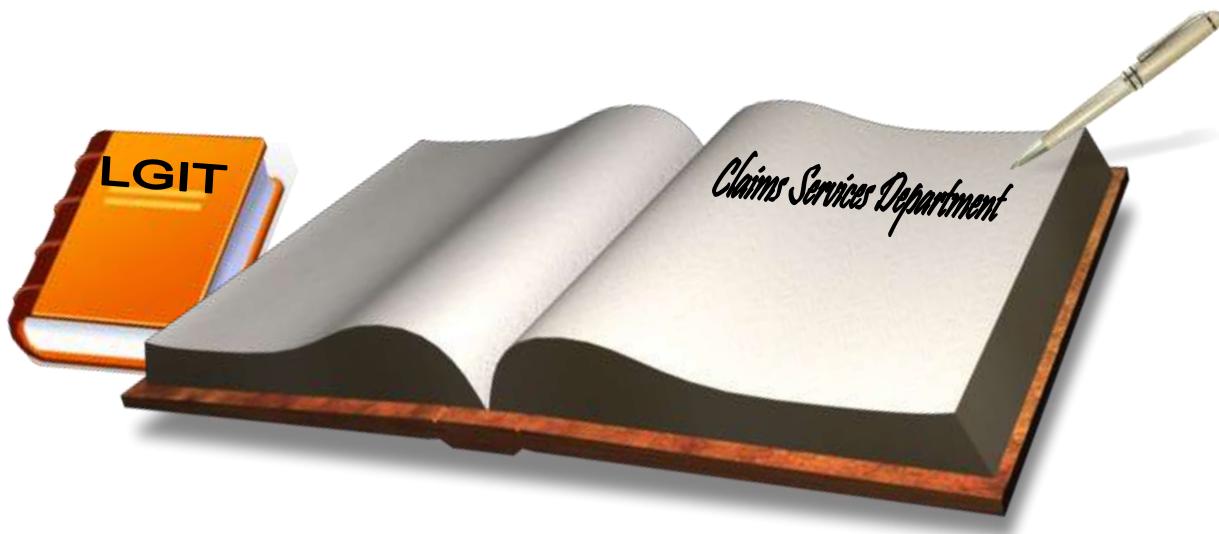


# Claims Management Manual



## Mission Statement

To ensure prompt, fair and efficient delivery of claims and related services to LGIT members within the parameters of  
LGIT's coverages  
and existing legal principles, while utilizing techniques  
to reduce member loss exposures.



**Claims Department Directory**  
Local Government Insurance Trust  
7225 Parkway Drive, Hanover, Maryland 21076

**Tia Nicole Bowman**  
Director of Claims Services  
443-561-1700 Ext 713  
TBowman@LGIT.org

**Clyde Bessicks**  
Claims Analyst  
443-561-1700 Ext 722  
CBessicks@LGIT.org

**Winter J. Jordan**  
Claims Analyst  
443-561-1700 Ext 716  
WJordan@LGIT.org

**Dorie L. Schwartz**  
Property Claims Manager  
443-561-1700 Ext 717  
Dorie@LGIT.org

**Charise Henderson**  
Claims Staff Associate  
443-561-1700 Ext 721  
ChariseH@LGIT.org

**Elizabeth Martinez**  
Litigation Analyst  
443-561-1700 Ext 714  
ElizabethM@LGIT.org

**Warren R. Baskerville**  
Claims Analyst  
443-561-1700 Ext 715  
WBaskerville@LGIT.org

**Hollis Henry**  
Claims Analyst  
443-561-1700 Ext 718  
HHenry@LGIT.org

**Dallas Salters**  
Claims Analyst  
443-561-1700 Ext 720  
DSalters@LGIT.org



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## Introduction

Claims are the reason we insure ourselves. The Local Government Insurance Trust was established in 1987 by the Maryland Association of Counties (MACo) and the Maryland Municipal League (MML) via an enabling Act of the Maryland General Assembly to allow Maryland local governments to pool together to protect themselves from losses. It is the responsibility of the Claims Services Department to effectively assist our members through the claims process.

Local governments provide unique services to the public. Consequently, the issues associated with local government claims are equally unique. The LGIT claims staff manages both litigated and non-litigated claims presented by or against our local government members. Our obligation is to protect our members from financial losses in a prompt and professional manner. However, because our members are located throughout our entire state, we must work in close partnership with our members in order to properly investigate and process claims. Our members are an integral part of the Claims Department.

The Claims Staff has prepared this Claims Management Manual to provide our Members with a quick reference guide to assist their understanding of claims concepts and the policies and procedures associated with processing claims. This manual has a preliminary section that discusses the Local Government Tort Claims Act and governmental immunities. This should help the Member understand its liability exposure within the local government claims environment. The next sections will be divided by claims type and will discuss all aspects of those claims. The last section will discuss litigation procedure and the general litigation process.

We look forward to working with you!

## Section 1- Claims





## Section 1. Claims

### 1.1 What is a claim?

A *first-party* claim occurs when a LGIT member alleges physical damage to an insured vehicle, property, or equipment.

A *third-party* liability claim occurs whenever someone other than a member or employee alleges bodily injury, personal injury, or property damage that was caused by an action or inaction on the part of a member or its employee. The person bringing the claim requests damages for the injury.

### 1.2 What are the types of claims?

There are seven types of claims handled by LGIT's Claims Services Department. Automobile Physical Damage (vehicle collision/comprehensive), Property, and Equipment Breakdown are first party claims paid to our members to reimburse the member for a loss. Coverage for these types of claims generally provides for the repair or replacement of member property less a deductible. Liability claims include Auto Liability, General Liability, Police Legal Liability, Public Official Liability and Excess Liability.

For additional information regarding each type of claim, please refer to the succeeding sections.

### 1.3 Who will handle my claim?

Automobile, general liability, law enforcement liability, employment practices liability and public official liability are handled by our claims analysts: Warren Baskerville, Clyde Bessicks, Dalas Salters, Hollis Henry and Winter Jordan. Elizabeth Martinez handles litigation matters. Property and equipment breakdown claims are handled by Dorie Schwartz. Comprehensive claims are handled by Charise Henderson. Tia Nicole Bowman is the Director of the Claims Services Department and has the ultimate responsibility for the processing of all claims for our member local governments.

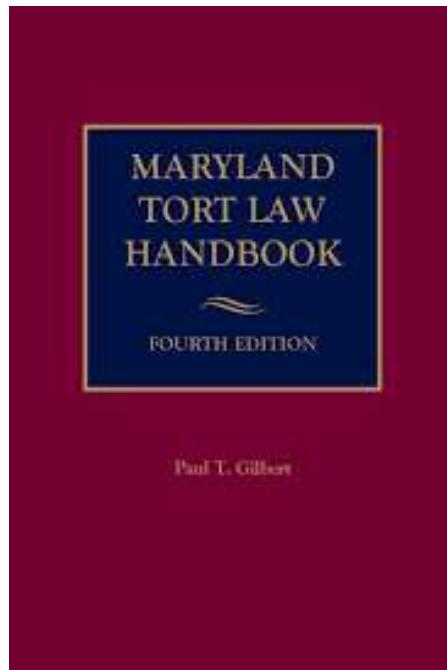
The Members should upload new claims to the Member Portal. The Member will receive an acknowledgement confirming receipt of the claim.

The assigned claims analyst will contact with Member within 24 hours of receipt of the claim.



## Section 2

# Local Government Tort Claims Act





## Section 2. The Local Government Tort Claims Act

### 2.1 What is the Local Government Tort Claims Act?

Claims brought against Local Governments under Maryland law are governed by the Local Government Tort Claims Act (LGTCA) *{§5-301, et. seq. Courts and Judicial Proceedings Article, Md. Code, Ann. (Ex. A)}*. The LGTCA applies to all actions which allege tortious actions or omissions brought under state law against local governments and local government employees. The LGTCA does not apply to claims which allege federal constitutional or federal law actions.

### 2.2 To whom does the LGTCA apply?

- Chartered counties established under Article 25A of Code;
- Code counties established under Article 25B of the Code;
- Boards of County Commissioners established under Article 25 of the Code;
- Municipal corporations established under Article 23A of the Code;
- Volunteers providing services or performing duties under the control and direction of a local government;
- An employee within or without a classified service or merit system;
- Elected and appointed officials;
- Various other governmental entities; (See Ex. A)

2.3      What protection does the LGTCA provide?

- Requires the local government to provide a defense for all employees;
- Requires the local government to pay any judgment entered against an employee;
- Limits the liability of a local government or employee to \$400,000 per individual claim or \$800,000 for all claims that arise from the same occurrence;
- Imposes a 1 year notice of claim requirement on persons bringing an action against a local government or employee.

A Claimant bringing an action against a local government, which alleges state law claims, must provide Notice of the Action to the Local Government within 180 days of the injury. The notice must be in writing and state the date, time, place, and cause of the injury.

Notice must be provided by the Claimant or a representative of the Claimant in person or by certified mail to the County commissioner or corporate authorities of the local government. This notice should then be forwarded to the proper LGIT representative.

- Preserves common law and statutory defenses and immunities available to a local government and/or employee.

Exceptions:

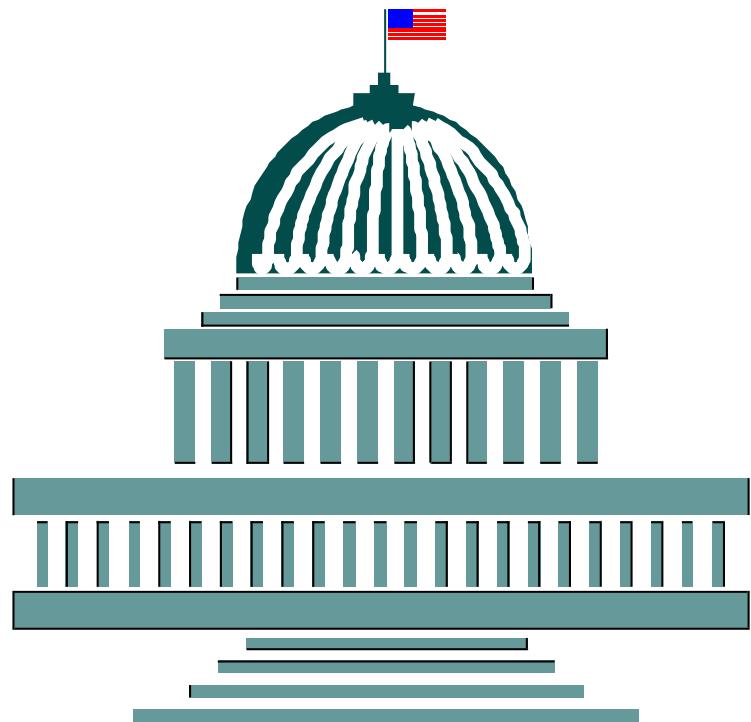
- The Local Government is not required to pay for any damages for malicious actions of the employee.
- The Employee must cooperate with the defense of the claim or be held responsible for any judgment.

