as if the equipment were being used for any other city purpose.
- The LMCIT liability coverage of the city receiving assistance will respond to liability claims against the sending city's employees that arise in the course of providing the emergency assistance. This is because they are deemed to be employees of the receiving city for tort liability purposes.
- For auto liability claims that arise from using the sending city's licensed vehicles in providing emergency assistance, both cities' coverage could theoretically apply to the claim. Where both cities are LMCIT members, LMCIT will treat the receiving city's LMCIT auto liability coverage as primary in this situation.
- When a city employee or volunteer operates his/her own vehicle on city business, that vehicle is not considered to be a "borrowed" or "leased" vehicle. The city's auto physical damage coverage therefor won't cover damage to the employee's vehicle.
- In many cases, the city providing assistance will send its own employees, who will be operating the assisting city's own vehicles and equipment. In that situation, the vehicle is not considered to be a "borrowed" vehicle for the city that's receiving the assistance, and that vehicle is therefor not covered by the receiving city's auto physical damage coverage. The vehicle is considered a "borrowed" vehicle only if it's being operated by and is in the care, custody, and control of, the city that's receiving the assistance.

If your city lends its vehicles or equipment, to be operated by the receiving city's employees or volunteers, coverage works like this unless you've made other arrangements:

- Damage to the vehicle or equipment is covered under the lending city's LMCIT coverage.
- For auto liability arising from the operation of the lending city's vehicle by the receiving city's employees or volunteers, the receiving city's LMCIT auto liability coverage is primary.
- Liability arising from the operation of the lending city's equipment (other than licensed vehicles) is covered under the receiving city's LMCIT liability coverage.

If you borrow or rent vehicles or equipment from sources other than an LMCIT member city:

The city's LMCIT municipal liability and auto liability coverage will automatically respond to liability claims arising from the operation of vehicles or equipment that the city borrows or rents. Under the new LMCIT auto physical damage coverage form, it is no longer necessary to schedule each individual vehicle in order to have coverage. LMCIT provides coverage for physical damage for

- Any vehicles you borrow or rent; or
- Any equipment you borrow or rent that's valued at more than \$25,000 replacement cost. (Note: most cities' LMCIT property coverage includes blanket coverage for mobile property worth less than \$25,000, including borrowed or rented equipment in the city's care, custody, and control. However, a few cities choose not to cover their small-value equipment at all. If your city doesn't have coverage for its own small-value mobile property, you don't have coverage for small-value equipment you borrow or lease either.)

What happens if we provide emergency assistance under a mutual aid agreement that has different provisions from the statute?

It really depends on what the mutual aid agreement says. If the mutual aid agreement between the two cities is silent about workers' compensation, tort liability, or damage to equipment, the provisions of the statute apparently would still apply on that particular issue. If the agreement specifically addresses any or all of those points different from the way the statute handles them, the terms of the agreement would govern.

If both cities are LMCIT members, liability coverage, including auto liability, shouldn't be a problem. Regardless of how the mutual aid agreement addresses tort liability, each city's respective LMCIT coverage would pick up whatever liability that city has under the agreement. That would include liability for its own employees' acts, and any tort liability the city assumes under the contract for the other city's employees' acts.

We would suggest, though, that cities avoid using mutual aid agreements which have language like "each party shall be responsible for its own liability." That sort of provision sets up the potential for a defense conflict between the two cities if both are sued for a single incident; i.e.,

each city ends up with its own defense attorney, one of whose duties is to try to shift any potential liability to the other city. At best, it results in more legal expense, since we're now paying two defense attorneys instead of one. This kind of conflict can also reduce the cities' chances of defending those claims successfully.

If the agreement makes your city responsible for workers' compensation benefits for the other city's employees, you need to contact LMCIT. Note that there may be a charge to your city for this kind of additional workers' compensation exposure.

What about emergency volunteers?

M.S. 12.22, subd. 2a, says that a city volunteer assisting a city in a disaster or emergency is considered a city employee, if the volunteer:

- Is registered with the city; and
- Is working under the direction and control of the city.

