

# What? That's Really Not Covered?

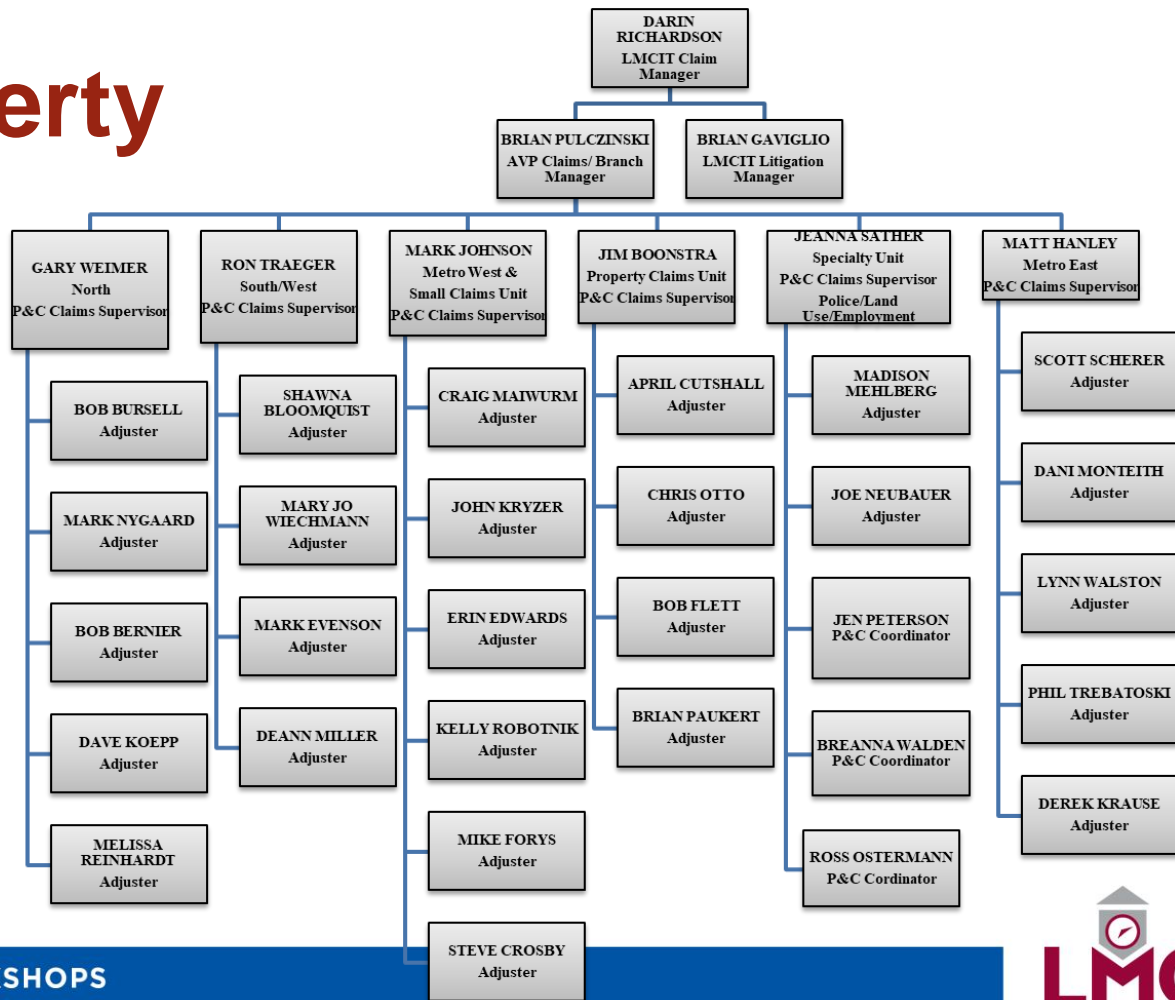
SAFETY AND LOSS CONTROL WORKSHOPS



# Session Overview

- Claims department overview & philosophy
- General liability coverage requirements
- Claim examples without coverage & exceptions
- Property coverage helpful recommendations

# LMCIT Property Casualty Claims Department



# Four Regional Claim Units

- North
- South
- Metro East
- Metro West



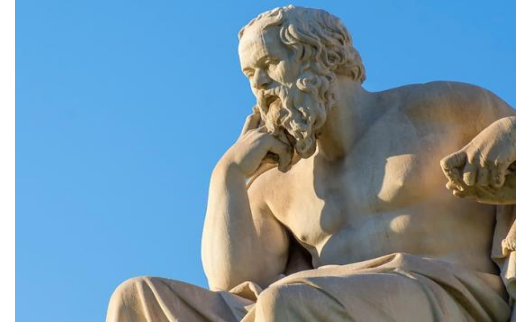
# Two Specialized Units

- Property (First-party, cyber/data breach, crime, bond)
- Specialty (police, employment and land use)



# Claims Philosophy

- Provide coverage for losses
- Consistently apply coverage
- Keep members advised
- Cooperative effort
- End result: consistently analyze coverage, properly evaluate claims, consider city's input and make settlement on meritorious claims
- Communicate, communicate, communicate.