- The Local Government is not required to pay for punitive damages (However, the Local Government has the discretion to pay for punitive damages).
- The Local Government may not indemnify a law enforcement officer for a judgment for punitive damages if the officer has been convicted for a related offense under Article 27 §731 (LEOBR).



## Section 3

# Governmental Immunity





## Section 3. Governmental Immunity

### 3.1 What is governmental immunity?

LGIT insures local governments and its officials and employees who benefit from immunities, which are not available to private individuals and corporations. The existence of immunities granted to local governments under common (judge-made) law and by statutory law insulate local governments and their officials and employees from liability that may have existed if they were acting as private citizens in a private capacity. Immunity simply means an absence of financial responsibility for tortious conduct and a protection from suit.

Governmental immunity is an offspring of sovereign immunity, which originated in English common-law and referred to the ancient doctrine that “The King Can do No Wrong.” This doctrine traveled with our ancestors from England and has become firmly entrenched in American common law. Sovereign Immunity grants to state governments a blanket immunity from tort liability. Therefore, a State may not be sued unless it waives this immunity.<sup>1</sup>

Governmental immunity is derived from the roots of sovereign immunity however; it is not as far reaching as the immunity enjoyed by state governments. Municipalities and county governments in Maryland are immune from tort liability when the acts or omissions giving rise to the tort occur during the exercise of a governmental function. Local governments are not immune when they perform a proprietary function.

### 3.2 What is the purpose of governmental immunity?

- Encourage people to work for government
- Encourage government officials and employees to make decisions

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<sup>1</sup> The State of Maryland has waived its sovereign immunity for tort claims up to a limit of liability of \$200,000 per claimant from a single occurrence; §12-104 *State Gov. Art. Md. Code, Ann.*

- Encourage programs and facilities, which promote public welfare
- Avoid bankruptcy

Local governments provide unique and important services, which benefit the public welfare. Public services include but are certainly not limited to law enforcement and emergency services; parks and recreational programs; utilities; streets and sidewalks; aging and youth programs. They enact ordinances to protect the public and regulate the growth of their individual jurisdictions. All of these functions benefit the citizens of their individual jurisdictions and, to some extent, others. The fundamental purpose of the doctrine of governmental immunity is to promote the welfare of the public unfettered by a fear of liability. If government officials and employees face unrestricted liability for every decision and activity they perform, governmental operations would be paralyzed into inaction.

3.3 What is a governmental function as opposed to a proprietary function?

3.3.1 Governmental function – absolute immunity

- Sanctioned by legislative authority
- Solely for the benefit of public welfare
- No profit or benefit to the local government
- Includes the exercise of discretion

Governmental functions are activities, which promote and improve the public welfare and do not provide a monetary profit to the government. These activities enjoy absolute immunity from suit. Some long established governmental functions are as follows:

- Recreation and park facilities and programs
- Building permit operations
- Building inspection operations
- Enactment of legislation

- Collecting and disposing of garbage
- Police and emergency services
- Planning and design of streets, sidewalks and sewers
- Operation buildings associated with governmental functions

### 3.3.2 Proprietary function – no immunity

- Mimic profit making endeavors
- Mimic private sector organizations

Proprietary functions generally appear to mimic profit-making private sector activities. These functions do not enjoy immunity from suit. Some traditional proprietary functions include:

- Maintenance of streets, sidewalks, bridges & sewers
- Operation of a motor vehicle
- Operation of utility companies

Although the maintenance of streets and sidewalks is not a profit making function and does not necessarily mimic the private sector, this is an important and long-standing exception to the governmental immunity doctrine. In England the King used the highway as a method to promote business and commerce. Therefore, when it came to matters associated with road travel “the King could do wrong.” Consequently, the maintenance of streets, sidewalks, bridges and sewers is considered by common-law a proprietary function<sup>2</sup> adopted from English common law.

### 3.4 Are there any other exceptions?

Following are some additional exceptions to the governmental immunity doctrine:

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<sup>2</sup> The planning of streets, sidewalks and sewers is, however, a governmental function. Therefore, the failure to provide a street, sidewalk, bridge or sewer, and any resultant injury, is immunized from suit. However, actions associated with the maintenance of existing streets, sidewalks, bridges and sewers are not immune from suit.

- Contracts
- Nuisance
- Violations of state or federal constitutional rights

Maryland statutory law specifically provides that there is no immunity for breach of contract actions regardless of the subject matter of the contract.<sup>3</sup> Further, a nuisance against a local government is not immune from suit. A nuisance is anything that causes injury, damage, inconvenience, annoyance or discomfort to a person in the legitimate enjoyment of his property or which renders his property uncomfortable to him. If a local government, in attempting to perform a governmental function, commits a nuisance to an adjacent landowner, the landowner may assert an action for damages. For instance, if a local government operates a landfill and contaminates the ground water of an adjacent landowner, the local government is not immune from suit.

Claimed violations of state or federal constitutional rights or federal statutes that provide for a remedy are not immunized from suit.

### 3.5 Are governmental employees also immune?

Employees of a government are not immune from liability for negligent acts or omissions, which cause injury. However, a public official is immune from liability when performing discretionary acts within the scope of employment. Therefore, if a Plaintiff can attribute an act or omission to a particular governmental employee, which causes injury or harm to a Plaintiff, the employee may be determined negligent.

However, Public Officials do enjoy immunity in Maryland. In both Maryland common-law and statutory law Public officials are immune from civil liability for all acts committed while in a discretionary capacity, if those acts are done without malice and

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<sup>3</sup> Md. Code, Ann. Art. 23A §1A.

within the scope of employment.<sup>4</sup> This immunity does not apply to the operation of a motor vehicle.

### 3.5.1 Public official immunity

- Applies to discretionary acts but not ministerial acts
- Actions are in good faith without malice or corruption
- Actions are within the scope of employment

Ministerial functions are absolute, certain and imperative tasks required of a public official. A public official may be held liable in damages to anyone especially injured either by omitting to perform the task, or by performing it negligently. On the other hand, discretionary actions are actions that involve the exertion of the public official's judgment. A Public official is not liable for the consequences of the lawful exercise of discretion absent malice or corruption. Of course, the actions must be within the scope of the Public Official's authority.

### 3.5.2 Who is a public official?

- Takes an oath
- Issued a commission
- Position of dignity and importance
- Elected or appointed
- Exercises some executive power of the sovereign

### 3.5.3 Who are public officials?

- Law enforcement officers / Sheriff and Deputy Sheriffs
- Elected officials
  - County Commissioners
  - City Council Members
- Appointed officials who exercise some authority of elected officials

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<sup>4</sup> §5-511 *Courts & Jud. Proc. Art. Md. Code Ann.*; *James v. Prince George's County*, 288 Md. 315 (1980)

- Firefighters
- Prison/detention center guards

This overview of governmental immunity is not an inclusive discussion on governmental immunity or the application of governmental immunity under Maryland law. Immunity is a complicated issue, which often requires extensive litigation and appeal to resolve. This information is meant to demonstrate to our Members the factors we consider when analyzing claims. Additional immunity issues are addressed in the succeeding sections.

# Section 4

## Automobile Claims





## Section 4. Automobile Claims

Automobile Accident Claims fall in two categories: Physical damage to our Member's vehicle and liability to a third party for property damage or bodily injury.

### 4.1 Automobile physical damage claims

#### 4.1.1 What is an automobile physical damage claim?

An Automobile Physical Damage claim is a first party claim only made by a Member for damages sustained to a member owned vehicle due to a covered incident. There are two categories of Physical Damage coverage:

- Comprehensive damage
  - Vandalism
  - Glass breakage
  - Hitting a bird or animal
  - Falling objects or missiles

Comprehensive damage occurs when a vehicle incurs damage due to an incident where there is no negligence on the part of the Member or employee. Examples of comprehensive damage are vandalism to a vehicle or striking a deer.

- Collision damage
  - Member vehicle collision with another object
  - Member vehicle overturn

Collision damage occurs to a Member vehicle due to negligence or fault of the driver of the Member vehicle. Examples of collision damage are a Member driver backing into a pole or hitting an icy patch and striking a tree.

#### 4.1.2 How is the claim reported?

- Notify LGIT of the claim
  - Complete the LGIT vehicle accident report
  - Forward the form to your claims analyst including:
    - Complete description of accident
    - Witness information
      - Name and telephone numbers of driver/ contact
      - Complete information of other vehicle/driver
      - Insurance information of other vehicle
  - Forward occurrence reports and documentation
    - Police report
    - Driver and/or supervisor report
    - Pictures of accident scene (if available)
    - Pictures of physical damage (if available)

Fax or forward the LGIT Vehicle Accident Report the Claims Analyst responsible for your jurisdiction. The Claim form should contain all pertinent information regarding the accident including a description of the event. Attach to the report any and all reports prepared in connection with the occurrence including police report, driver report and supervisor report. Report information will assist us in properly determining if the accident is a Comprehensive Damage claim or a Collision damage claim.

It is important to obtain all information on any vehicle and driver who may have caused the collision damage to our Member vehicle. This information should include the name, address, and policy number of any insurer of the negligent driver. This will assist the Claim Analyst in pursuing a subrogation claim against the negligent driver.