A registered city volunteer who's injured while assisting in a disaster would therefore be entitled to workers' compensation benefits. LMCIT's practice has been not to charge any additional premium for this workers' compensation exposure.

Like any city volunteers, disaster volunteers are automatically "covered parties" under the city's LMCIT liability coverage. Thus for LMCIT member cities, LMCIT would cover liability claims against a registered emergency volunteer working under the city's direction and control.

These volunteers do not need to be reported to LMCIT. However, because the statute specifies that emergency volunteers must be "registered", the city should maintain a record of the individuals that provide volunteer help to the city. If an injury occurs, the LMCIT work comp claims staff will need that record to determine whether or not the individual is covered.

What about other political subdivisions or cities that aren't LMCIT members?

Obviously, we're only in a position to tell you how the city's LMCIT coverage works. If you're not an LMCIT member, talk to your insurer about work comp, liability, and equipment coverage. Make sure your insurer will cover whatever exposures that you have, whether you're operating under the statute or under an agreement. Make sure too that you understand what items or exposures you need to report to your insurer, and what the added coverage will cost.

Similarly, if your city receives assistance from a political subdivision that's not an LMCIT member, make sure that that political subdivision is aware of these various coverage and liability issues and has addressed them appropriately with their own carrier.

Disaster assistance - A coverage checklist for cities

If your city is either receiving assistance in a disaster or providing assistance to another city in a disaster, here's a checklist to help identify potential coverage problems:

1. *Is assistance being provided under the statute or under an agreement?*

If both the sending and receiving cities are LMCIT members, and you're working under M.S. 12.331 rather than an agreement, providing or receiving disaster assistance doesn't create any particular coverage problems for either city. Both cities' existing LMCIT liability, property, auto, and workers' compensation coverages will address their respective risks under the statute.

2. *Is either the sending or the receiving party a non-LMCIT member?*

If you're receiving assistance from a county or township, or from a city that isn't an LMCIT member, you'll want to make sure they understand that under the statute, they're responsible for work comp for injuries to their employees, and for any damage to their equipment.

If you're providing assistance to a city or other unit that isn't an LMCIT member, you'll want to make sure that they and their liability carrier understand that they are responsible for liability claims arising from your employees' activities.

3. *Is the city borrowing or leasing any vehicles?*

Under the new LMCIT auto physical damage coverage form, it's no longer necessary for the city to schedule each individual vehicle in order to have coverage. The city automatically has coverage for physical damage to any vehicle the city rents or borrows.

4. *Is the city borrowing or leasing any equipment valued at more than \$25,000?*

If you're borrowing or renting any equipment with a replacement value of more than \$25,000, you need to contact LMCIT to schedule it in order to pick it up under your LMCIT property coverage.

5. *Is the city using volunteers?*

If your city is using volunteers who are acting under your direction and control, those volunteers need to be "registered" with the city in order to be covered by the city's workers' compensation and liability coverage. In other words, keep a list of your disaster volunteers, by name.

If your city is working under an agreement rather than under the statute in either providing or receiving disaster assistance, make sure you understand your responsibilities under that agreement.

6. *Does the agreement make you responsible for work comp for anyone else's employees or volunteers?*

If an agreement makes your city responsible for providing workers' compensation coverage for anyone who is not by law your city's employee, contact LMCIT right away – preferably before you sign the agreement.

7. *Does the agreement require you to provide liability coverage for anyone else or name them as a covered party?*

If the agreement calls for you to add another city or other person or entity as an “insured” or a “covered party”, contact LMCIT.

Questions?

If you have any questions about coverage, please give us a call. We understand that when you're dealing with a disaster, the last thing you need is to be worrying about arcane details of coverage. We'll do our best to answer your questions and address any problems as quickly as we can.

Feel free to contact Pete Tritz, Tom Grundhoefer, Doug Gronli, or any of the underwriters at the LMCIT office.

PST – 10/2001