# What Isn't Covered



# Why Things May Not Be Covered

- Explicit exclusion
- Not a covered entity
- Individual not a covered party
- No damage claim or wrongful act





# Explicit Exclusions - No Coverage

- War
- Pollution
- Injuries to employees
- Medical malpractice for doctors
- City attorneys & engineers who are not city employees
- Fireworks displays



# LMCIT Coverage For Municipal Liability

- *LMCIT* will pay on behalf of the *covered party* all sums which the *covered party* shall become legally obligated to pay as *damages* as a result of an *occurrence*...
- *Damages* means *money damages*, and includes *awards for attorneys' fees* with respect to *suits* alleging violations under federal civil rights laws, state human rights laws or the federal or state constitution
- *Damages* does not include any of the following: Injunctive or equitable relief, or quasi-judicial or administrative orders
- *Occurrence* means a *wrongful act* or a series of related *wrongful acts*.

# Three Main Elements

Covered Party

Damages

Occurrence/  
Wrongful Act

# Covered Party – Entities Not Covered

- Gas, electrical or steam utilities commissions
- Port authority HRA, EDA, Redevelopment Authority
- Municipal power and gas agencies
- Joint powers entities

# Covered Party, But...

- SECTION II - WHO IS COVERED

- b. **For actions within his duties as such**, any present or former:
  - (1) Member of the city council;
  - (2) Member of a *member* board, commission, or committee which is not excluded by the definition of *member*;
  - (3) Elected or appointed official of the *member*;
  - (4) Employee of the *member*

# Elected Official Within Duties?

Mayor distributed campaign material



Lacked statutorily required information



Violated campaign fair practices statute



Did not assert a damage claim

# Campaign Violations – MN Statute

- **211B.04 CAMPAIGN MATERIAL MUST INCLUDE DISCLAIMER.**
- (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section [211B.05, subdivision 1](#), that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

# Campaign Violation

Help our country reach new heights.

*Elect*  
**CAL SMITHFIELD**  
*to Congress*



Paid for by the XYZ Party Committee  
([www.xyz.fec](http://www.xyz.fec)) and not authorized by any  
candidate or candidate's committee



# Elected Official, Within Duties?

- Allegations that a current elected official running for reelection violated campaign laws.
- Campaigning for reelection is not within duties of the mayor...not a covered party.
- We disclaimed coverage.

# Employee Within Duties?

- Plaintiff was a suspect in officer death
- Fellow police officer posted an accusatory comment on a national officer memorial website about a suspected killer
- Plaintiff alleged defamation (damages)
- Defended subject to a reservation of rights

# Facts To Determine Coverage

Were the comments made when officer was within his duties as an officer?

- On duty?
- Use city furnished equipment for the online post?
- Posted at request of city?
- Seek permission from city prior?

# What We Determined

- Plaintiff no longer a suspect
- Officer was not on duty at the time of the comments
- Officer made comments from a personal computer at his home while off duty
- City did not ask officer to make the comments
- No permission sought to make comments on behalf of city

# LMCIT Coverage Decision

- Not a covered party at the time of the “wrongdoing”
- Comments were made in a personal capacity
- LMCIT and the City denied obligation to defend and indemnify

# City's Obligation

- **466.07 INDEMNIFICATION.**
- **1. Indemnification required.**
- Subject to the limitations in section [466.04](#), a municipality or an instrumentality of a municipality shall defend and indemnify any of its officers and employees, whether elective or appointive, for damages, including punitive damages, claimed or levied against the officer or employee, provided that the officer or employee:
  - (1) was acting in the performance of the duties of the position

# Final Outcome

- LMCIT & City jointly filed a Declaratory Judgment Action
- Ultimately a jury ruled in our favor
- Officer did not appeal
- Cost was \$76,000