#### 4.1.3 How will the claim be adjusted?

- Obtain damage estimates
  - Damage under \$2,500 — Two (2) estimates required
  - Damage over \$2,500 — LGIT will assign appraiser
- Repair cost or ACV of vehicle – deductible paid by LGIT

If damage to the vehicle is approximately \$2,500 or less, the Member should obtain two estimates of the damage from body shops of their choice and forward the estimates to the LGIT representative. If the vehicle damage exceeds \$2,500 the Claims Analyst will retain the services of an independent appraiser who will estimate the damage repair cost of the vehicle and compare it to the actual cash value of the vehicle. LGIT will pay the lower of the cost of repairs of the vehicle or the ACV (actual cash value) less the applicable comprehensive damage or collision damage deductible.

If the vehicle is repairable, the independent appraiser will coordinate any repair estimate with the body shop chosen by the Member. For instance, if supplemental damage is discovered once repairs begin, the independent appraiser will verify the additional repair and cost with the body shop and notify LGIT. If LGIT has already issued payment on the damage repair, it will issue a supplemental damage payment to the body shop or the Member.

#### 4.1.4 What is subrogation?

- Automobile physical damage caused by another party
- Reimbursement for damages and member deductible

If LGIT pays collision damage and determines that the accident is the fault of another party, LGIT will subrogate against the “at fault” party for full reimbursement of the damage, including our Member’s deductible. If we have insurance information for the negligent party, the LGIT representative may be successful in having the damages to our Member’s vehicle paid directly by the negligent driver’s insurer.

Otherwise, we will make payment to our Member and request reimbursement by the negligent party's insurer. If the negligent party's insurer denies our subrogation demand, or, we have no information regarding the insurer, we will pursue a subrogation claim in Court.

#### 4.2 Automobile liability claim

##### 4.2.1 What is an automobile liability claim?

An automobile liability claim occurs when a third party alleges damage to property or bodily injury caused by a Member vehicle.

Because an Automobile Liability claim involves damage to another party, there are no deductible payments made by our Member. Therefore, if liability is determined by the LGIT Claims Analyst the full amount of property and/or bodily injury damages will be paid by LGIT.

The Local Government Tort Claims Act has establish a limit of liability on liability actions against a local government it employee. That limit of liability applies to motor vehicle claims.

##### 4.2.2 How is the claim reported?

- Notify LGIT of the claim
  - Complete the LGIT vehicle accident report
  - Forward any notice of claim received from claimant<sup>5</sup>
  - Forward the form to your claims analyst including:
    - Date, time and location of accident
    - Complete description of accident occurrence
    - Diagram of accident scene

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<sup>5</sup> A local government must be notified of any and all claims, including vehicle accidents, pursuant to the requirements of the Local Government Tort Claims Act (See Ex. A).

- Name, address & telephone number of driver
- Name and phone number of contact person
- Complete information of other vehicle/driver
- Insurance information of other vehicle
- Information on injured parties
  - Name and address
  - Work and home telephone number
  - Social security number
- Police report number
- Information on citations (tickets) issued by police
- Witness information
- Forward occurrence reports and documentation
- Police report
- Internal reports and department memoranda
- EMS reports
- Written statements
- Pictures of accident scene (if available)
- Pictures of physical damage (if available)

It is imperative to report liability accidents as quickly as possible. Therefore, it is preferable that you fax a Vehicle Accident Claim Form to the Claims Analyst responsible for your jurisdiction. Please do not refer a claimant to LGIT without first reporting the claim. The Claims Analyst cannot communicate with a Claimant without official documentation from our Member that, indeed, an incident has occurred. Additional documentation and information may follow after the first reporting. Quick reporting of liability claims will allow the Claims Analyst to make an assessment of fault and assist with the prompt repair of damaged vehicles.

#### 4.2.3 How will liability be determined?

It is not always possible for the Claims Analyst to make a clear determination of liability from the preliminary documentation provided the Claims Analyst by the Member. Therefore, to make a proper determination of liability, the Claims Analyst will conduct a complete and thorough investigation of the occurrence as follows:

- Obtain Recorded Statements
  - Employee / driver
  - Other driver
  - Witnesses

The Claims Analyst will need to obtain a recorded statement from the driver of the Member vehicle. *Therefore, it is important to make that employee/driver available to assist with this process.* The statement will be recorded in order to preserve a record of the occurrence in anticipation of possible litigation.

The LGIT Analyst will further attempt to take recorded statements from the other driver as well as any witnesses to the occurrence. In addition, the Analyst will:

- Analyze testimony, reports and physical evidence
- Possible site visit
- Interview investigating police officer
- Analyze statutory and common law

If the Claims Analyst determines that the Member driver was negligent in the operation of the Member vehicle LGIT will pay for all property damage to the other vehicle as well as bodily injury to other persons injured as a result of the occurrence. If the Claims Analyst determines that the Member driver was not negligent or that the other driver was also (contributorily) negligent in the accident, LGIT will deny the third-party claim and defend that matter in court, if necessary.

#### 4.2.4 How will bodily injury and personal injury damages be determined?

Bodily injury claims are handled separate and apart from a determination of liability for property damage. For example, the Claims Analyst may determine that a Member driver was at fault in an accident and pay property damage to the owner of the other vehicle.

However, during an investigation, the Claims Analyst may determine that the person claiming bodily injury as a result of the vehicle accident was actually injured in another occurrence. This information may result in a denial of liability for the bodily injury claim or, substantially decrease the value of the claim.

The Claims Analyst will review documentation regarding the injury:

- Bodily Injury Documentation
  - EMS reports
  - Emergency room reports
  - Statements made by injured party following occurrence
  - Physician medical reports
  - Physical therapy / chiropractic reports
  - Index bureau reports
  - Lost wage statements

Documentation regarding a claimant's injuries may be provided directly by a claimant or, as often is the case, by an attorney representing the claimant. The Claims Analyst will carefully analyze the initial reports regarding the injury to determine if the claimed injuries alleged in physician reports are consistent with the original complaints made in an emergency room.

Another excellent tool the Claims Analyst will use to ascertain prior or pre-existing injuries or claims are to "Index" the claimant with "The Index System." The Index System is a cooperative data system which insurance companies use to report claims made by individuals. The Member can assist with this process by obtaining the address and social security number of the Claimant at the time of the incident. This will allow us to "Index" the Claimant even if the Claimant fails to cooperate with our requests for information.

While liability may be the fault of the Member or employee, the Claims Analyst investigation may cause the Claims Analyst to dispute

the nature and extent of a claim or dispute that the injuries were, in fact, the proximate result of the vehicle accident.

If a bodily injury claim is denied, LGIT will forward a denial letter to the Claimant or the Claimant's representative. LGIT will defend the matter in Court if necessary.

# Section 5

## General Liability





## Section 5. General Liability

### 5.1 What is a general liability claim?

General Liability claims occur when a third party alleges damage to property or bodily injury caused by the negligent act or omission of a Member or employee of a Member. The basis of General Liability is an assertion of negligence.

General Liability claims which arise against local governments include the following types of incidents:

- Premises liability – slip, trip and fall accidents
- Defective road maintenance
- Falling - flying objects
- Miss-Utility
- Storm water, water, sewer back up

### 5.2 What is negligence?

Negligence is the failure to exercise a degree of care that circumstances reasonably require. The elements of negligence are:

- A legal duty owed to the claimant
- A failure to perform the duty owed to the claimant
- Damage occurs to the claimant
- A causal connection between the failure to perform a duty and the injury alleged by the claimant

Negligent conduct may occur by an action or a failure to take an action. For instance, a person cutting grass along a roadway who throws up a stone which damages a vehicle using the roadway is guilty of a positive act of negligence. An example of a negligent inaction is when a lifeguard fails to respond to a swimmer's call for help.

### 5.2.1 What is a duty of care?

The Degree of care that one must show to another depends upon the facts and circumstances of each case and the function which is being performed. For instance, a doctor or lawyer cannot exercise just ordinary care toward a patient or client, but is required to exercise the degree of care that persons in those professions ordinarily are required to exercise. The degree of care also varies with the circumstances. For instance, a railroad owes a different degree of care to a passenger than to a trespasser. A trespasser on railroad property is owed only the duty of not being willfully or wantonly injured by the railroad.

The standard for the duty of care is established in three ways:

1. Contractual
2. Statutory
3. Common-law

### 5.2.2 Notice

Notice is a critical factor in determining liability in a negligence claim. Notice of a defective condition causes a duty to correct the problem in order to avoid damage or injury to another person. There are two types of notice established by common-law.

1. Actual Notice
2. Implied or Constructive Notice

Actual notice is a direct and positive knowledge of a situation or condition that may cause damage or injury to another. Implied or constructive notice is created when the facts indicate that a person should have known of a condition that may cause damage or injury to another. For instance, a building maintenance person may be required by policy to regularly inspect the building walk areas for defects and cracks that may cause injury to persons using the building. Although he may not have actual notice of a defect because he did not complete his inspections in a timely fashion, he may have implied notice of a defect because he should have known of the condition.

A person or entity is not negligent unless they have actual or implied notice of a condition which causes damage or injury to another person.

5.3 Are there any defenses to negligent acts or omissions?

5.3.1 Contributory negligence

Contributory negligence occurs when the injured Claimant acts or fails to act in a manner to avoid a danger, which was known or should have been known to the Claimant. Even if a person is negligent and that negligence is the major cause of a Claimant's injuries, the Claimant may not recover if he or she contributed to the incident.

Maryland is one of only four states that still has the defense of contributory negligence. Most states have adopted a Comparative Negligence standard, which means that negligence is attributed to the person who is the major cause of the injury.

Generally, the issue of whether the Claimant is contributorily negligent is for the jury to decide. Although contributory negligence is an excellent defense tool, we note that in a practical world juries sometimes weigh negligence in an effort to reach a fair and equitable decision.

5.3.2 Last clear chance doctrine

The last clear chance doctrine was adopted in common-law to lessen the effects of the contributory negligence rule. The courts have ruled that the mere negligence or want of care on the part of a Claimant does not bar a recovery by the Claimant if the person who caused the injury had a chance to avoid or stop the action, which caused the injury.

### 5.3.3 Assumption of risk

A Claimant is said to have assumed the risk of any injury if the Claimant had full knowledge and understanding of an obvious danger but, nonetheless, exposes himself or herself to the danger and resultant injury. Like the defense of contributory negligence, an assumption of risk defense must be proven by the defendant.

