

Hurricane Season CLAIMS BRIEF



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The "Extraordinary Rainfall" Doctrine

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In mid-September, Maryland went from drought to flood conditions overnight. Although the break of the drought was welcome news for all of us, this meteorological turn-about did not come without a price. The sudden surge in rainfall, which accompanied Floyd and Dennis to our area, caused numerous storm water systems to overflow and flood people's homes and businesses. This resulted in a flood of claims against our members. As a result, we have been forced to re-evaluate the legal liability for our members associated with these storm events.

Although both citizens and local governments were harmed by the recent Hurricanes Floyd and Dennis, this article will focus on the unique problems associated with handling citizen complaints that result from storm flooding. Claims made by our member governments for damage to governmental property are being evaluated based on the policy provisions of the property coverage that was purchased.

Most of the claims that LGIT has received due to the hurricanes are the result of sewer back-ups into citizen's basements

or flooding caused by storm water culvert ditches, which overflowed. In each of these cases, the aggrieved citizen alleges that the local government should reimburse them for their damages, because the condition that harmed them was ultimately caused by some form of negligence on the part of the local government.

In order for claimants to show that a local government was negligent and responsible for flood-related damage, a claimant must show that the local government (1) owed them a duty [to not allow flood water into their homes], (2) breached that duty, and (3) was the proximate cause [the local government's failure to control the flood water caused the damages] of the damages. *E.g. Flood v. Atsgood Realty Co.*, 92 Md. App. 520, 608, A2d. 1297 (1992).

However, the primary duty required of a local government in regards to maintaining a storm water drainage system is to ensure that it is operating properly for normal storm events. For a local government to be found negligent for the overflow of a storm drain or sewer related claim, the claimant must

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show that there was a prior problem with the drainage system that the local government failed to correct. “The general rule is that, in order that an act or omission may be regarded as negligent, the person charged therewith must have knowledge that such act or omission involved danger in the instrumentality or property causing the injury, or must be chargeable with such knowledge.” *Adams v. Carey*, 172 Md. 173, 186 (1937) (quoting authority). If the local government has no prior knowledge of a potential problem with its sewer, or storm drainage system, then it should not be found liable for any damage resulting from a back up, or flooding event.

This defense against negligence for sewer related claims is further reinforced by the “extraordinary rainfall” doctrine adhered to by Maryland Courts. Local Governments are not responsible to “do more than take care of the usual and ordinary flow of water occasioned by rainfall, or otherwise, it has been expressly held that infrequent and extraordinary occurrences, which cannot be foreseen and provided against, create no obligation upon the municipality.” *Eisenstein v. Annapolis*, 177 Md. 222, 226-227, 9 A2d. 224, 226 (1939). Hurricanes Floyd and Dennis should clearly qualify as “unforeseen and extraordinary occurrences.” *Id.* The amount of rainfall these storms brought to Maryland was clearly an unusual, though welcome, circumstance.

As claims have been received by LGIT, we have analyzed them based on the legal principles outlined above. In most cases, these claims resulted from the unique situation created as a result of the hurricanes. Therefore, the claims made by the aggrieved citizens were denied simply

because that there was no negligence on the part of the local government that contributed to the damages.

Although these decisions are legally sound, they do not resolve the frustrations suffered by citizens and the local government that wants to help its own. In most cases, the local government can help their citizens get aid from the myriad state and federal disaster programs that have responded to these events. Another means of ensuring that its citizenry is covered for these storm water, sewer back up incidents is to purchase some additional coverage through LGIT.

LGIT provides a no-fault sewer back up coverage that will allow us to provide help to citizens who suffer such losses. This coverage is designed to allow a local government a means through which a citizen can make a claim for damages for a sewer back up that is not the fault of the local government. The public relations benefit of such an insurance provision is immeasurable. Local governments should also advise their citizens that they can purchase storm water and sewer back up coverage through their own individual homeowners policy which will provide coverage for these events. The cost of this coverage is usually about \$25.00 per year. Money well spent for peace of mind.

The LGIT claims staff appreciates the difficulty caused by storm events and in all cases attempts to find a means to resolve these claims. However, LGIT will not pay for a claim if our member is not legally negligent, and our members should not be legally obligated for damages sustained by citizens due to flooding caused by Hurricanes Floyd and Dennis.

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