# LMCIT Coverage For Municipal Liability

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- **Damages** means **money damages**, and includes **awards for attorneys' fees** with respect to *suits* alleging violations under federal civil rights laws, state human rights laws or the federal or state constitution
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# Costs Associated With Infrastructure

- Replacing items such as water, sewer, streets, etc.
- How are they funded?
  - Special Assessments
  - Taxes or fees associated with use



# Special Assessment Appeal

- Plaintiff sues city claiming their assessment is unfair, unreasonable, illegal, or unconstitutional
- Plaintiff claims they don't benefit from project and improvements

# MN Statute 429

- Most filed citing MN Statute 429
- Provides process for the appeal
- Does not allow for damages
- Case is purely asking the court to decide whether the property owner is subject to the special assessment/lower the amount
- No coverage:
  - No claim for damages
  - Injunctive in nature

# Special Assessment Appeals – Coverage Extended

- Additional allegations that:
  - Assessment constitutes a taking of their private property for public use without compensating plaintiff (not covered)
  - Depriving plaintiff of use of land without allowing due process & could potentially be entitled to attorney's fees (covered)
  - Assessment has devalued property (covered)
- We will defend with the additional allegations
- We have not seen any plaintiff prevail on securing loss of use devaluation of property or securing attorneys fees

# Mechanics Lien



# Mechanics Liens



- Legal claim on a property that allows a contractor, subcontractor, laborer, or material supplier to enforce payment for work completed on a property
- If prevail, a lien for the amount owed attaches to the title of the property
- Lien is not satisfied until payment made

# Mechanics Lien Example

- City constructed a park shelter
- City hired a general contractor
- General contractor didn't pay an electrician for services
- Electrician files a mechanics lien against the property and names the city and the general contractor

# Coverage Evaluation

- No damages as defined by LMCIT definition of damages
- No wrongdoing
- No coverage



# Mechanics Liens- Exceptions

- LMCIT Land Use and Special Risk Litigation:
- No damage claim need, just a lawsuit
- HRA, EDA or other City Development

# Ranked Choice Voting Lawsuit

- Citizens seeking vote on ranked choice voting
- City Charter Amendment required
- City denied request
- Citizen group brought lawsuit in State District Court

**✓ Your Ranked-Choice Ballot**

Rank up to 4 candidates. Mark no more than 1 oval in each column.

	First Choice	Second Choice	Third Choice	Fourth Choice
Candidate A	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Candidate B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Candidate C	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Candidate D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

# Ranked Choice Voting Lawsuit

- Complaint alleged the city had erred
- MN Statute, Chapter 204B.43
  - a) Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:
  - (b) The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner.
- The Court will determine the remedy.

# Coverage Evaluation

- No claim for money damages
- Statutes don't provide for any money damages or attorneys' fees
- Relief: "Force Charter Amendment on the ballot" which is injunctive or equitable relief or quasi-judicial or administrative order

# LMC/LMCIT Resources

- Future coverage change
- Recommend experienced legal counsel
- Research Department
- General Counsel
- Intergovernmental Relations
- Minnesota Association of City Attorneys

# Be Aware

- Charges filed with MDHR, EEOC...
- Sometimes only seeking a response to an allegation of potential wrongdoing and initially no request for damages
- LMCIT provides coverage for response and will assign defense counsel

# Questions?

# Common Property Coverage Solutions

## Light Poles and Fire Hydrants



# Property In The Open (PIO)

## ***PROPERTY IN THE OPEN***

This endorsement modifies coverage provided under the Municipal Property Coverage.

1. Section VII – DEFINITIONS defines *property in the open* to mean:

a. Benches, fences, light poles or outdoor lighting systems, playground equipment, sports and recreational apparatus, standalone dugouts, picnic tables, grills, statues, monuments, portable toilets, water fountains, garbage cans, flagpoles, planters, and signs that are not part of the building;

Unless, if otherwise endorsed, property in the open does not mean basketball, tennis or other recreational sporting court surfaces, fire hydrants, street signs, streetlights or traffic signs or signals, or any property described in SECTION I, 1.b., PROPERTY NOT COVERED.

# Wind and Vehicle Impacts to Light Poles





**When light poles are damaged, the underground wiring is not covered to/from poles.**



# Fire hydrant vehicle impact



# Property In The Open – Light Poles and Fire Hydrants

- Need to be scheduled as property in the open (PIO)
- PIO is not a blanket coverage on everything.
- PIO needs to be listed for the loss site address or citywide.
- Contact your agent to ensure these are on your policy if you want coverage.
- Contact your underwriter @ LMCIT with questions on coverage.

# Questions?