### 5.4 How is the claim reported?

- Notify LGIT of the claim
  - Complete the LGIT general liability report
  - Mail or fax the report to your claims analyst
  - Forward any notice of claim received from claimant

Our Members will most often be notified of a General Liability Claim by letter or telephone call from a Claimant. It is important to obtain as much preliminary information as possible from the Claimant and forward to the Claims Analyst.

Following are sections which address the types of General Liability claims most often presented against our Members. Each section will describe the elements of that claim type and discuss the investigative information we will require before a determination of liability can be made.

### 5.5 Premises liability claim

Premises Liability claims are commonly referred to as slip and fall or trip and fall claims. A person alleging a Premises Liability claim normally alleges bodily injury. These claims are almost always based on the complaint that a defect in or on the Member's property caused injury to the Claimant. Generally, claims arise from falls on sidewalks, streets, and buildings owned and operated by the Member. A common complaint is that a pedestrian trips on a raised portion of a sidewalk, falls and sustains bodily injury.

### 5.5.1 What is our duty?

Local governments are responsible for the maintenance of streets, sidewalks and sewers and any injury resulting from improper municipal maintenance of these facilities will give rise to liability.<sup>6</sup> Under common law it is clear that local governments have a duty to pedestrians to maintain sidewalks and walkways in a reasonably safe condition.<sup>7</sup>

Because we have a common-law duty to maintain streets, and sidewalks in a reasonably safe manner claims arising from such incidents must be investigated carefully.

### 5.5.2 What investigative information will be needed?

- Description of incident

- Location and complete description of occurrence
- Date and time of occurrence
- Type of weather at time of incident  
(snow, rain, dark)
- Claimant information
  - Name, address, telephone number
  - Occupation
  - Social Security number
- Description of injuries and medical treatment received
- Note claimant's condition, if possible
- Witness information

- Description of defect

- Determine exact location of occurrence
- Measure defect and document location
- Take pictures with a ruler to show defect size

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<sup>6</sup> Herilla v. City of Baltimore, 37 Md. App. 481 (1977).

<sup>7</sup> Weisner v. Mayor and Council of Rockville, 245 Md. 225 (1967).

- Make diagrams of area
- State cause of defect (erosion; contractor's work)
- Take statement from claimant and witnesses
- Confirm ownership and maintenance of property
  - Does the member own property in fee simple
  - Is another party using or leasing the property
  - Has another party agreed to maintain property
  - Identify any contractors working on the property
  - Did contract contain an indemnification agreement
  - Identify any certificate of insurance in effect

It will be necessary for the Member to verify for the Claims Analyst that the location of the alleged defect is actually owned and maintained by the Member. At this juncture, the Member should provide any and all documentation relating to any other party who might have responsibility for the defect. For instance, if someone trips and falls in a hole in a roadway which is being paved by a contractor hired by the Member the contractor is likely responsible for any claimed injuries. Any contract or work bid should specifically contain an indemnification agreement whereby the contractor agrees to protect the Member from liability associated with the work. The Member should obtain from any contractor a Certificate of Insurance naming the Member as an additional insured under any policy of insurance, which the contractor has.

If the premise is determined to be owned and maintained by the Member, the Claims Analyst will require the following documentation to make a determination of liability.

- Member knowledge of defect
  - Did member know of defect prior to occurrence
  - Records of citizen complaints regarding defect
  - Maintenance records of premises

- Inspection records of premises
  - Knowledge of previous incidents
- Immunities and Defenses

There are some common-law defenses that may be raised regarding premise liability claims. For instance, the courts have determined that a municipality is not liable for small (1 ½ inch deep) depressions in a sidewalk because to hold local governments responsible for every difference in uneven surface would impose a great burden on taxpayers.<sup>8</sup> This is an often-used defense and explains why we need to obtain a measurement and picture of defective conditions in sidewalks.

Maryland common law has also held that a local government is not responsible for premise liability claims arising from the operation of a courthouse.<sup>9</sup> We believe that this doctrine also applies to other governmental public buildings including but not limited to police stations, aging centers, schools. It should be noted, however, that if an individual can associate negligence to a particular governmental employee, that employee is not immune from liability.

## 5.6 Defective road maintenance claims

Another common claim against local governments are road maintenance claims. These include the following allegations:

- Potholes which cause damage to a vehicle
- Improper or inadequate signage - traffic control devices
- Failure to provide traffic control devices - signage
- Improper visibility
- Roadway construction or maintenance causing damage

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<sup>8</sup> Martin v. Rockville, 258 Md. 177 (1970).

<sup>9</sup> Love v. Harford County, 173 Md. 429 (1938).

## 5.6.1 What Investigative information will be needed?

- Description of incident
  - Location and complete description of occurrence
  - Date and time of occurrence
  - Type of weather at time of incident  
(snow, rain, dark)
  - Claimant information
    - Name, Address, telephone number
    - Occupation
    - Social Security number
  - Description of injuries and medical treatment received
  - Note claimant's condition if possible
  - Witness information
- Description of roadway defect
  - Determine exact location of defect
  - Take pictures
  - Make diagrams of area
  - State cause of defect (contractor's work, weather)
  - Take statement from claimant and witnesses
- Confirm ownership and maintenance of roadway
  - Does the member own and maintain the roadway
  - Does the roadway intersect with a state highway
  - Does the roadway intersect with another entity roadway
  - Identify who is responsible for traffic control devices
  - Identify any contractors working on the roadway

- Did the contract contain an indemnification agreement
- Identify any certificate of insurance in effect

It is important to verify for the Analyst if another entity is responsible for the maintenance of the roadway or the traffic control devices alleged as a cause of the incident. For instance, when a local roadway intersects with a State Highway, it is the responsibility of the State to place and maintain all Traffic control devices at the intersection, including those facing the local government roadway.

#### 5.6.2 Member knowledge of defect

- Did member know of the defect prior to occurrence
- Records of citizen complaints regarding defect
- Maintenance records of roadway
- Inspection records of roadway
- Knowledge of previous accidents at the location

#### 5.6.3 Immunities and defenses

The planning and decision making process of whether to create a roadway is immunized from liability. However, the law is clear that the maintenance of streets is a proprietary functions for which a local government is not immune. The Courts have also made it clear that the placing of traffic control devices is not immunized from liability.<sup>10</sup>

#### 5.7 Falling object claims

Falling Object Claims are most often allegations of damage to property or persons caused by falling tree limbs. These claims are not limited to tree limbs, however, and may include signs posted or traffic devices installed by a local government.

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<sup>10</sup> Montgomery County v. Voorhees, 86 Md. App. 294 (1990).

### 5.7.1 What Investigative Information Will Be Needed?

- Description of incident
  - Location and complete description of occurrence
  - Date and time of occurrence
  - Type of weather at time of incident (snow, rain, dark)
  - Claimant information
    - Name, address, telephone number
    - Occupation
    - Social Security number
  - Description of injuries and medical treatment received
  - Note claimant's condition if possible
  - Witness information

### 5.7.2 Confirm ownership of object and cause of event

- Does the Member own the object
- Did the member install or maintain the object
- What caused the object to fall
- Was the object dislodged by a force of nature (storm)

### 5.7.3 Was a third party involved in the event?

- Did a random vehicle strike the object causing it to fall
- Was the utility company or roadside crew responsible for the occurrence?

#### 5.7.4 Member knowledge of hazard

- Did the member know the object might fall
- Records of citizen complaints regarding defect
- Tree maintenance records
- Inspection records of roadway signage

If it is determined that a third party may have caused the object to fall, the Member may be able to avoid liability despite ownership of the object. If a contracted crew hired by the Member caused the object to fall, the Member may be liable but be able to pursue a subrogation claim against the contractor.

#### 5.7.5 Immunities and defenses

Maryland law has held that a landowner is not liable for damage to the property of an adjoining landowner caused by falling limbs and debris from the landowner's property. This premise does not apply to falling limbs onto roadways because a local government is responsible for keeping roadways in a reasonably safe manner.

### 5.8 Sewer and storm water back-up claims

Back-up claims often create a need for immediate attention by a Claims Analyst. When the property of a citizen is damaged by storm water or sewer back up, a quick resolution is warranted. Therefore, the Member will need to quickly provide investigative information to the Analyst so that a determination of liability may be made promptly.

#### 5.8.1 What investigative information will be needed?

- Description of incident
  - Location and complete description of occurrence
  - Date and time of occurrence

- Claimant information
  - Name, address, telephone number
  - Occupation
  - Social security number
- Description of property damage
- Confirm maintenance responsibility and event cause
  - Does the member own and maintain the storm drain or sewer line
  - What caused the sewer back-up
    - Clogged line
    - Severe storm event
    - Defect in lateral to property owner
- Member knowledge of hazard
  - Drain or sewer line
  - Records of citizen complaints regarding problem
  - Maintenance records for storm drain or sewer line
  - Inspection records of lines

Often a Member does not know of a problem with a storm drain or sewer line until the property of a citizen is damaged. Especially in sewer damage claims it is important to quickly determine liability for the incident so that the property can be promptly cleaned up. If the Member has no prior knowledge of a problem within a sewer or storm water line, the Member may still be liable if it failed to adequately inspect and maintain the lines.

## 5.9 Miss Utility Claims

Another frequent Claim is the “Miss Utility” claim. These claims are frequent visitors to the LGIT Claims Department and occur when a local government public works department strikes a utility line such as BG&E or Bell Atlantic during an excavation project.

The “Miss Utility” law<sup>11</sup> was enacted to protect underground utilities of public service companies from damage due to increasing excavation projects. The law requires the following procedure prior to beginning excavation work:

1. Call “Miss Utility” locate service at least 48 hours prior to excavation.

Excavation means:

- Grading
- Trenching
- Digging
- Ditching
- Drilling
- Augering
- Tunneling
- Scraping

2. Advise locate service of location of intended excavation
3. Keep record of date, time and confirmation number of the “Miss Utility” call
4. If the proposed excavation is within 18 inches of the locator mark, the excavation crew must first “test pit” (hand dig) the area to locate the utility line prior to using any heavy equipment. The excavation crew should use due care when hand digging the area.
5. A repeat “Miss Utility” call is required if the dig does not begin within 10 days of the original call.

If, despite these precautions, a Member crew strikes a utility line it is important to document the event. The “Miss Utility Law is not a strict liability law and, therefore, there is an opportunity to refute a Claim by a Utility Company for damages caused to the lines if we are able to

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<sup>11</sup> §12-101, et. seq. *Public Utility Companies, Md. Code, Ann.* (See Ex. B)

prove that the Utility Company or the locate service was contributorily negligent in the event.

#### 5.9.1 What investigative information will be needed?

- Description of incident
  - Location and complete description of occurrence
  - Date and time of occurrence
  - Name of utility company
  - Copy of “Miss Utility” locate ticket
  - Names of work crew personnel at the site
  - Complete report prepared by crew supervisor documenting the event.
  - Photographs taken of work scene showing
    - Damaged utility line
    - Area of “Miss Utility” marking
    - Distance between the marking and the excavation site and utility line strike
    - Depth of the utility measured with a ruler.

It is extremely important for our Member to document the information as noted above so that the Claims Analyst can make a detailed investigation of the event. The burden to prove that the Utility Company was responsible for the event is ours. Therefore, it is essential to preserve this evidence at the time of the strike.

#### 5.10 How will the general liability claim be finalized?

After completing a full investigation based on the documentation provided for every type of claim and analyzing common-law the Claims Analyst will make a determination of liability regarding the occurrence. If the Claims Analyst determines probable liability on the part of our Member, the Analyst will negotiate a settlement of any damages with the Claimant or the Claimant’s representative.

If, however, the Analyst determines there is no liability on the part of the Member, a denial letter will be sent to the Claimant and Claimant's representative. LGIT will defend the matter in Court if necessary. The Claims Analyst does have the option to make a no-fault (Med Pay) payment to a Claimant alleging bodily injury in order to reimburse the Claimant for medical bills up to \$5,000. Prior to a Med-Pay the Claims Adjuster will require the Claimant to execute a full and final release of all claims against our Member.



## Section 6

# Police Liability Claims





## Section 6. Police Liability Claims

### 6.1 What is a police liability claim?

Police Liability claims are allegations against local governments and/or their police or detention center officers arising from the performance of law enforcement or detention activities for the municipality or county government. LGIT covers police departments, detention centers, and county sheriff departments.<sup>12</sup> Police claims generally include the following types of allegations:

#### 6.1.1 Federal civil rights claims

42 U.S.C. §1983 was enacted as part of the Civil Rights Act of 1871 and is the basis for claims brought for the violation of rights granted by the United States Constitution and some federal laws. The statute reads, in part, as follows:

Every person who under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the derivation of any rights, privileges or immunities secured by the constitution and the laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.

This statute provides a mechanism to enforce rights guaranteed by the constitution. Claims under this statute against law enforcement agencies include the following:

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<sup>12</sup> Under Maryland law Sheriffs and Deputy Sheriffs are officials or employees of the state of Maryland rather than the county where their functions are performed. *Rucker, et al. v. Harford County, Maryland, et al.*, 316 Md. 275 (1989); *State Government Article §12-101(6)*. However, a County may be financially responsible for settlements or judgments paid on behalf of a Sheriff or deputy sheriff in connection with any law enforcement activities other than courthouse security, service of process, or the transportation of inmates to and from court proceedings. *State Finance and Procurement Article §9-108; State Government Article 12-501*.

- Violation of free speech rights
- Illegal search and seizure - (4<sup>th</sup> Amendment)
- Illegal arrest - (4<sup>th</sup> Amendment)
- Excessive Use of Force - (4<sup>th</sup> Amendment)
- Failure to provide medical care to persons in custody
- Failure to provide due process - (14<sup>th</sup> Amendment)

#### 6.1.2 To whom does §1983 apply?

Local governments and governmental employees and officials are considered “persons” for the purposes of §1983 claims. Therefore, local government officials and employees as well as the local government itself are subject to potential liability under this statute. Generally speaking, an employee performing his or her duties pursuant to the authority of the local government is acting under color of law and may be liable in his or her individual capacity for any §1983 violations.

However, a local government may be held liable for §1983 violations only when the official or employee is acting pursuant to an official policy, custom, or practice of the government, or when the official’s action itself constitutes official policy or custom. Therefore, local government liability is limited only to actions for which the government is responsible. An official policy or custom can be established by the action or inaction of a local government’s legislative body or its officials. For instance, if a municipality adopts an unconstitutional ordinance, which results in a deprivation of federally protected rights, the municipality will certainly be subject to liability under §1983. A “custom” although not legislatively approved may be implied where there has been a continual failure by governmental officials to remedy known constitutional violations. For instance, if police administrators fail to remedy known violations by police officers who repeatedly use excessive force on arrestees.

Further, under Federal law supervisory liability can only be established where the supervisor had actual or constructive knowledge of unconstitutional behavior on the part of the subordinate.

- Supervisory Liability
- Supervisor had actual or constructive knowledge that the subordinate was engaged in conduct that posed an unreasonable risk of constitutional injury to a citizen;
- Supervisor's response was so inadequate as to show deliberate indifference or tacit authorization of the alleged practice;
- Close affirmative link between the supervisor's inaction and constitutional injury.

#### 6.1.3 What remedies are available to plaintiffs under §1983?

There are three types of remedies available to Plaintiffs under §1983: equitable and injunctive relief, money damages, and attorney fees. Money damages compensate the plaintiff for injuries caused by the deprivation of the federally protected rights. There is no limit of liability for damages in a §1983 action. They entitle the plaintiff to compensatory damages and punitive damages. Punitive damages are not applicable against local governments but may be awarded against an individual employee or official. Generally, compensatory damages are not awarded for constitutional violations unless there is some proof of an actual injury suffered by the Plaintiff. However, emotional injury may be considered an injury.

A prevailing plaintiff in a §1983 action is also entitled to recover attorney's fees from a defendant. Alternatively, a prevailing defendant usually is not awarded attorney fees unless it can be shown that the claim was frivolous and without merit. It is not unusual for a plaintiff's attorney's fees to exceed the awarded damages.

#### 6.1.4 Immunity

Section 1983 does not address the issue of governmental, public official, or individual immunity from liability. Therefore, the courts have looked to traditions in common-law to determine whether any immunity exists for a municipality or official. There are two types of immunity afforded to officials and individuals in a §1983 action: absolute immunity or qualified immunity. Law enforcement officers enjoy qualified official immunity.

Qualified immunity provides immunity from civil damages as long as the conduct of the officer does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity extends to officials, subordinates and non-elected officials who carry out discretionary rather than legislative, judicial, or prosecutorial functions. If a reasonable person would have or should have known that the actions of the official were contrary to law and that those actions deprived an individual of constitutional or federally protected rights, then the official is not entitled to qualified immunity.

For example, if a police officer arrests someone for screaming obscenities directed toward the officer, the officer would not be entitled to qualified immunity. However repugnant the actions of the arrestee, he may not be arrested for exercising a constitutionally protected right of free speech.

#### 6.1.5 Use of force claims

The most notable claims brought against police officers under 42 USC §1983 are “use of force” claims. These claims allege that a police officer exceeded the force necessary to accomplish the governmental purpose. These claims usually allege that the physical force needed to effect an arrest or subdue a person was not reasonable. The Federal Courts have determined that the standard of liability for a Fourth Amendment excessive force claim is whether the police officer’s

actions were objectively reasonable in the light of the facts and circumstances confronting the officer at the time of the occurrence.<sup>13</sup>

#### 6.1.6 Maryland declaration of rights claims

In addition to §1983 claims, a Plaintiff may bring an action against police officers and local governments alleging that rights guaranteed under Article 24 and Article 26 of the Maryland Declaration of Rights have been violated. These claims are analogous to §1983 claims.

Article 24 of the Maryland Declaration of Rights reads as follows:

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

Article 26 of the Maryland Declaration of Rights reads as follows:

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grieved [grievous] and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Both of these Articles actually pre-date similar Amendments contained in the Federal Constitution. Article 24 mimics the Fourteenth Amendment to the Federal Constitution and Article 26 mimics the Fourth Amendment to the Federal Constitution. The words “law of the land” contained in Article 24 were actually copied from the English Magna Charta and mean due process of law.

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<sup>13</sup> Graham v. Connor, 490 U.S. 386.

### 6.1.7 Maryland common law claims

In addition to Federal and State Constitutional claims, a police officer may face common-law tort claims under Maryland law. Common law claims frequently alleged against police officers include:

- Negligence
- Intentional Torts
  - False arrest
    - Outside scope of officer's authority
    - Warrantless arrest lacking probable cause
  - Malicious prosecution
  - Assault and battery
  - Intentional Infliction of Emotional Distress<sup>14</sup>

### 6.1.8 Maryland law immunity

Under Maryland law a police officer is considered a public official and is entitled to Qualified Public Official Immunity. That immunity is defined in Maryland common-law and has been re-stated in Maryland statutory law as follows:

An official of a municipal corporation while acting in a discretionary capacity, without malice, and within the scope of the official's employment or authority shall be immune as an official or individual from any civil liability for the performance of the action.

*§5-511 Courts & Jud. Proc., Md. Code Ann.*

Without doubt, the actions of police officers within the scope of their law enforcement function are discretionary acts. In the absence of any showing of malice, law enforcement officers are free from liability. Malice has been defined as the performance of an act without legal justification or excuse and with an evil or rancorous motive influenced by hate with an intent to deliberately and willfully injure another.

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<sup>14</sup> Maryland does not recognize a tort of negligent infliction of emotional distress as is sometimes alleged.

Public Official Immunity in Maryland is in evolution. It is clear that police officers are immune from liability for negligent actions arising in the performance of their duties. However, there is no common-law public official immunity for alleged intentional torts or violations of a plaintiff's constitutional rights. Recent court decisions have held that the statutory public official immunity codified at *§5-511 Cts. & Jud. Proc., Md. Code Ann.* does protect a police officer from liability for intentional and constitutional torts.

LGIT has been extremely successful in using these tools to defend police liability claims. But, it should be noted that because a plaintiff usually alleges that a police officer acts with malice, most lawsuits require, at the very least, a complicated and expensive discovery process prior to resolution. We have observed that more Maryland Judge's are inclined to allow a jury to decide whether the officer acted maliciously.

## 6.2 How is a police claim reported?

1. Forward Notice of Claim
2. Forward lawsuit within 24 hours

A local government will generally first receive notice of a Police Liability claim by receipt of a Notice of Claim from a Claimant or a representative of the Claimant (usually an attorney). This is the 180 day Notice required by the Local Government Tort Claims Act. Occasionally, the first notice of a Police Liability claim will be in the form of a lawsuit. Lawsuits must be forwarded to the LGIT Analyst responsible for your jurisdiction with 24 hours of receipt.

## 6.3 What documentation should be provided to LGIT?

- Offense/Incident Reports
  - Arrest report
  - Investigative reports (including witness statements)
- Court Documents
  - Application for Statement of Charges
  - Indictment
  - Application for search and seizure warrant
  - Supporting Affidavits
- Criminal Index
- Traffic Citations
- Daily Logs (including duty -radio logs, detention logs)
- Dispatch Tapes and Reports
- Booking Photographs (including booking area videos)
- Officer Complaint and Internal Investigation

Although few Police Liability claims are settled prior to litigation, it is important that the LGIT Analyst receive any documentation regarding the claim when notice is first received. This will not only preserve the documentation for a lawsuit which may be filed three years from the incident, but assist the Analyst in completing an investigation of the incident in anticipation of potential litigation.

## 6.4 What next occurs?

- Investigation
  - Recorded statement from officer if necessary
  - Recorded statement from Claimant
  - Recorded statement of witnesses unless
  - Transcripts of underlying criminal actions
  - Legal research regarding police liability issues

The Analyst will conduct an independent investigation of the claim against the law enforcement agency and/or police officer. This will enable the Analyst to evaluate any loss exposure in a claim and establish financial reserves, if necessary. Occasionally, this information is used to obtain a quick and inexpensive settlement if, it is determined there is some risk exposure.



# Section 7

## Public Official Liability Claims





## Section 7. Public Official Liability Claims

### 7.1 What is a public official liability claim?

Public Official Liability claims are allegations against local governments and/or their elected and appointed officials arising from the performance of legislative, executive and policymaking functions for the municipality or county government. Public Official Liability claims include the administration of Employee Benefits Programs.

#### 7.1.1 Federal civil rights claims

42 U.S.C. §1983 was enacted as part of the Civil Rights Act of 1871 and is the basis for claims brought for the violation of rights granted by the United States Constitution and some federal laws. The statute reads, in part, as follows:

Every person who under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the derivation of any rights, privileges or immunities secured by the constitution and the laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress

This statute provides a mechanism to enforce rights guaranteed by the constitution. Claims under this statute against local governments and officials include but certainly are not limited to the following:

- Violation of free speech rights
- Land use and regulation claims (“Takings” claims)
- Failure to properly train police officers
- Failure to provide medical care to persons in custody

- Lack of due process (employee termination)
- Discrimination in employment
- Code Enforcement
- Constitutional challenge to legislative actions

#### 7.1.2 To Whom Does §1983 Apply?

Local governments and governmental employees and officials are considered “persons” for the purposes of §1983 claims. Therefore, local government officials and employees as well as the local government itself are subject to potential liability under this statute. Generally speaking, an employee performing his or her duties pursuant to the authority of the local government is acting under color of law and may be liable in his or her individual capacity for any §1983 violations.

However, a local government may be held liable for §1983 violations only when the official or employee is acting pursuant to an official policy, custom, or practice of the government, or when the official’s action itself constitutes official policy or custom. Therefore, local government liability is limited only to actions for which the government is responsible. An official policy or custom can be established by the action or inaction of a local government’s legislative body or its officials. For instance, if a municipality adopts an unconstitutional ordinance, which results in a deprivation of federally protected rights, the municipality will certainly be subject to liability under §1983.

Further, under Federal law supervisory liability can only be established where the supervisor had actual or constructive knowledge of unconstitutional behavior on the part of the subordinate.

#### 7.1.3 Supervisory liability

- Supervisor had actual or constructive knowledge that the subordinate was engaged in conduct that posed an unreasonable risk of constitutional injury to a citizen;

- Supervisor's response was so inadequate as to show deliberate indifference or tacit authorization of the alleged practice;
- Close affirmative link between the supervisor's inaction and constitutional injury.

#### 7.1.4 What remedies are available to plaintiffs under §1983.

There are three types of remedies available to Plaintiffs under §1983: equitable and injunctive relief, money damages, and attorney fees. Money damages compensate the plaintiff for injuries caused by the deprivation of the federally protected rights. There is no limit of liability for damages in a §1983 action. They entitle the plaintiff to compensatory damages and punitive damages. Punitive damages are not applicable against local governments but may be awarded against an individual employee or official. Generally, compensatory damages are not awarded for constitutional violations unless there is some proof of an actual injury suffered by the Plaintiff. However, emotional injury may be considered an injury.

A prevailing plaintiff in a §1983 action is also entitled to recover attorney's fees from a defendant. Alternatively, a prevailing defendant usually is not awarded attorney fees unless it can be shown that the claim was frivolous and without merit. It is not unusual for a plaintiff's attorney's fees to exceed the awarded damages.

#### 7.1.5 Immunity

Section 1983 does not address the issue of governmental, public official, or individual immunity from liability. Therefore, the courts have looked to traditions in common-law to determine whether any immunity exists for a municipality or official. There are two types of immunity afforded to officials and individuals in a §1983 action: absolute immunity or qualified immunity. Public officials of a local government enjoy qualified official immunity.

Qualified immunity provides immunity from civil damages as long as the conduct of the officer does not violate clearly established statutory

or constitutional rights of which a reasonable person would have known. Qualified immunity extends to officials, subordinates and non-elected officials who carry out discretionary rather than legislative, judicial, or prosecutorial functions. If a reasonable person would have or should have known that the actions of the official were contrary to law and that those actions deprived an individual of constitutional or federally protected rights, then the official is not entitled to qualified immunity.

Legislative immunity, on the other hand, is an absolute immunity afforded to Public Officials to make them immune from suit when they perform the legislative functions of their office. Therefore, while a Public Official is engaged in the functions of enacting legislation, they may not be sued. However, the local government may be liable for the consequences of that legislation if the legislation is unconstitutional.

#### 7.1.6 What are employment claims?

All actions which negatively impact an employee's work status are potential employment claims which may eventually be reviewed by a jury. Employment claims may arise from the alleged violation of a specific federal, state or local law applicable to the employment relationship. Or, an employment claim may arise from a common law (judge made) tort applicable to the employment relationship available under Maryland law.

Federal, state and local laws which prohibit disparate treatment in employment are known as Anti-Discrimination laws. These laws prohibit an employer from discriminating in all aspects of employment based upon the following:

- Race, color, national origin, religion and sex
- Age Discrimination in Employment  
(40 years or older)

- Americans with Disabilities (Physical and Mental)
- Discrimination in making or enforcing employment contracts
- Prohibits employer from depriving employees of Civil Rights

Furthermore, there are numerous statutes, which further regulate the employer and employee relationship. For instance, an employer may not require an employee to submit to a lie detector or similar test as a condition of employment,<sup>15</sup> and employers are required to pay male and female employees equally for the same work. Many federal discrimination laws have been re-enacted in both state and local statutes. See *Exhibit D* for a summary of federal, state and local laws which impact the employer – employee relationship.

#### 7.1.7 What are common law employment claims?

Common law claims are theories of liability, which may be brought against an employer under Maryland law. Some of these types of claims are as follows:

- Breach of Express or Implied Contract
- Civil Conspiracy
- Defamation
- False Imprisonment
- Fraud and Negligent Misrepresentation
- Intentional Infliction of Emotional Distress
- Invasion of Privacy
- Wrongful Discharge
- Negligent Hiring/ Supervision

These types of claims would be brought against an employer in Maryland State Court.

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<sup>15</sup> This does not apply to certain security services if procedural requirements are satisfied.

#### 7.1.8 What are EEOC and MCHR claims?

Both the Federal Government and the State of Maryland have established administrative agencies to review employee complaints of discrimination in the workplace. The Federal Agency, which reviews employment discrimination, is the Equal Employment Opportunity Commission (EEOC). The State of Maryland agency assigned to this function is the Maryland Commission on Human Relations (MCHR). An increasing number of dissatisfied employees and applicants are finding their way to these agencies requesting relief for perceived discrimination. The EEOC is responsible for receiving, investigating and reconciling claims of discrimination based on race, sex, religion, age or disability under Title VII, the Equal Pay Act, Age Discrimination in Employment Act and the Americans with Disabilities Act.

The Maryland Commission on Human Relations is charged with similar responsibilities to investigate violations of discriminatory practices as established by Article 49B of the Maryland Code Annotated.

#### 7.1.9 What is a charge of discrimination?

Both the EEOC and the MCHR have developed a form known as a Charge of Discrimination. This form allows an employee to briefly describe the type of alleged discrimination and request an agency review of the occurrence. For instance, an employee may allege that he was not promoted because he was black although he had more experience than the non-minority who received the promotion. Or, a job applicant may allege that he was not hired by the employer because he had a disability.

Once a Charge of Discrimination is filed, the agency will conduct an investigation of the charges. A response to the charges must be filed with the agency and additional records may be requested. Occasionally, the investigator may wish to interview particular employees or the employer. We have noticed this occurs more often with the MCHR.

If an investigator determines that there is no probable cause to believe discrimination occurred, a “no cause” finding will be made and the Complainant will be given a “right to sue” letter giving him or her 90 days to file suit in federal court. If an investigator makes a determination that cause exists to believe discrimination has occurred, a “probable cause” finding will be made and the investigator will attempt to resolve the matter. However, the EEOC does not have the authority to force an employer to reinstate a prevailing party or require back wages. If the matter cannot be resolved, the EEOC may file suit in federal court to enforce its determination.

Because a victory at this very important administrative stage may discourage a more expensive lawsuit, LGIT has determined to represent our members at the EEOC and MCHR administrative level. The LGIT Analyst will assign legal counsel to file a response to the Administrative Agency.

#### 7.1.10 Maryland declaration of rights claims

In addition to §1983 claims, a Plaintiff may bring an action against a local government or public officials alleging that rights guaranteed under Article 24 and Article 26 of the Maryland Declaration of Rights have been violated. These claims are analogous to §1983 claims.

Article 24 of the Maryland Declaration of Rights reads as follows:

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

Article 26 of the Maryland Declaration of Rights reads as follows:

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grieved [grievous] and oppressive; and all general warrants

to search suspected placed, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Both of these Articles actually pre-date similar Amendments contained in the Federal Constitution. Article 24 mimics the Fourteenth Amendment to the Federal Constitution and Article 26 mimics the Fourth Amendment to the Federal Constitution. The words “law of the land” contained in Article 24 were actually copied from the English Magna Charta and mean due process of law.

Constitutional claims against Public Officials arising from the Maryland Declaration of Rights include but are not limited to:

Land Use disputes (Takings)  
Legislative Challenge  
Due process claims from Code Enforcement

#### 7.1.11 Maryland common law claims

In addition to Federal and State Constitutional claims, local governments and public officials may face common-law tort claims under Maryland law. Common law claims frequently alleged against local governments and their public officials include:

- Negligence
- Intentional Torts
  - Defamation
  - Nuisance
  - Assault and Battery (i.e. sexual harassment)
  - Intentional Infliction of Emotional Distress<sup>16</sup>
  - Civil conspiracy
  - Breach of Express or Employed contract

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<sup>16</sup> Maryland does not recognize a tort of negligent infliction of emotional distress as is sometimes alleged.

### 7.1.12 Maryland Law Immunity

Under Maryland law public officials are entitled to Qualified Public Official Immunity. That immunity is defined in Maryland common-law and has been re-stated in Maryland statutory law as follows:

An official of a municipal corporation while acting in a discretionary capacity, without malice, and within the scope of the official's employment or authority shall be immune as an official or individual from any civil liability for the performance of the action.

*§5-111 Courts & Jud. Proc., Md. Code Ann.*

Absent some showing of malice, a Public Official is entitled to Qualified immunity while performing discretionary but not ministerial actions in the scope of his or her duties. Ministerial actions are those tasks that the Public Official is required to perform. Discretionary functions are those tasks that contain some judgement on the part of the official. Furthermore, while performing legislative functions, a Public Official enjoys absolute immunity from suit.

LGIT has been extremely successful in using these tools to defend Public Official claims. But, it should be noted that because a plaintiff usually alleges that a public officer acts with malice, most lawsuits require, at the very least, a complicated and expensive discovery process prior to resolution. In addition, we have noticed that Courts are allowing more lawsuits to be decided by a jury.

### 7.2 How is a public official claim reported?

- Forward Notice of Claim
- Fax EEOC or MCHR Charge of Discrimination
- Fax lawsuit within 24 hours

A local government will generally first receive notice of a Public Official Liability claim by receipt of an Administrative Charge of Discrimination or a Notice of Claim from a Claimant or a

representative of the Claimant (usually an attorney). Occasionally, the first notice of a Public Official Liability claim will be in the form of a lawsuit. Both Charges of Discrimination and Lawsuits must be forwarded to the LGIT Analyst responsible for your jurisdiction with 24 hours of receipt.

#### 7.3 What documentation should be provided to LGIT?

Because public official claims vary so greatly in subject matter and scope, it is necessary for the Claims Analyst to review allegations made in an EEOC or MCHR Charge of Discrimination or Notice of Claim before determining documentation which will be required to investigate and defend the matter.

An EEOC or MCHR Charge of Discrimination will require receipt of the employment file of the employee as follow:

- Personnel File of Complainant
- Disciplinary File of Complainant
- Personnel Regulations
- Grievance Procedures
- Employment Contract
- Municipal ordinances regulating employees
- Employee evaluations

Because of the unique allegations of each claim, the Claims Analyst will request investigative documents when the claim is received.

Although few Public Official Liability claims are settled prior to litigation, it is important that the LGIT Analyst receive any documentation regarding the claim when requested. This will not only preserve the documentation for a lawsuit which may be filed three years from the incident, but assist the Analyst in completing an investigation of the incident in anticipation of potential litigation.

#### 7.4 What next occurs?

The Analyst will conduct an independent investigation of the claim against the local government or official. This will enable the Analyst to evaluate any loss exposure in a claim and establish financial reserves, if necessary. Occasionally, this information is used to obtain a quick and inexpensive settlement if, it is determined there is some risk exposure.

An administrative Charge of Discrimination received from the EEOC or MCHR will be referred to defense counsel to file a response on behalf of the local government. Likewise, a lawsuit will be immediately assigned for defense.



# Section 8

## Equipment Breakdown Claims





## Section 8. Equipment Breakdown Claims

### 8.1 What is an equipment breakdown claim?

An equipment breakdown claim is a first party claim made by a member for the repair or replacement of a covered mechanical object that has been damaged as a result of a sudden and accidental occurrence. This coverage has commonly been referred to as Equipment Breakdown and Machinery coverage.

Breakdown claims include but are not limited to the following types of mechanical objects:

- Equipment Breakdowns & Pressure Vessels
  - Equipment Breakdowns
  - Air conditioning systems
  - Refrigeration systems
  - Air tanks
- Electrical Equipment
  - Electric steam generators
  - Communication systems
  - Electronic computer control systems
  - Transformers
- Turbines
- Mechanical Objects
  - Pumps
  - Compressors
  - Blowers, fans

However, the term objects does not include:

- Hot water (non-steam) Equipment Breakdowns
- Buried vessel or piping
- Furnace, oven, stoves or kilns
- Computers, unless used with an object for monitoring

The breakdown of the mechanical object must be caused by some sudden and accidental occurrence. Accidental occurrences are Equipment Breakdown explosions and mechanical or electrical breakdowns. Accidental occurrences include but are not limited to the following:

- Explosion
- Burning
- Cracking
- Collapse
- Implosion
- Brittle insulation
- Loss of lubrication
- Overspeed
- Mechanical stress
- Shock loads
- Overloads

However, an accidental occurrence does not include:

- Depletion, deterioration, corrosion, or erosion of material;
- Wear and tear;
- Leakage at any valve, fitting, or joint;
- Breakdown of any electronic computer;
- Breakdown of any structure supporting the object;
- Explosion of gas or fuel not consumed within a furnace;

By example, a covered equipment breakdown claim might occur when a Equipment Breakdown that provides hot water to a building suddenly breaks down due to an explosion from a faulty pressure relief valve.

## 8.2 What Is the Claim Procedure?

### 8.2.1 Report the Claim

Complete a Property/Equipment Breakdown form and immediately fax it to the Claims Analyst responsible for your jurisdiction. The member should include with this report any internal occurrence reports and preliminary damage estimates that have been prepared.

### 8.2.2 Coverage Determination

The LGIT representative will review the basis of the occurrence and make a preliminary determination regarding coverage. It is important to contact your representative at the first sign of an incident involving a breakdown so an assessment can be made in an expedient manner.

### 8.2.3 Claim Appraisal

Upon receipt of the Equipment Breakdown claim, LGIT will refer the claim to an independent appraiser. The appraiser will contact the member directly and work with them to determine the repair or replacement value of the damage. The appraiser will then notify LGIT of the value of the claim.

### 8.2.4 Adjustment of Claim

The Analyst will issue a check for the amount of the value of the claim less the member deductible.



# Section 9

## Property Claims





## Section 9. Property Claims

### 9.1 What is a property claim?

A property claim is a first party claim made by a member for physical damage and loss of use to covered buildings and tangible personal objects caused by a covered cause of loss.

The LGIT Scope of Coverage includes two forms of property coverage. Therefore, it is important to immediately contact your assigned Claims Analyst so you may be advised which type of coverage you have elected to purchase. The coverage forms are as follows:

#### 9.1.1 Basic form

The LGIT Scope of Coverage defines Basic Form coverage as, “coverage limited to certain specified causes of loss.” Basic Form coverage is limited to specific covered perils or causes of loss as follows:

- Fire
- Lightning
- Explosion
- Windstorm or Hail
- Riot or Civil Commotion
- Vandalism
- Sprinkler Leakage
- Sinkhole Collapse
- Volcanic Action

#### 9.1.2 Special form

The LGIT Scope of Coverage defines Special Form coverage as, “coverage from any cause of loss except those causes specifically excluded.” This is a broader coverage than the Basic Form and covers

all types of property damage, except for those damages that are specifically excluded, or considered Equipment Breakdown. Special Form does not include equipment breakdown. Coverage applies to any given situation, except those perils that the LGIT Scope of Coverage specifically excludes. The Claims Analyst will evaluate the incident, review the policy, and advise the insured as to the exclusions.

A few examples of extra Special Form coverages are listed below. However, it is important to refer to the policy for a further listing of items covered, as well as a listing of the pertinent exclusions to those particular items.

- Time element; extra expense

Time Element is an item, which is subject to a limit of \$250,000 dollars per occurrence unless a higher limit is selected by the Insured. This type of coverage includes an item entitled Extra Expense. Extra Expense allows for the recovery of necessary expenses the Insured incurs during the period of recovery to maintain or continue business operations that the Insured would not have incurred if there had been no damages to the Insured's property. Extra Expense does not include wages; salary or other compensation, other than overtime directly attributed to the loss, which is paid to employees of the Insured.

- New construction coverage

During the course of construction, addition, alterations, or repairs, the trust will cover, subject to the lesser of the Blanket Buildings and Personal Property Maximum Per Occurrence limit shown on the Declarations or \$500,000 dollars per Occurrence unless a higher limit is selected.

- Newly acquired property

The Trust will cover, as Covered Property, newly acquired or constructed Property not included in the “Schedule A” for a period of sixty days following the date of acquisition or until added to “Schedule A”, whichever occurs first. However, the coverage stops at the end of the sixty days, therefore, be sure to notify underwriting to add the new building to the schedule.

9.2     What is the claims procedure?

9.2.1     Report the claim

- Fax claim form to analyst
- Forward occurrence reports
  - Supervisor’s reports
  - Police reports

Complete a Property/Equipment Breakdown form and immediately fax it to the Claims Analyst responsible for your jurisdiction. The member should include with this form any reports prepared regarding the incident such as police reports or supervisor’s reports.

9.2.2     Coverage determination

The LGIT representative will review the basis of the occurrence and make a determination regarding coverage. It is important to contact your representative immediately after an incident so an assessment can be made in an expedient manner.

9.2.3     Claim appraisal — damage estimated under \$2,500

- Provide 2 estimates and forward to LGIT
- LGIT will pay the lower estimate less deductible

9.2.4     Claim appraisal — damage estimated over \$2,500

- Notify LGIT that estimates exceeds \$2,500

- Independent appraiser assigned
  - Will determine two separate values of the claim
    - ACV (Actual Cash Value) appraisal – the cost of replacing damaged or destroyed property with comparable new property, minus depreciation (RCV – depreciation – deductible)
    - RCV (Replacement Cost Value) appraisal – the sum it takes to replace an insured's damaged or destroyed property with one of like kind and quality. Replacement does not include improvements to the property

Upon notification that the damage estimate exceeds \$2,500 the LGIT Claims Analyst will send out an appraiser to evaluate and assess the claim. The appraiser will make contact with the member within 48 hours of notification to the Analyst. For emergency situations, the Analyst will make every effort to have the appraiser at the loss site sooner than 48 hours. Always keep the appraiser involved in the claim until final payment is made by LGIT.

The appraiser will forward to the Analyst a report regarding the claim, which will include an ACV value and a RCV value of the claim. LGIT will issue a check for ACV minus the member deductible.

- Receive ACV payment less deductible from LGIT
- Obtain repair bids

At this time the insured may begin repairs of the damaged property if applicable. If the value of the claim is over \$5,000.00 dollars, bids are normally required. The insured should refer to the city/county ordinance or statute, which typically requires that the insured go through the bid process when the value of a claim exceeds \$5,000.00 dollars.

- Repair property

Once repairs have been completed, the appraiser will come back to the site, inspect and report to LGIT. LGIT will then send a final check for the RCV less the ACV, which was previously paid. At this time the claim file will be closed.

- Receive final check for RCV less ACV previously paid



# Section 10

## Lawsuit Notification





## Section 10. Lawsuit Notification

Lawsuits are filed in all types of liability third party claims. All litigation matters are handled by Claims Analysts. The receipt of a lawsuit requires immediate action by our members.

### 10.1 What to do when a lawsuit is received.

- Make a notation of the date, time, and method of service of the Summons and Complaint (certified mail, process server, sheriff).

This information is required for all employees who are served with the Complaint. The notation may be made on the face of the complaint. Because a response is due within a fixed period of time, which runs from the receipt of the lawsuit, this information is essential.

- Immediately fax or deliver a copy of the Complaint and Summons to your assigned Claims Analyst.

Lawsuits MUST be faxed or provided to the Trust within 24 hours of receipt. Time is of the essence, because lawsuits require a response within a fixed period of time. Complaints filed in the District Court of Maryland require the filing of a Notice of Intention to Defend within 15 days from the receipt of the lawsuit. Complaints filed in the State Circuit Court require a response within 30 days and complaints filed in the United States District Court for the District of Maryland require a response within 20 days.

- Notify proper local government officials of the lawsuit.

Pursuant to your own internal policies, notification of the lawsuit should be given to the City/County attorney, City/County administrator as well as the Supervisor of any employee named in the lawsuit.

- Confirm to the LGIT analyst whether notice of the claim was received as required by the Local Government Tort Claims Act.

For any lawsuit which alleges Maryland constitutional or common law claims, notice of a claim must have been provided to the local government within 180 days of the alleged occurrence. This information should have been provided to LGIT. However, if LGIT has never received a Notice of Claim, we will need to confirm with our member that the required statutory notice was not provided.

- Notify all defendant employees that they should speak to no one regarding the lawsuit except for assigned counsel or LGIT staff.

## 10.2 What occurs next?

After receipt of the lawsuit, the Claims Analyst will analyze the allegations contained in the complaint to determine if there is coverage pursuant to the guidelines of the LGIT Scope of Coverage.

If coverage applies, the analyst will assign the lawsuit to a LGIT approved litigation counsel best suited for the defense of the claims alleged in the lawsuit. Automobile Liability and General Liability claims will likely be assigned to the Trust's in-house litigation counsel. However, Police Liability and Public Official Liability matters will be assigned to approved outside counsel.

Following assignment, a letter will be forwarded to our member who will acknowledge receipt of the lawsuit and notify the member of the assigned counsel. A letter notifying our member of any reservation of rights within the LGIT Scope of Coverage may be sent at this time.

## 10.3 What is the Litigation Process?

- Receipt and Analysis of Complaint
  - What jurisdiction (federal or state court)
  - What type of claims
    - Federal constitutional claims (42 USC §1983)
      - Under color of law
      - Deprivation of rights secured by constitution
    - State constitutional claims –  
Maryland declaration of rights
    - State torts

The Claims Analyst works very closely with defense counsel to determine a proper and cost effective litigation strategy. For instance, if the Complaint is filed in State Court but alleges both federal and state law claims, it is likely that we will remove the matter to Federal Court. At this time, the Analyst will also establish preliminary loss and expense reserves for the litigated claim.

- Preliminary motions
  - Venue
  - Jurisdiction
  - Failure to state a claim
  - Insufficiency of process
  - Lack of statutory notice
  - Immunity

Upon receipt and analysis of the Complaint it may be appropriate to file a preliminary motion to request the court to dismiss the action against the Member or employee. For instance, if statutory Notice required by the Local Government Tort Claims Act was not provided to the member, we will file a Motion requesting the Court to dismiss the action for lack of proper statutory notice. At this juncture, we will also raise the issue of immunity if appropriate.

- File Answer following disposition of Preliminary Motions

If preliminary motions are not appropriate, or have been denied by the Court, an Answer will be filed on behalf of the member and any employee served with the lawsuit.

- Discovery
  - Interrogatories
  - Production of Documents
  - Depositions
  - Experts

This *discovery* phase of litigation requires the most active participation by members and their employees. Discovery includes interrogatories or questions that the Plaintiff may ask regarding the occurrence. Additionally, the Plaintiff may request copies of documents from the member that relate to the occurrence. This process will require assistance from our members.

After the exchange of information through interrogatories and document production, depositions will be taken of all parties to the litigation as well as witnesses who may have knowledge of the occurrence. A deposition is a proceeding where attorneys litigating the matter have the opportunity to ask questions of a witness before a court reporter who records the testimony.

Although we like to use the expertise of our member employees, occasionally, it will be necessary to retain the services of an expert witness to give an opinion regarding some aspect of the issues involved in the litigation. For instance, we may need to obtain a doctor to evaluate the medical condition of a Plaintiff. Or, we may need to retain the services of a person who reconstructs accidents to evaluate who was at fault in an accident. The opinions of experts retained in a case are exchanged prior to trial during the discovery process.

After completion of the discovery process, the LGIT Analyst, along with assigned counsel will re-evaluate the exposure of liability in the matter. At this juncture, the Analyst will adjust financial reserves in the matter and consider a settlement if, indeed, one is warranted.

- Motion for Summary Judgment
  - No Dispute of Fact
  - Court may decide as a Matter of Law

Following the discovery process, if we believe the evidence presented through discovery shows that there is no dispute of fact regarding the issues of the matter, we will file a Motion for Summary Judgment. A Summary Judgment Motion requests the court to rule as a matter of law that the case should be dismissed against our member and/or employee. If the judge grants our Motion the case will not go to trial, although the Plaintiff *may* appeal the Court's ruling. If the Motion for Summary Judgment is not granted, the matter will go to trial to allow a jury to determine the issues of the case.

- Trial

We will require either the Defendant employee or a representative of our member to be present during the duration of the trial. This will enable us to personalize our member local government to the jury. For instance, if the issue of the case involves negligent road maintenance by a municipality, it will be necessary for a supervisor of the Department of Public Works to be present at trial.

- Appeal

LGIT may authorize an appeal to the proper appellate Court. Appeals may be taken only if the trial court has made some error during the trial. For instance, a Defendant may appeal a ruling by the trial judge to allow certain testimony into evidence.

In Maryland an appeal may be taken to the Court of Special Appeals of Maryland. A further appeal to the Court of Appeals may occur but only if the Court agrees to accept the matter. Appeals of Federal claims go the United States Court of Appeals for the Fourth Circuit. A further appeal to the Supreme Court may occur but only if the Court agrees to accept the matter.

# Section 11

## Excess Claims





## Section 11. Excess Claims

### 11.1 What is an excess claim?

An Excess Claim is a serious liability claim that has the potential of exceeding the limit of liability under the LGIT Primary Liability Coverage of \$1,000,000.00. Fortunately, this is an area in which LGIT currently has no outstanding experience. The Local Government Tort Claims Act caps losses against local governments at \$200,000 per person and \$500,000 per total claim. Almost all automobile liability and general liability claims presented against our Members fall within the Local Government Tort Claims Act limit of liability. However, it should be noted that this cap would not apply to a vehicle travelling outside the State of Maryland.

Local Government claims that do not fall under the Local Government Tort Claims Act are claims which allege violations of a federally protected constitutional or statutory right. These claims are usually claims brought under 42 USC §1983 and may include police excessive force claims or employment termination claims.

LGIT purchases excess coverage from NLC Insurance Company for insurance covering potential losses of \$1,000,000.00 or more. Despite the low potential for a catastrophic loss that may involve the need for excess insurance, LGIT is required to report potential losses to NLC.

The reporting requirements for potential excess claims are as follows:

- All fatalities;
- All spinal cord injuries;
- All paralysis claims;
- All amputation claims;
- All brain damage claims; and
- All serious burn and disfigurement claims.

These claims need to be reported to the excess carrier regardless of liability exposure or loss reserve. In addition to the reporting requirements of NLC, the LGIT Claims Analyst also sometimes report serious federal constitutional claims involving use of force.

Although LGIT has never had a claim reach the excess level, it is important to be aware of the excess insurance reporting requirements so that we are protected from a catastrophic loss.

## 11.2 How is an excess claim reported?

If LGIT is handling the claim under the Primary Liability Scope of Coverage, then the Member does not need to further report the claim. The Claims Analyst will notify NLC of the potential loss.

IF LGIT insures the Member only for Excess Coverage, then the Member should report all claims that have a potential to exceed \$1,000,000. in loss. The notification should include:

- Type of claim
- Date of loss
- Name of claimant
  - Date of birth
  - Gender
  - Marital status
- Name of defendants or potential defendants
- Injury or damage
- Description of loss

# Section 12

## Exhibits





# Section 13

## Forms

